

# CHAPTER 61

## PROFESSIONAL AND OCCUPATIONAL LICENSES

Pamphlets 96, 97 - Professional and Occupational Licenses

Pamphlet 98 - Licensing Boards; Architects to Engineering

Pamphlet 99 - Licensing Boards; Hearing Aid Dealers to Utility Operators

### ARTICLE 1

### UNIFORM LICENSING

#### 61-1-1. Short title.

Sections 61-1-1 through 61-1-31 NMSA 1978 may be cited as the "Uniform Licensing Act".

**History:** 1953 Comp., § 67-26-1, enacted by Laws 1957, ch. 247, § 1; 1971, ch. 54, § 1.

#### ANNOTATIONS

**Cross-references.** - For the State Rules Act, see 14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978.

As to criminal offender employment, see 28-2-1 NMSA 1978.

**Revocation must be based on substantial evidence.** - In administrative adjudications where a person's livelihood (a property right) is at stake, any action depriving him of that property must be based upon such substantial evidence as would support a verdict in a court of law. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**Naked hearsay insufficient.** - In proceedings to revoke a license to conduct a business or profession, where, by law, the licensee is entitled to a hearing before the licensing authority, revocation based solely upon hearsay evidence is unwarranted. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**License not revocable on grounds for original denial.** - An administrative agency, having once issued a license to an applicant who has made full disclosure of all pertinent facts, may not revoke that same license for reasons that would not have permitted issuance of the license in the first instance. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 78 N.M. 536, 434 P.2d 61 (1967).

Barring fraud and misrepresentation and the existence of statutory authority, state may not revoke the license issued previously to party for the reason that party did not have

two years of college training required by the statute when, in fact, at the time appellant granted the license to party, state knew that appellee did not have said college work but, nevertheless, proceeded to grant him the license under a policy which, in effect, eliminated the college requirement. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 78 N.M. 536, 434 P.2d 61 (1967).

**Specification of "unprofessional conduct" not required.** - A board may suspend or revoke a license to practice a profession for "unprofessional conduct" without its being required to first specify by regulation or rule exactly what acts may be so considered. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**Preexisting account not required to receive funds.** - No law or regulation of the New Mexico real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M. L. Rev. 103 (1979-80).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 1 to 10.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 A.L.R.2d 90.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done - modern cases, 44 A.L.R.4th 271.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 A.L.R.4th 467.

## **61-1-2. Definitions.**

As used in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]:

A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and

(4) any other state agency to which the Uniform Licensing Act is applied by law;

B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension.

**History:** 1953 Comp., § 67-26-2, enacted by Laws 1957, ch. 247, § 2; 1959, ch. 223, § 13; 1969, ch. 6, § 1; 1971, ch. 54, § 2; 1973, ch. 259, § 4; 1977, ch. 245, § 165; 1981, ch. 62, § 16; 1981, ch. 349, § 1; 1983, ch. 295, § 26; 1989, ch. 6, § 49; 1989, ch. 51, § 26; 1989, ch. 387, § 16; 1990, ch. 75, § 24; 1991, ch. 147, § 26; 1993, ch. 49, § 31; 1993, ch. 171, § 25; 1993, ch. 295, § 1.

## **ANNOTATIONS**

**1989 amendments.** - Laws 1989, ch. 6, § 49, effective July 1, 1989, in Subsection A, substituting "surveyors" for "land surveyors" in Paragraph (16), "commission and division of the regulation and licensing department" for "committee and division of the commerce and industry department" in Paragraph (20), and "manufactured housing division of the regulation and licensing department" for "division of the commerce and industry department" in Paragraph (24), was approved March 2, 1989. Laws 1989, ch. 51, § 26, effective June 16, 1989, also amending this section by rewriting Subsections A(20) and A(24); adding a Subsection A(27), which read "the board of social work examiners; and"; and redesignating former Subsection A(27) as present Subsection A(28), was approved March 15, 1989. However, Laws 1989, ch. 387, § 16, effective July 1, 1989, also amending this section, in Subsection A(20) substituting "regulation and licensing department" for "commerce and industry department"; in Subsection A(24) inserting "manufactured housing" preceding "division" and substituting "regulation and licensing department" for "commerce and industry department"; adding present Subsection A(27); and redesignating former Subsection A(27) as present Subsection A(28), was approved April 7, 1989. This section is set out as amended by Laws 1989, ch. 387, § 16. See 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted "professional engineers and surveyors" for "professional engineers and land surveyors" in Paragraph (16), substituted "construction industries commission and construction industries division" for "construction industries committee and division" in Paragraph (20), deleted "Polygraphy Act and the" preceding "Private Investigators Act" in Paragraph (25), added present Paragraphs (28) to (34), designated former Paragraph (28) as present Paragraph (35), and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, added Paragraphs (35) and (36), designated former Paragraph (35) as Paragraph (37) and made a related stylistic change, and made a minor stylistic change in Subsection E.

**1993 amendments.** - Laws 1993, ch. 49, § 31, effective July 1, 1993, which, in Subsection A, deleted "state" preceding "board" in Paragraph (19), added Paragraph (27), and renumbered former Paragraphs (27) through (37) as Paragraphs (28) through (38), was approved March 18, 1993. Laws 1993, ch. 171, § 25, effective June 18, 1993, also amending this section by rewriting it to the extent that a detailed comparison is impracticable, was approved April 2, 1993. However, Laws 1993, ch. 295, § 1, effective June 18, 1993, also amending this section by rewriting Subsection A, but not giving effect to the changes made by the first two 1993 amendments, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 295, § 1. See 12-1-8 NMSA 1978.

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

### **61-1-3. Opportunity for licensee or applicant to have hearing.**

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action which would result in:

A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;

B. denial of a license after examination for any cause other than failure to pass an examination;

C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for any cause other than:

(1) failure to pay the required renewal fee;

(2) failure to meet continuing education requirements; or

(3) issuance of a temporary license extension if authorized by statute;

E. suspension of a license;

F. revocation of a license;

G. restrictions or limitations on the scope of a practice;

H. the requirement that the applicant complete a program of remedial education or treatment;

I. monitoring of the practice by a supervisor approved by the board;

J. the censure or reprimand of the licensee or applicant;

K. compliance with conditions of probation or suspension for a specific period of time;

L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;

M. corrective action, as specified by the board; or

N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

**History:** 1953 Comp., § 67-26-3, enacted by Laws 1957, ch. 247, § 3; 1981, ch. 349, § 2; 1993, ch. 295, § 2.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added the Paragraph (1) designation and Paragraphs (2) and (3) to Subsection D; added Subsections G through N; and made stylistic changes throughout the section.

**Probable cause hearing not necessary before revocation proceedings.** - A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to institution of license revocation proceedings against him. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

**Charging board not disqualified in hearing on charge.** - The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the absence of a provision for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Zeal in performing public duty does not disqualify.** *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 16, 57, 139.

Validity of statute or ordinance vesting discretion as to license in public officials without prescribing a rule of action, 12 A.L.R. 1435, 54 A.L.R. 1104, 92 A.L.R. 400.

Suspicion of intended violation of its conditions as ground for refusal of license, 27 A.L.R. 325.

Personal liability of public officers for refusing to grant license, 85 A.L.R. 298.

License holder's right to question propriety of issuing license to other persons, 109 A.L.R. 1259.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for cancelling license or special privilege, 113 A.L.R. 1179.

Prohibition as means of controlling licensing official, 115 A.L.R. 15, 159 A.L.R. 627.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Change in law pending application for permit or license, 169 A.L.R. 584.

Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required, 30 A.L.R.2d 1006.

Right to attack validity of statute, ordinance or regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 43, 55.

### **61-1-3.1. Limitations.**

A. No action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 shall be initiated by a board later than two years after the discovery of the conduct that would be the basis for the action except as provided in Subsections C and D of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico state board of public accountancy shall not initiate an action under the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery of a violation of that act.

**History:** 1978 Comp., § 61-1-3.1, enacted by Laws 1981, ch. 349, § 3; 1989, ch. 41, § 1; 1992, ch. 10, § 27; 1993, ch. 218, § 40; 1993, ch. 295, § 4.

## ANNOTATIONS

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted "Subsection D" for "Subsections D" and added "except as provided in Subsection C of this section"; in Subsection B deleted ", transaction" following "conduct"; and added Subsection C.

**The 1992 amendment,** effective May 20, 1992, substituted "Subsections C and D" for "Subsection C " in Subsection A, added Subsection D, and made minor stylistic changes throughout the section.

**1993 amendments.** - Laws 1993, ch. 218, § 40, effective July 1, 1993, adding a new Subsection E, was approved April 5, 1993. However, Laws 1993, ch. 295, § 4, also amending this section by substituting "Subsections D through N" for "Subsection D, E or F" in Subsection A and the first sentence of Subsection C; inserting "the discovery of" in Subsection A; substituting "result in any of the actions" for "have any of the effects" in the first sentence of Subsection C; and rewriting Subsection D, but not giving effect to the changes made by the first 1993 amendment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 295. See 12-1-8 NMSA 1978.

**When limitation period begins to run.** - The limitation period of this section begins to run from the date of the licensee's culpable conduct. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**Criminal prosecution tolls statute.** - The criminal prosecution of culpable conduct serves only to toll the statute if litigation is commenced during the two-year period following the criminal act. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

If tolling applies, the limitation period is tolled from the time of indictment or information until the judgment of conviction has been entered, but no longer. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**But conviction is not "conduct".** - Although the fact of conviction may provide a separate and independent basis for revoking a professional license, a conviction is not "conduct" within the meaning of this section and, therefore, the two-year limitation period begins to run from the time of the conduct, transaction, or occurrence that underlays the conviction rather than from the date of conviction. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For 1984-88 survey of New Mexico administrative law, see 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

#### **61-1-4. Notice of contemplated board action; request for hearing; notice of hearing.**

A. For the purpose of investigating complaints against licensees, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

B. When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:

(1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;

(2) indicating in what respects the applicant has failed to satisfy the board;

(3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and

(4) calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978.

C. In any board proceeding to take any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking any action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;

(2) indicating the general nature of the evidence;

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board will take the contemplated action; and

(4) calling the licensee's attention to his rights under Section 61-1-8 NMSA 1978.

E. If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

F. If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and regulations authorizing the board to take the contemplated action, which hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice.

G. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board.

**History:** 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1993, ch. 295, § 3.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, added present Subsection A; redesignated the former first paragraph of Subsection A as present Subsection B; rewrote the former second paragraph of Subsection A as present Subsection C; redesignated former Subsections B through D as Subsections D through F; substituted "D through N" for "D, E or F" in the introductory language of Subsection D; added Subsection G; and made stylistic changes in Subsections B, D, and F.

**Probable cause hearing not necessary before revocation proceedings.** - A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to institution of license revocation proceedings against him. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

**Charging board not disqualified in hearing on charge.** - The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Zeal in performing public duty does not disqualify.** *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Requirement of actual notice to license.** - The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which

convenes a hearing on a licensing matter and which is subject to the provisions of the act, must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

**Content of notice of contemplated action.** - The "evidence" to be set out in the notice of contemplated action under this statute is the evidence of the ground or grounds to be relied upon in taking the contemplated action under 61-5-14 NMSA 1978, not the evidence to be adduced by way of explanation and determination of rehabilitation under Criminal Offender Employment Act. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 60.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

53 C.J.S. Licenses §§ 43, 55, 56.

### **61-1-5. Method of service.**

Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978, may be served either personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last know [known] address as shown by the records of the board. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the Rules of Civil Procedure for the District Courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

**History:** 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5.

## **ANNOTATIONS**

**Cross-references.** - For service of process, see Rule 1-004.

**Requirement of actual notice to licensee.** - The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the

act, must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 37, 54.

### **61-1-6. Venue of hearing.**

Board hearings held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county.

**History:** 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6.

### **61-1-7. Hearing officers; hearings; public; exception; excusal; protection of witness and information.**

A. All hearings under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing officer shall, within thirty days after any hearing, submit to the board a report setting forth his findings of fact.

B. All hearings under the Uniform Licensing Act shall be open to the public, provided that in cases in which any constitutional right of privacy of an applicant or licensee may be irreparably damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The applicant or licensee may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may peremptorily excuse one board member or a hearing officer by filing with the board a notice of peremptory excusal at least twenty days prior to the date of the hearing, but this privilege of peremptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hear or decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of

peremptory excusals and excusals for good cause would result in less than a quorum of the board being able to hear or decide the matter, the peremptory excusals that would result in removing the member or members of the board necessary for a quorum shall not be effective.

D. In any case in which excusals for cause result in less than a quorum of the board being able to hear or decide the matter, the governor shall, upon request by the board, appoint as many temporary board members as are necessary for a quorum to hear or decide the matter. These temporary members shall have all of the qualifications required for permanent members of the board.

E. In any case in which excusals result in less than a quorum of the board being able to hear or decide the matter, the board, including any board members who have been excused, may designate a hearing officer to conduct the entire hearing.

F. Each board shall have power where a proceeding has been dismissed, either on the merits or otherwise, to relieve the applicant or licensee from any possible odium that may attach by reason of the proceeding, by such public exoneration as it shall see fit to make, if requested by the applicant or licensee to do so.

G. There shall be no liability on the part of and no action for damages against a person who provides information to a board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to a board shall be subject to disciplinary action.

**History:** 1953 Comp., § 67-26-7, enacted by Laws 1957, ch. 247, § 7; 1981, ch. 349, § 6; 1993, ch. 295, § 5.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "excusal; protection of witness and information" for "disqualification" in the catchline; substituted "any constitutional right of privacy" for "the reputation" in the first sentence of Subsection B; rewrote Subsection C; substituted "excusals for cause" for "disqualifications" in the first sentence of Subsection D; substituted "excusals" for "disqualifications" and "excused" for "disqualified" in Subsection E; and added Subsection G.

**Charging board not disqualified in licensing on charge.** - The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and is therefore an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Zeal in performing public duty does not disqualify.** Seidenberg v. New Mexico Bd. of Medical Exmrs., 80 N.M. 135, 452 P.2d 469 (1969).

**Due process violated where hearing conducted by prejudiced tribunal.** - Any utilization of this section which has the effect of allowing an administrative hearing, punitive in nature, to be conducted by a patently prejudiced tribunal must necessarily violate the due process provisions of the fifth and fourteenth amendments of the United States Constitution and N.M. Const., art. II, § 18. Reid v. New Mexico Bd. of Exmrs. in Optometry, 92 N.M. 414, 589 P.2d 198 (1979).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 43, 54, 55, 59.

### **61-1-8. Rights of person entitled to hearing.**

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

**History:** 1953 Comp., § 67-26-8, enacted by Laws 1957, ch. 247, § 8; 1981, ch. 349, § 7.

## ANNOTATIONS

**Section provides right to examine all opposing witnesses.** *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Law reviews.** - For article, "An Administrative Procedure Act For New Mexico," see 8 *Nat. Resources J.* 114 (1968).

For annual survey of New Mexico law relating to administrative law, see 12 *N.M.L. Rev.* 1 (1982).

For 1984-88 survey of New Mexico administrative law, see 19 *N.M.L. Rev.* 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 *Am. Jur. 2d Licenses and Permits* §§ 60, 61.

53 *C.J.S. Licenses* §§ 43, 54, 58, 59.

### **61-1-9. Powers of board or hearing officer in connection with hearings.**

A. In connection with any hearing held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Boards or hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant or licensee.

B. Geographical limits upon the subpoena power shall be the same as if the board or hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service, including tendering of witness and mileage fees, shall be the same as that under the Rules of Civil Procedure for the District Courts, except that those rules requiring the tender of fees in advance shall not apply to the state.

C. The board or hearing officer may impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena.

**History:** 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1981, ch. 349, § 8.

## ANNOTATIONS

**Administrative body has only authority given it by law.** In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Granting continuance to allow discovery.** - This section allows the board to grant a prehearing continuance to assure that the licensee obtains full and complete discovery. Molina v. McQuinn, 107 N.M. 384, 758 P.2d 798 (1988).

**Law reviews.** - For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses §§ 43, 58, 59.

### **61-1-10. Enforcement of board orders and contempt procedure.**

In proceedings before a board or hearing officer under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the district court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court may issue such order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt.

**History:** 1953 Comp., § 67-26-10, enacted by Laws 1957, ch. 247, § 10; 1981, ch. 349, § 9.

### **61-1-11. Rules of evidence.**

A. In proceedings held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], boards and hearing officers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. Boards and hearing officers may in their discretion exclude

incompetent, irrelevant, immaterial and unduly repetitious evidence. In proceedings involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Documentary evidence may be received in the form of copies or excerpts.

B. Boards and hearing officers may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When any board or hearing officer takes notice of a fact, the applicant or licensee shall be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

C. Boards and hearing officers may utilize their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

**History:** 1953 Comp., § 67-26-11, enacted by Laws 1957, ch. 247, § 11; 1981, ch. 349, § 10.

## ANNOTATIONS

**Reliable evidence given probative effect.** - Evidence of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs may be given probative effect under this section. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969). See note under 61-1-1 NMSA 1978.

**Necessity of expert testimony.** - Expert testimony was not required to support charges that a dentist submitted a false claim for reimbursement and that he was guilty of unprofessional conduct and failed to practice dentistry in a professionally competent manner. Where the agency conducting the hearing is itself composed of experts qualified to make a judgment as to the licensee's adherence to standards of professional conduct, there is no need for the kind of assistance an expert provides in the form of an opinion. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Hearsay admissible.** - This section clearly contemplates that a board may admit and consider hearsay evidence, if it is of a kind commonly relied upon by reasonably prudent men in the conduct of serious affairs. In *re Willoughby*, 82 N.M. 443, 483 P.2d 498 (1971).

Because an agency has wide discretion in receiving and excluding evidence in proceedings under the Uniform Licensing Act, any error in allowing reference to an indictment against a dentist was harmless. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Standard of proof applied in administrative proceedings,** with few exceptions, is a preponderance of the evidence. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

**Substantial evidence must support revocation.** - The revocation or suspension of a license to conduct a business or profession must not be based solely upon hearsay evidence, and other legally competent evidence, together with the hearsay evidence, must substantially support the findings upon which the revocation or suspension is based. *In re Willoughby*, 82 N.M. 443, 483 P.2d 498 (1971).

**Higher burden to prove fraud.** - Where fraud is charged in administrative proceeding, the evidence in support of a finding of fraud is not deemed substantial "if it is not clear, strong and convincing." *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Special weight given to technical findings.** - Courts may properly give special weight and credence to findings concerning technical or scientific matters by administrative bodies whose members, by education, training or experience, are especially qualified and are functioning within the perimeters of their expertise, and legislative approval of such treatment of the findings of such boards is implicit in this section. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974).

**Law reviews.** - For article, "An Administrative Procedure Act For New Mexico," see 8 *Nat. Resources J.* 114 (1968).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 *N.M. L. Rev.* 103 (1979-80).

For annual survey of New Mexico law relating to administrative law, see 12 *N.M.L. Rev.* 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 *Am. Jur. 2d Licenses and Permits* §§ 62, 71, 79, 80, 83.

Hearsay in proceedings for suspension or revocation of license to conduct business or profession, 142 *A.L.R.* 1388.

Hearsay evidence in proceedings before state administrative agencies, 36 *A.L.R.3d* 12.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 *A.L.R.4th* 969.

53 *C.J.S. Licenses* §§ 43, 58, 59.

## **61-1-12. Record.**

In all hearings conducted under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], a complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the board, by tape recording. The

board shall observe any standards pertaining to tape recordings established for the district courts of this state.

**History:** 1953 Comp., § 67-26-12, enacted by Laws 1957, ch. 247, § 12; 1981, ch. 349, § 11.

### ANNOTATIONS

**Section provides for complete transcript.** *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

#### **61-1-13. Decision.**

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A decision based on the hearing shall be made by a quorum of the board and signed by the person designated by the board within sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing.

**History:** 1953 Comp., § 67-26-13, enacted by Laws 1957, ch. 247, § 13; 1981, ch. 349, § 12; 1993, ch. 295, § 6.

### ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, in Subsection A, substituted "a quorum of the board" for "the board at a meeting where a majority of the members are present and participating in the decision" at the end of the first sentence; and made stylistic changes in the second and third sentences.

**Standard of proof** for a hearing under this section is by a preponderance of the evidence. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

**Section requires that decision be made by majority of the members of the board.** *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Effect of failure to timely sign decision.** - Failure of the board of dentistry to render and sign its decision suspending a dentist's license within 90 days after completion of the hearing made the decision null and void. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

The 90-day time limit imposed by this section is expressly jurisdictional. Where the board fails to take action within the required 90-day period, its decision is void and must be reversed. *Lopez v. New Mexico Bd. of Medical Exmrs.*, 107 N.M. 145, 754 P.2d 522 (1988).

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses §§ 43, 60.

### **61-1-14. Service of decision.**

Within fifteen days after the decision is rendered and signed, the board shall serve upon the applicant or licensee a copy of the written decision.

**History:** 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14.

## **ANNOTATIONS**

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

### **61-1-15. Procedure where person fails to request or appear for hearing.**

If a person who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give the person notice as required by Sections 61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

**History:** 1953 Comp., § 67-26-15, enacted by Laws 1957, ch. 247, § 15; 1981, ch. 349, § 14.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 43, 61.

### **61-1-16. Contents of decision.**

The decision of the board shall contain findings of fact made by the board; conclusions of law reached by the board; the order of the board based upon these findings of fact and conclusions of law; and a statement informing the applicant or licensee of his right to judicial review and the time within which such review must be sought.

**History:** 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1981, ch. 349, § 15.

### **61-1-17. Petition for review; waiver of right.**

Any person entitled to a hearing under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court of Santa Fe county or in the district court of the county in which the hearing was held or, upon agreement of the parties to the appeal, in any other district court of the state. In order to obtain such review, the person shall, within twenty days after the date of service of the decision as required by Section 61-1-14 NMSA 1978, file with the court a petition for review, a copy of which shall be served on the office of the attorney general and on the board secretary, stating all exceptions taken to the decision and indicating the court in which the appeal is to be heard. The court shall not consider any exceptions not stated in the petition. Failure to file a petition for review in the manner and within the time stated shall operate as a waiver of the right to judicial review and shall result in the decision of the board becoming final; except that for good cause shown, within the time stated, the judge of the district court may issue an order granting one extension of time not to exceed sixty days.

**History:** 1953 Comp., § 67-26-17, enacted by Laws 1957, ch. 247, § 17; 1993, ch. 295, § 7.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, inserted "office of the attorney general and on the" in the second sentence and made stylistic changes in the second and fourth sentences.

**Section applies only to licensing decisions.** - This section sets forth venue provisions governing the judicial review only of orders of the board which relate to the

denial, suspension or revocation of licenses. It is inapplicable to judicial review of price agreement order of state board of barber examiners. *Tudesque v. New Mexico State Bd. of Barber Exmrs.*, 65 N.M. 42, 331 P.2d 1104 (1958).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

Stay pending review of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

53 C.J.S. Licenses §§ 43, 62.

### **61-1-18. Record filed by board; contents.**

Within thirty days after service of the copy of the petition for review, the board shall prepare, certify and file with the clerk of the district court in the proper county the record of the case, comprising a copy of the notice of hearing required under Sections 4 and 5 [61-1-4 and 61-1-5 NMSA 1978]; a complete transcript of the testimony taken at the hearing; copies of all pertinent documents and other written evidence introduced at the hearing; a copy of the decision of the board containing the items specified in Section 16 [61-1-16 NMSA 1978]; and a copy of the petition for review containing the exceptions filed to the decision. For good cause shown within the time stated, the judge of the district court may issue an order granting one extension of time not to exceed sixty days.

With permission of the court, the record may be shortened by stipulation of all parties to the review proceeding. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

**History:** 1953 Comp., § 67-26-18, enacted by Laws 1957, ch. 247, § 18.

### **ANNOTATIONS**

**Evidence collaterally attacking conviction properly excluded.** - The opinion of an expert criminal lawyer that a dentist's plea of guilty had been unknowingly and unintelligently given and that he had received ineffective assistance of counsel in the criminal proceedings leading to his convictions was irrelevant to the issue before the court, and constituted an attempt to collaterally attack the convictions. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses §§ 43, 62.

### **61-1-19. Stay.**

At any time before or during the review proceeding, the aggrieved person may apply to the board or file a motion in accordance with the Rules of Civil Procedure for the District Courts in the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The board or court may grant or deny the stay in its discretion. No such order granting or denying a stay shall be reviewable.

**History:** 1953 Comp., § 67-26-19, enacted by Laws 1957, ch. 247, § 19; 1976, ch. 4, § 1; 1981, ch. 349, § 16.

## ANNOTATIONS

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 84.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade, or occupational license, 42 A.L.R.4th 516.

### 61-1-20. Scope of review.

Upon the review of any board decision under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the judge shall sit without a jury, and may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken, except that in cases of alleged omissions or errors in the record, testimony thereon may be taken by the court. The court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are: in violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the board; or made upon unlawful procedure; or affected by other error of law; or unsupported by substantial evidence on the entire record as submitted; or arbitrary or capricious.

If the court reverses or remands the decision of the board, the judge shall set out in writing, which writing shall become a part of the record, the reasons for such reversal or remand.

**History:** 1953 Comp., § 67-26-20, enacted by Laws 1957, ch. 247, § 20.

## ANNOTATIONS

**Reviews of real estate commission governed by different provision.** - Because, where statutes are in conflict with one another and one cannot be applied without doing violence to another, the specific provisions should govern over the general, 61-29-13

NMSA 1978, adopted in 1959 as part of the Real Estate Broker and Salesman Act, rather than this section, adopted in 1957 as part of the Uniform Licensing Act, governs reviews of the real estate commission. *Poorbaugh v. New Mexico Real Estate Comm'n*, 91 N.M. 622, 578 P.2d 323 (1978).

**Options of reviewing court.** - The court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are: in violation of constitutional provisions; or in excess of the statutory authority or jurisdiction of the board; or made upon unlawful procedure; or affected by other error of law; or unsupported by substantial evidence on the entire record as submitted; or arbitrary or capricious. *In re Willoughby*, 82 N.M. 443, 483 P.2d 498 (1971).

The district court is limited in its review to determining whether the order of the board was unreasonable or unlawful; whether the order of the board was supported by substantial evidence; and, generally, whether the action of the board was within the scope of its authority. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969); *Fiber v. New Mexico Bd. of Medical Exmrs.*, 93 N.M. 67, 596 P.2d 510 (1979).

**The supreme court must conduct the same review as the district court** while at the same time determining whether the district court erred in the first appeal. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

**Court may not substitute its judgment** for that of the board. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974); *Fiber v. New Mexico Bd. of Medical Exmrs.*, 93 N.M. 67, 596 P.2d 510 (1979).

This section does not permit the court to make the findings or to fix the penalty for such is the function of the New Mexico real estate commission. *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Board's findings to be upheld if supported by substantial evidence.** - The district court is bound to uphold the board's findings if they were supported by substantial evidence, regardless of whether the court might find otherwise or might believe different witnesses. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**"Substantial evidence" is defined** as "more than merely any evidence and more than a scintilla of evidence and contemplates such relevant legal evidence as a reasonable person might accept as sufficient to support a conclusion." *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

"Substantial evidence" means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**Where reviewing court to defer to board.** - The court may give special weight to the decision of the board of medical examiners where the issue before the board is essentially one of a scientific or medical nature; however, where the facts are not in dispute and the question is a legal one, the court will not hesitate to overrule the decision of the board. *Fiber v. New Mexico Bd. of Medical Exmrs.*, 93 N.M. 67, 596 P.2d 510 (1979).

**Supreme court review.** - The supreme court, in reviewing the district court's judgment, must, in the first instance, make the same review of the administrative agency's action as did the district court. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Grounds for reversal.** - The courts are vested with the power and authority to set aside an order of such agency if it is unreasonable, unlawful, arbitrary, capricious or not supported by evidence. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974).

**Reversal must be based on specified ground.** - When the judge substitutes his own judgment in reversing the decision of the board, rather than basing his reversal upon any of the grounds set forth in this section, his judgment will be reversed and that of the board reinstated. *In re Willoughby*, 82 N.M. 443, 483 P.2d 498 (1971).

It is well established that a district court, on appeal, is restricted to whether, as a matter of law, the administrative body acted fraudulently, arbitrarily or capriciously, whether the administrative order is substantially supported by evidence and, generally, whether the action of the administrative body was within the scope of its authority. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Findings and conclusions as to intent to deceive.** - Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause would be remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

**New evidence not heard on review.** - The scope of review of the district court upon appeal from the board excludes evidence not offered at the hearing, except that in cases of alleged omissions or errors in the record, as testimony thereon may be taken by the court. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Absence of board member not prejudicial.** - Where one of the board members is absent during part of the testimony and is apparently rounding up a witness to testify at the hearing absent an indication that the board as a whole was biased or prejudiced toward appellee, it would not constitute a basis to overturn the board's decision. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Substantial evidence to support real estate commission's suspension of broker's license.** - See Elliott v. New Mexico Real Estate Comm'n, 103 N.M. 273, 705 P.2d 679 (1985).

**Review in light of 61-6-12 NMSA 1978.** - The district court may find that the differences in methodology of examination scoring between this state and another do not rationally relate to the question of "equivalent" "qualifications and requirements," as those terms are used in the second sentence of 61-6-12 NMSA 1978 (now 61-6-13A NMSA 1978). Fiber v. New Mexico Bd. of Medical Exmrs., 93 N.M. 67, 596 P.2d 510 (1979).

**Findings unsupported by substantial evidence.** - Where there is a failure to establish the nature of pills sold and whether a prescription is required by law, findings that pharmacist willfully and unlawfully sold without prescription certain dangerous drugs as defined by the Federal Food and Drug Laws would not be supported by law and should be set aside. Young v. Board of Pharmacy, 81 N.M. 5, 462 P.2d 139 (1969).

**Arbitrary action defined as willfully in disregard of facts.** - Arbitrary and capricious action on the part of an administrative agency has been defined as willful and unreasonable action, without consideration and in disregard of facts or circumstances. Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached. McDaniel v. New Mexico Bd. of Medical Exmrs., 86 N.M. 447, 525 P.2d 374 (1974).

**Law reviews.** - For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 N.M. L. Rev. 103 (1979-80).

For article, "Substantial Evidence Reconsidered: The Post-Duke City Difficulties and Some Suggestions for Their Resolution," see 18 N.M.L. Rev. 525 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required, 30 A.L.R.2d 1006.

53 C.J.S. Licenses §§ 43, 62.

### **61-1-21. Power of board to reopen the case.**

A. At any time after the hearing and prior to the filing of a petition for review, the person aggrieved may request the board to reopen the case to receive additional evidence or for other cause.

B. The board need not reconvene and may be polled about whether to grant or refuse a request to reopen the case. The board shall grant or refuse the request in writing, and that decision and the request shall be made a part of the record. The decision to grant or refuse a request to reopen the case shall be made, signed by the person designated by the board, and served upon the applicant or licensee within fifteen days after the board receives the request.

C. The granting or refusing of a request to reopen the case shall be within the board's discretion. The board may reopen the case on its own motion at any time before petition for review is filed; thereafter, it may do so only with the permission of the reviewing court. If the board reopens the case, it shall provide notice and a hearing to the applicant or licensee. The notice of the hearing shall be served upon the applicant or licensee within fifteen days after service of the decision to reopen the case. The hearing shall be held within forty-five days after service of the notice, and a decision shall be rendered, signed and served upon the applicant or licensee within thirty days after the hearing.

D. The board's decision to refuse a request to reopen the case shall not be reviewable except for an abuse of discretion.

**History:** 1953 Comp., § 67-26-21, enacted by Laws 1957, ch. 247, § 21; 1981, ch. 349, § 17.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses §§ 43, 61.

### **61-1-22. Remand for hearing newly discovered evidence; procedure before the board.**

At any time after the petition for review has been filed, the aggrieved person may apply to the reviewing court for leave to present additional evidence. If the court is satisfied

that the evidence is material to the issues, that it is not merely cumulative and that it could not reasonably have been presented at the hearing before the board, the court may remand the case to the board where additional evidence shall be heard. The board may then affirm or modify its findings of fact and its decision, and shall file with the reviewing court as a part of the record the additional evidence, together with the affirmation of, or modifications in, its findings or decision.

**History:** 1953 Comp., § 67-26-22, enacted by Laws 1957, ch. 247, § 22.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 16, 57, 139.

### **61-1-23. Appeal to supreme court.**

Any party to the review proceeding, including the board, may appeal to the supreme court from the decision of the district court under rules of procedure applicable in other civil cases. No appeal bond shall be required of the board. The appealing party may apply to the district court for a stay of that court's decision or a stay of the board's decision, whichever shall be appropriate, pending the outcome of the appeal to the supreme court.

**History:** 1953 Comp., § 67-26-23, enacted by Laws 1957, ch. 247, § 23.

### **ANNOTATIONS**

**Cross-references.** - As to procedure on appeal to the supreme court, see Rule 12-101.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses §§ 43, 62.

### **61-1-24. Power of board to seek injunctive relief.**

Any board may appear in its own name in the courts of the state and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of rules and regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations.

**History:** 1953 Comp., § 67-26-24, enacted by Laws 1957, ch. 247, § 24.

### **ANNOTATIONS**

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 85, 149.

53 C.J.S. Licenses § 85.

### **61-1-25. Declaratory judgment.**

The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the district court of Santa Fe county when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board.

**History:** 1953 Comp., § 67-26-25, enacted by Laws 1957, ch. 247, § 25.

#### **ANNOTATIONS**

**Cross-references.** - For declaratory judgments, see 44-6-1 NMSA 1978 et seq.

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 22A Am. Jur. 2d Declaratory Judgments §§ 73, 76.

53 C.J.S. Licenses § 37.

### **61-1-26. Judicial review procedure exclusive.**

The provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] providing a uniform method of judicial review of board actions of the kind specified in Section 3 [61-1-3 NMSA 1978] shall constitute an exclusive method of court review in such cases and shall be in lieu of any other review procedure available under statute or otherwise. Nothing herein, however, shall be construed to bar the use of any available remedies to test the legality of any type of board action not specified in Section 3.

**History:** 1953 Comp., § 67-26-26, enacted by Laws 1957, ch. 247, § 26.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses §§ 43, 62.

### **61-1-27. Amending and repealing.**

The provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of this act being amended, repealed or superseded.

**History:** 1953 Comp., § 67-26-27, enacted by Laws 1957, ch. 247, § 27; 1981, ch. 349, § 18.

### **61-1-28. Purpose of act; liberal interpretation.**

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] is to promote uniformity with respect to the conduct of board hearings and judicial review and that the Uniform Licensing Act is to be liberally construed to carry out its purpose.

**History:** 1953 Comp., § 67-26-28, enacted by Laws 1957, ch. 247, § 28.

## **ANNOTATIONS**

**Severability clauses.** - Laws 1957, ch. 247, § 29, provides for the severability of the act if any part or application thereof is held invalid.

### **61-1-29. Adoption of regulations; notice and hearing.**

A. The procedures specified in Sections 61-1-29 through 61-1-31 NMSA 1978 shall be applicable to proceedings by a board to adopt, amend or repeal rules or regulations of general applicability which implement or interpret a law enforced or administered by the board. These procedures shall not apply to:

(1) statements, policies, procedures or regulations concerning only internal management or discipline of a board and not affecting the rights of or procedures available to licensees, applicants or the public generally;

(2) declaratory rulings issued pursuant to Section 61-1-33 NMSA 1978;

(3) decisions, statements or interpretations issued or actions taken in the course of disciplinary proceedings against a licensee; or

(4) formal or informal opinions of the attorney general issued pursuant to requests of the board.

B. No regulation or amendment or repeal thereof shall be adopted by the board until after a public hearing by the board.

C. The board shall make reasonable efforts to give notice of any rulemaking proceeding to its licensees and to the members of the public. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulations. The notice of the public hearing shall include but not necessarily be limited to publishing the notice in a newspaper of general circulation in the state, and the board shall give notice to all persons who have made a written request to the board for advance notice.

D. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board. The board may designate a hearing officer to take evidence in the hearing. A record shall be made of all proceedings at the hearing.

E. No regulation or amendment or repeal thereof shall become effective until thirty days after its filing under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

**History:** 1953 Comp., § 67-26-29, enacted by Laws 1971, ch. 54, § 3; 1981, ch. 349, § 19.

## ANNOTATIONS

**Cross-references.** - As to legal newspaper, see 14-11-2 NMSA 1978.

**Notice procedure of pharmacy board does not violate due process.** Montoya v. O'Toole, 94 N.M. 303, 610 P.2d 190 (1980).

**Board must disclose reasoning behind regulation.** - In propounding regulations the board of pharmacy need not make formal findings. The only requirements which it must meet are that the public and the reviewing courts are informed as to the reasoning behind the regulation. The comments of the one board member suffice in this regard. Pharmaceutical Mfrs. Ass'n v. New Mexico Bd. of Pharmacy, 86 N.M. 571, 525 P.2d 931 (Ct. App. 1974).

**Subsection C is applicable to repeal of regulations** by an administrative agency. Rivas v. Board of Cosmetologists, 101 N.M. 592, 686 P.2d 934 (1984).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 46, 125.

53 C.J.S. Licenses § 37.

### **61-1-30. Emergency regulations; appeal.**

A. If the board determines that an emergency exists which requires immediate action to protect the public peace, health, welfare or safety, it may, with the written concurrence of the governor, adopt a regulation or amendment or repeal thereof, and the emergency regulation shall become effective immediately upon its filing under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]. The emergency regulation shall not continue in effect longer than forty-five days unless within that time the board commences proceedings to adopt the regulation by issuing the notice required under Section 61-1-29 NMSA 1978. If the board commences proceedings under Section 61-1-29 NMSA 1978, the emergency regulation shall remain in effect until a permanent regulation takes effect or until the procedures are otherwise completed. In no event shall any emergency regulation remain in effect for more than one hundred twenty days.

B. Any person who is or may be affected by an emergency regulation adopted by the board may appeal to the court of appeals for relief. An appeal of an emergency regulation is perfected by filing a notice of appeal with the court of appeals and the board within the period of time the emergency regulation is in effect. The notice of appeal shall be accompanied by a copy of the emergency regulation. Within three days of the date the board receives the notice of appeal, the board shall file with the court of appeals a statement setting forth the facts requiring the emergency action. The board shall also deliver a copy of the statement to the appellant. The appellant shall have five days to file with the court of appeals a written response to the board's statement. The appellant shall also deliver a copy of its response to the board. The court of appeals may set aside the emergency regulation only if it finds that the board's exercise of its emergency regulation-making authority is arbitrary, capricious, contrary to law or an abuse of discretion.

**History:** 1953 Comp., § 67-26-30, enacted by Laws 1971, ch. 54, § 4; 1981, ch. 349, § 20.

### **ANNOTATIONS**

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

### **61-1-31. Validity of regulation; judicial review.**

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for relief. All appeals shall be upon the record made at the hearing by the board and shall be taken to the court of appeals within thirty days

after filing of the regulation under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

B. An appeal to the court of appeals under this section is perfected by the timely filing of a notice of appeal with the court of appeals, with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the board.

C. Upon appeal, the court of appeals shall set aside the regulation only if found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) contrary to law; or
- (3) against the clear weight of substantial evidence of the record.

**History:** 1953 Comp., § 67-26-31, enacted by Laws 1971, ch. 54, § 5; 1981, ch. 349, § 21.

### ANNOTATIONS

**Interpretations overturned only if clearly wrong.** - Reviewing courts overturn the administrative interpretation of a statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpretation by the board of pharmacy of 26-1-16 NMSA 1978 to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. New Mexico Bd. of Pharmacy*, 86 N.M. 571, 525 P.2d 931 (Ct. App. 1974).

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

Right to attack validity of statute, ordinance or regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

53 C.J.S. Licenses § 37.

**61-1-32. Petition for adoption, amendment or repeal of regulations.**

Any interested person may request in writing that a board adopt, amend or repeal a regulation. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with Section 61-1-29 NMSA 1978 to adopt the regulation or issue a concise written statement of its reason for denial of the request. The denial of such a request is not subject to judicial review.

**History:** 1978 Comp., § 61-1-32, enacted by Laws 1981, ch. 349, § 22.

### **ANNOTATIONS**

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

### **61-1-33. Declaratory rulings.**

A. Any licensee of a board whose rights may be affected by the application of any statute enforced or administered by that board or by any decision, order or regulation of that board, may request in writing a declaratory ruling from the board concerning the applicability of the statute, decision, order or regulation to a particular set of facts. The board shall respond in writing to such a written request within one hundred twenty days.

B. The board may also issue declaratory rulings on its own motion.

C. The effect of a declaratory ruling shall be limited to the board and to the licensee, if any, who requested the declaratory ruling.

**History:** 1978 Comp., § 61-1-33, enacted by Laws 1981, ch. 349, § 23.

### **ANNOTATIONS**

**Law reviews.** - For annual survey of New Mexico law relating to administrative law, see 12 N.M.L. Rev. 1 (1982).

**Severability clauses.** - Laws 1981, ch. 349, § 25, provides for the severability of the Uniform Licensing Act if any part or application thereof is held invalid.

## **ARTICLE 2 OPTOMETRY**

### **61-2-1. Short title. (Effective until July 1, 1998.)**

Chapter 61, Article 2 NMSA 1978 may be cited as the "Optometry Act".

**History:** 1953 Comp., § 67-1-1, enacted by Laws 1973, ch. 353, § 1; 1985, ch. 241, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 8.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 A.L.R. 682, 42 A.L.R. 1342, 54 A.L.R. 600.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Corporation or individual not himself licensed, right of, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Prescription, one who fills, under reciprocity arrangement with optometrist, as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Liability of optometrist or optician for malpractice, 51 A.L.R.3d 1273.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6 to 8.

### **61-2-2. Definitions. (Effective until July 1, 1998.)**

As used in the Optometry Act [this article]:

A. "practice of optometry" means:

(1) the employment of any subjective or objective means or methods, including the prescription or administration of topical ocular pharmaceutical agents, for the purpose of determining the visual defects or abnormal conditions of the human eye and its adnexa; and

(2) the employing, adapting or prescribing of lenses, prisms, contact or corneal lenses or other optical appliances and prescribing or administering of topical ocular pharmaceutical agents for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa.

The "practice of optometry" shall not include the use of surgery, injections or any controlled substances in the treatment of eye diseases. Persons who sell or dispense eyeglasses upon prescription and who do not prescribe ophthalmic lenses for the eyes shall not employ, adapt, dispense, modify, provide, sell, give or fit contact or corneal lenses;

B. "ophthalmic lens" means a lens which has a spherical, cylindrical or prismatic value and which is ground pursuant to a prescription and intended to be used as eyeglasses or spectacles;

C. "contact or corneal lens" means any lens to be worn on the anterior segment of the human eye, to be prescribed, dispensed, adapted, employed, modified, provided, sold and fitted by a licensed optometrist or physician;

D. "prescription" means a formula written for ophthalmic lenses or for a topical ocular pharmaceutical agent which comes under the provisions of the New Mexico Drug and Cosmetic Act by a person duly licensed and containing the following essential elements:

(1) an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and shall bear the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue; or

(2) dioptric power of spheres, cylinders and prisms, axes of cylinders, position of prism base and, if so desired by the prescriber, light transmission properties and lens curve values;

(3) designation of pupillary distance; and

(4) name of patient, date of prescription, expiration date and the name and office location of prescriber; provided, however, that:

(5) those who sell and dispense eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine the:

(a) type, form, size and shape of ophthalmic lenses;

(b) placement of optical centers for distance-seeing and near-work;

(c) designation of type and placement of reading segments in multi-vision lenses;

(d) type and quality of frame or mounting, type of bridge and distance between lenses, type, length and angling of temples; and

(e) designation of pupillary distance;

E. "eyeglasses" means any exterior optical [optical] device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision and includes spectacles and other devices using ophthalmic lenses; and

F. "board" means the board of optometry.

**History:** 1953 Comp., § 67-1-2, enacted by Laws 1973, ch. 353, § 2; 1977, ch. 30, § 1; 1979, ch. 3, § 1; 1985, ch. 241, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**New Mexico Drug and Cosmetic Act.** - See 26-1-1 NMSA 1978 and notes thereto.

**"Optometry".** - Optometry and the practice of optometry relate basically to the testing of the loss of eyesight and the correction thereof by the use of optical appliances or other means, not including drugs, medicines or surgery. 1957-58 Op. Att'y Gen. No. 58-158.

**Duplicating of lens as "practice of optometry".** - A person who duplicates an ophthalmic lens without a prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1953-54 Op. Att'y Gen. No. 5909.

**Contact lenses.** - Even though not specifically named in former Optometry Practice Act, contact lenses could be considered a lens or other optical appliance. 1957-58 Op. Att'y Gen. No. 58-158.

**Audiometric testing should not be undertaken by optometrist** because the various healing arts professions should stay within the confines of their individual professions as defined by the separate licensing acts enacted by the state legislature. 1957-58 Op. Att'y Gen. No. 58-158.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 8, 39, 40.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 3 to 5.

**61-2-3. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Optometry Act [this article].

**History:** 1953 Comp., § 67-1-2.1, enacted by Laws 1974, ch. 78, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

### **61-2-4. License required. (Effective until July 1, 1998.)**

Unless licensed or exempted under the Optometry Act [this article], no person shall:

- A. practice optometry;
- B. represent himself or offer his services as being able to practice optometry;
- C. prescribe eyeglasses or give a prescription to a patient; or
- D. duplicate or replace an ophthalmic lens, not including contact lenses, without a current prescription, or without a written authorization from the patient if the prescription is not available.

**History:** 1953 Comp., § 67-1-3, enacted by Laws 1973, ch. 353, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - As to incorporation of optometrists under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

**Retail ophthalmic dispenser may not legally fit contact or corneal lenses** either independently or under the supervision of a New Mexico licensed practitioner of optometry or medicine. 1957-58 Op. Att'y Gen. No. 58-176.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 37, 38, 132.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 14, 17, 26, 27.

**61-2-5. Board created; terms; appointment; continuance; removal.  
(Effective until July 1, 1998.)**

A. There is created a six-member "board of optometry" composed of four persons who have resided in and have been continuously engaged in the practice of optometry in New Mexico for at least five years immediately prior to their appointment and two persons who shall represent the public. The public members of the board shall not have been licensed as an optometrist, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Professional members of the board shall be appointed by the governor from a list of five names for each vacancy submitted to him by the state organization affiliated with the American optometric association. Not more than one professional board member shall maintain his place of business or reside in any one county, and professional appointments shall be made on a geographical basis to effect representation of all areas of the state. Board members shall be appointed for staggered terms of five years or less, each. The terms of each board member shall be made in such a manner that the term of one board member ends on June 30 of each year. Board members shall serve until their successors have been appointed and qualified. A professional-member vacancy shall be filled for the unexpired term by the appointment by the governor of a licensed optometrist from the general area of the state represented by the former member. All members of the board of optometry in office on the effective date of the Optometry Act shall serve out their unexpired terms.

C. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for any reason that would justify the suspension or revocation of his license to practice optometry.

D. No board member shall serve more than two consecutive terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the state optometric association of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

**History:** 1953 Comp., § 67-1-4, enacted by Laws 1973, ch. 353, § 4; 1979, ch. 12, § 1; 1991, ch. 189, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, substituted "four persons" for "five persons" and "two persons" for "one person" in the first sentence and made a related stylistic change in Subsection A; in Subsection B, deleted "commencing with 1974" at the end of the fourth sentence and deleted the former fifth sentence which read "The public board member shall be appointed by the governor upon the effective date of this 1979 act to a five-year term expiring June 30, 1984, and vacancy appointments of a public member shall be for the unexpired term"; and made minor stylistic changes in Subsections A, B and C.

**"Effective date of the Optometry Act".** - The "effective date of the Optometry Act", referred to in this section, is April 3, 1973, which is the effective date of Laws 1973, ch. 353, § 18.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-2-6. Organization; meetings; compensation; powers and duties. (Effective until July 1, 1998.)**

A. The board shall annually elect a chairman, a vice chairman and a secretary-treasurer, each of whom shall serve until his successor is elected and qualified.

B. The board shall meet in January and July of each year for the purpose of examining candidates for licensure. Special meetings may be called by the chairman and shall be called upon the written request of a majority of the board members. Candidates for licensure by endorsement shall be examined at the next regular meeting after the date of their application. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting. Meetings of the board shall be held at the capitol in Santa Fe or at such other city in the state as is agreed upon at least thirty days prior to the meeting. A majority of the members constitutes a quorum.

C. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

D. The board shall:

- (1) administer and enforce the provisions of the Optometry Act [this article];
- (2) adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], all rules and regulations for the implementation and enforcement of the provisions of the Optometry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on any matters within the board's jurisdiction;
- (5) keep an accurate record of all its meetings, receipts and disbursements;
- (6) keep a record of all examinations held, together with the names and addresses of all persons taking the examinations and the examination results. Within thirty days after any examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;
- (7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which he is examined; providing that any applicant failing may apply for re-examination at the next scheduled examination date;
- (8) keep a book of registration in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions and revocations;
- (9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;
- (10) develop and administer qualifications for certification for the use of topical ocular pharmaceutical agents, including minimum educational requirements and examination, as required by Section 61-2-10 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use topical ocular pharmaceutical agents;
- (11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section 61-2-10 NMSA 1978, after proper notice and an opportunity to be heard before the board; and
- (12) have the power to employ agents or attorneys.

**History:** 1953 Comp., § 67-1-5, enacted by Laws 1973, ch. 353, § 5; 1977, ch. 30, § 2; 1979, ch. 12, § 2; 1985, ch. 241, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21 to 24.

**61-2-7. Disposition of funds; optometry fund created; method of payments; bonds. (Effective until July 1, 1998.)**

A. There is created the "optometry fund."

B. All funds received by the board and money collected under the Optometry Act [this article] shall be deposited with the state treasurer, who shall place the same to the credit of the optometry fund.

C. All payments out of the optometry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the optometry fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Optometry Act and the duties and powers imposed thereby; and

(2) the promotion of optometric education and standards in this state within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the optometry fund and shall continue to be available for use by the optometry board in accordance with the provisions of the Optometry Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the optometry fund for use in accordance with the provisions of the Optometry Act.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

G. The secretary-treasurer shall make, at the end of each fiscal year, an itemized report to the governor of all receipts and disbursements of the board for the prior fiscal year, together with a report of the records and information required by the Optometry Act. A copy of the annual report to the governor shall be presented to the board at its first meeting in July of each year.

**History:** 1953 Comp., § 67-1-6, enacted by Laws 1973, ch. 353, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Withdrawals from fund.** - The regulation and licensing department may not withdraw money from the optometry fund without approval from the board of optometry. 1988 Op. Att'y Gen. No. 88-63.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-2-8. Qualifications for licensure as an optometrist. (Effective until July 1, 1998.)**

Each applicant for licensure as an optometrist shall furnish evidence satisfactory to the board that the applicant:

A. has reached the age of majority;

B. is of good moral character and of temperate habits;

C. has completed at least an approved four-year high school course of study or the equivalent thereof as determined by regulations of the board;

D. is a citizen of the United States or has taken out his first naturalization papers; and

E. has graduated and been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board, and in the event the applicant applies for licensure by endorsement, he shall have been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board which had a minimum course of study of four thousand clock hours of instruction leading to such degree.

**History:** 1953 Comp., § 67-1-7, enacted by Laws 1973, ch. 353, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - As to the age of majority, see 28-6-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

**61-2-9. Licensure by examination; licensure by endorsement.  
(Effective until July 1, 1998.)**

A. An applicant meeting the qualifications set forth in Section 61-2-8 NMSA 1978, shall:

(1) file his application under oath, on forms supplied by the board, for an examination by the board. The examination shall be confined to the subjects within the curriculum of colleges of optometry approved and accredited by the board and shall include written tests and practical demonstrations and may include oral tests; or

(2) file his application under oath on forms supplied by the board which conform to board regulations on endorsement and furnish proof satisfactory to the board of his having been licensed by examination in another state which had qualifications equal to or exceeding those required in this state on the date of his original licensure, and satisfying the board that he holds a doctor of optometry degree from a school or college approved and accredited by the board which was obtained after the completion of a course of study with a minimum of four thousand clock hours of instruction. The applicant must have been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made. This proof shall be accepted in lieu of the written portion of the examination. Applicants for licensure without written examination shall be examined to the satisfaction of the board by practical, oral and clinical demonstration in the presence of a majority of the board and a detailed record of such examination shall be kept and made available to the applicant at his request.

B. All applicants successfully passing the examinations shall be issued a license by the board upon payment of the license fee.

**History:** 1953 Comp., § 67-1-8, enacted by Laws 1973, ch. 353, § 8.

**ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - For license fees, see 61-2-11 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 60, 67.

**61-2-10. Certification for use of topical ocular pharmaceutical agents; display. (Effective until July 1, 1998.)**

A. The board shall issue certification for the use of topical ocular diagnostic pharmaceutical agents to optometrists, licensed on the effective date of this section, who have completed appropriate forms issued by the board and submitted proof of successful completion of the educational requirements for certification established by the board, which requirements shall be not less than those required in Paragraph (2) of Subsection B of this section.

B. The board shall issue certification for the use of topical ocular diagnostic pharmaceutical agents to optometrists, licensed after the effective date of this section, who have completed appropriate forms issued by the board and submitted proof of:

(1) having satisfactorily completed a course in pharmacology as applied to optometry with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions, which course is offered by an institution accredited by a regional or professional accreditation organization recognized or approved by the national commission on accrediting or the United States secretary of education; or

(2) having postgraduate education with a minimum of seventy hours of instruction in general and ocular pharmacology as applied to optometry taught by an accredited institution and approved by the board.

C. The board shall issue certification for the use of topical ocular pharmaceutical agents to optometrists who have successfully completed an examination and submitted proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the application of pharmaceutical agents for the purpose of examination of the human eye, analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of one hundred five classroom-clinical hours of instruction in general and ocular pharmacology, including therapeutic pharmacology, as applied to optometry, and shall be taught by an accredited institution and approved by the board.

D. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business.

**History:** 1953 Comp., § 67-1-8.1, enacted by Laws 1977, ch. 30, § 3; 1985, ch. 241, § 4.

**ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**"Effective date of this section".** - The effective date of this section, referred to in the introductory paragraph of Subsection B, means the effective date of Laws 1977, ch. 30, § 3, which is June 17, 1977.

**Necessity of submission of proof of course completion.** - To become certified to use topical ocular pharmaceutical agents, an optometrist must pass an examination and submit proof of completion of the course in pharmacology to the board. To hold otherwise would render the certification process meaningless. The board would then have to contact every pharmacology school in the country to ask if any New Mexico optometrists had completed any courses. *Molina v. McQuinn*, 107 N.M. 384, 758 P.2d 798 (1988).

**The word "use" in Subsection C** extends to prescribing drugs for patients who are treated by an optometrist. *Molina v. McQuinn*, 107 N.M. 384, 758 P.2d 798 (1988).

### **61-2-10.1. Glaucoma; iritis; procedures for treatment; consultation with physician eye specialist. (Effective until July 1, 1998.)**

In the treatment of glaucoma or iritis, an optometrist who has diagnosed the disease shall consult with a physician eye specialist, and after consultation, shall prescribe an ongoing treatment program for the patient.

**History:** Laws 1986, ch. 80, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

### **61-2-11. License fees; licensure under prior law. (Effective until July 1, 1998.)**

A. Applicants for licensure as an optometrist shall pay the following fees:

(1) for licensure without written examination, a fee set by the board in an amount not to exceed one hundred fifty dollars (\$150);

(2) for licensure by examination, a fee set by the board in an amount not to exceed one hundred dollars (\$100);

(3) for the issuance of a certificate of license, a fee set by the board in an amount not to exceed twenty-five dollars (\$25.00);

(4) for the annual renewal of license, a fee set by the board in an amount not to exceed one hundred dollars (\$100); and

(5) for late renewal after September 1 of any year, a late charge set by the board in an amount not to exceed twenty-five dollars (\$25.00), which late fee is in addition to any other fees.

B. Any person licensed as an optometrist under any prior laws of this state, whose license is valid on the effective date of the Optometry Act, shall be held to be licensed under the provisions of the Optometry Act [this article] and shall be entitled to the annual renewal of his present license as provided therein.

C. Prior to engaging in the active practice of optometry in this state, each licensee shall furnish the board evidence that he holds a registration number with the bureau of revenue [revenue processing division of the taxation and revenue department] of New Mexico and has completed, as a condition of licensure by endorsement, such continuing education requirements as set by the regulations of the board.

**History:** 1953 Comp., § 67-1-9, enacted by Laws 1973, ch. 353, § 9; 1981, ch. 50, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**"Effective date of the Optometry Act".** - The "effective date of the Optometry Act", referred to in this section, is April 3, 1973, which is the effective date of Laws 1973, ch. 353, § 18.

**Revenue processing division.** - The bureau of revenue, referred to in Subsection C, was abolished by Laws 1977, ch. 249, § 5. Section 4 of that act establishes the taxation and revenue department, consisting of several divisions, including a revenue processing division. See 7-2-2 and 9-11-4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-2-12. License; display; renewal; retirement; resumption of practice. (Effective until July 1, 1998.)**

A. Every person to whom a certificate of license has been issued shall display the certificate of license in a conspicuous place in his principal office or place of business.

B. Each license shall be renewed annually on or before July 1 of each year by the licensee remitting to the secretary of the board the proper fee and proofs of registration with the bureau of revenue [revenue processing division of the taxation and revenue department] and [proof] of continued education as required by regulation of the board. Notice of renewal shall be sent to each licensee by the board before July 1 of each year. Failure to renew his license on or before September 1 shall subject the licensee to such late charge as shall be determined by regulation of the board not to exceed the

limit set forth in the Optometry Act [this article]. Any license not renewed by October 1 of each year shall be automatically revoked. Upon receipt of the renewal certificate, each licensee shall attach a copy of the same to his certificate of license.

C. Each optometrist applying for the renewal of his license shall furnish to the secretary of the board satisfactory evidence that he has attended in the preceding year, at least two days of the annual education program as conducted by the New Mexico optometric association, or its equivalent as determined by the board. The secretary shall send a written notice of the continuing education requirements at least thirty days prior to August 1 in each year, to the last known address of the licensee. Failure of a licensee to meet such annual postgraduate educational requirements shall be grounds for the revocation of his license. Any license revoked because of the failure to meet the continuing education requirements shall be reinstated by the board upon the presentation of evidence of postgraduate study of a standard approved by the board and the payment of all fees due.

D. Any optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of his renewal of licensure and the secretary of the board shall acknowledge the receipt of such notice and record the same. If, within a period of five years from the year of retirement, the optometrist desires to resume practice, he shall so notify the board in writing and, upon giving proof of completing such refresher courses prescribed by regulation of the board and the payment of an amount equivalent to all lapsed renewal fees, his certificate of license shall be restored to him in full effect. Any optometrist not currently licensed, because of failure to timely renew, because of retirement or for any other reason, who practices optometry in this state shall be subject to the penalties provided for violation of the Optometry Act.

E. Before engaging in the practice of optometry and after a license has been issued to him, each registered optometrist shall notify the secretary of the board in writing of the address at which he intends to begin practice, and subsequently of any changes in his business address or location. Any notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board.

**History:** 1953 Comp., § 67-1-10, enacted by Laws 1973, ch. 353, § 10.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - For penalties for violation of Optometry Act, see 61-2-14 NMSA 1978.

**Revenue processing division.** - The bureau of revenue, referred to in Subsection B, was abolished by Laws 1977, ch. 249, § 5. Section 4 of that act establishes the taxation

and revenue department, consisting of several divisions, including a revenue processing division. See 7-2-2 and 9-11-4 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 11.

### **61-2-13. Refusal, suspension or revocation of license. (Effective until July 1, 1998.)**

The board may refuse to issue, suspend or revoke any license, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], for any of the following reasons:

- A. conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- B. malpractice or incompetence;
- C. continued practice by a person knowingly having an infectious or contagious disease;
- D. advertising by means of knowingly false, misleading or deceptive statements or advertising or attempting to practice under a name other than one's own;
- E. habitual drunkenness or addiction to the use of habit-forming drugs;
- F. aiding or abetting in the practice of optometry any person not duly licensed to practice optometry in this state;
- G. lending, leasing or in any other manner placing his certificate of license at the disposal or in the service of any person not licensed to practice optometry in this state;
- H. employing, procuring or inducing an unlicensed person to practice optometry in this state;
- I. violating any of the provisions of the Optometry Act [this article]; or
- J. committing any act defined as "unprofessional conduct" by regulation of the board filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978]. Without limiting the right of the board to determine what acts on the part of a licensee constitute unprofessional conduct, the following acts shall be deemed to be unprofessional conduct:
  - (1) any conduct of a character tending to deceive or defraud the public;
  - (2) the obtaining of a fee by fraud or misrepresentation;

- (3) charging unusual, unreasonable or exorbitant fees;
- (4) "splitting" or dividing a fee with any person;
- (5) advertising professional superiority;
- (6) advertising by any means, or granting, a discount for professional services, prosthetic devices, eyeglasses, lenses, frames or mountings whether sold separately or as part of the professional services; or
- (7) using any type of "price advertising" which would tend to imply the furnishing of professional services without cost or at a reduced cost to the public.

**History:** 1953 Comp., § 67-1-11, enacted by Laws 1973, ch. 353, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Constitutional basis for prohibitions against advertising.** - Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963-64 Op. Att'y Gen. No. 63-119. (opinion rendered under former law.)

**Applicability to optometrists in state.** - An optometrist doing business in New Mexico must carry on his profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

**Out-of-state advertising.** - The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist fell within the prohibition of the former New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42.

### **61-2-14. Offenses. (Effective until July 1, 1998.)**

Each of the following acts committed by any person constitutes a misdemeanor, punishable upon conviction by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) or by imprisonment not to exceed six months, or both:

- A. practicing or attempting to practice optometry without a current license issued by the board;
- B. permitting any person in one's employ, supervision or control to practice optometry, unless that person is licensed or exempted in accordance with the provisions of the Optometry Act [this article];
- C. making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;
- D. selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;
- E. refusal, after a request, to provide a patient a copy of his spectacle prescription, not including a contact lens prescription, providing the prescription is not over one year old;
- F. duplicating or replacing an ophthalmic lens, not including contact lens, without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;
- G. practicing optometry during any period of time in which one's license has been revoked or suspended as provided by the Optometry Act;
- H. except for licensed optometrists and as provided in Subsection A of Section 61-2-15 NMSA 1978, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes; provided, however, that it is not the intent of this subsection to prevent any school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, provided that such person, clinic or program does not attempt to

diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;

I. advertising by any means the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part thereof. This subsection does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office hours and designation of the provider in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

J. selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

**History:** 1953 Comp., § 67-1-12, enacted by Laws 1973, ch. 353, § 12; 1985, ch. 241, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Constitutionality of advertising restraints.** - Subsection (m) of 67-7-13, 1953 Comp., prohibiting price advertising of eyeglasses, lenses and the like, did not impose a constitutionally prohibited burden upon interstate commerce, and was not preempted by federal legislation; nor did it constitute a deprivation of property in violation of the due process clause or a violation of the privileges and immunities clause of the fourteenth amendment. *Head v. New Mexico Bd. of Exmrs. in Optometry*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

**Constitutional basis for prohibitions against advertising.** - Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963-64 Op. Att'y Gen. No. 63-119. (opinion rendered under former law.)

**Freedom of speech issue not decided.** - Argument that injunction against a newspaper and radio station, prohibiting the accepting or publishing within New Mexico of a Texas optometrist's advertisement, constituted an invalid restraint upon freedom of speech protected by the fourteenth amendment was neither made to the state courts nor reserved in notice of appeal, and would not be considered by the supreme court. *Head v. New Mexico Bd. of Exmrs. in Optometry*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

**Cable television system not "advertising".** - Cable television system which did not sell advertising space, nor receive any compensation whatsoever from advertisers or broadcasters for the electronic service it performed, and was supported entirely by the sale of subscriptions to viewers, in return for which it performed the service of increasing the viewer's capacity to receive television signals, was not "advertising" within meaning of statute forbidding advertising of optometry and optometry services; neither did operators share a "community of purpose" with out-of-state optometrists or broadcasters sufficient to render them liable as accessories. *Midwest Video v. Campbell*, 80 N.M. 116, 452 P.2d 185 (1969).

Fact that one consequence of the cable television systems' activities was to expose a number of New Mexicans to price advertising inducements to which they might not otherwise have been exposed was merely an incidental effect of an otherwise lawful activity, and did not, of itself, absent intention or purpose, make the activity "advertising." *Midwest Video v. Campbell*, 80 N.M. 116, 452 P.2d 185 (1969).

**Applicability to optometrists in state.** - An optometrist doing business in New Mexico must carry on his profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

**Out-of-state advertising.** - The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist would lie within the prohibition of the former New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

**Stay of federal proceedings pending state construction.** - Former 67-7-13(m), 1953 Comp., which forbade the advertising of prices or terms on eyeglasses, spectacles, etc., should have been exposed to state construction as to its application to the plaintiffs or limiting action before the federal courts were asked to pass on its constitutionality; therefore, proceedings challenging its validity before a three-judge federal district court would be stayed for a reasonable time pending state court interpretation of the statute. *Midwest Video Corp. v. Campbell*, 250 F. Supp. 158 (D.N.M. 1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 131, 135, 141, 143, 144.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

One who fills prescription under reciprocity arrangement with optometrist as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

What constitutes practice of "optometry," 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 28, 53 to 57.

### **61-2-15. Exemptions. (Effective until July 1, 1998.)**

A. Nothing in the Optometry Act [this article], except as provided in Section 61-2-16 NMSA 1978, shall be construed to apply to licensed physicians or surgeons, or persons, clinics or programs under their responsible supervision and control. Persons, clinics and programs under the responsible supervision and control of a licensed physician or surgeon shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses. The fitting of a contact lens to a patient shall be done at the practitioner's place of practice.

B. Nothing in the Optometry Act, except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, shall be construed to apply to persons selling eyeglasses who do not represent themselves as being qualified to detect or correct ocular anomalies and who do not traffic upon assumed skill in adapting ophthalmic lenses to the eyes.

**History:** 1953 Comp., § 67-1-13, enacted by Laws 1973, ch. 353, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - For restrictions on treatment and diagnosis of eye problems by physician's assistants, see 61-6-8 NMSA 1978.

**Person who duplicates ophthalmic lens without prescription is practicing optometry** and as such must be licensed under the act or is in violation of the same. 1953-54 Op. Att'y Gen. No. 5909.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

### **61-2-16. Freedom of choice. (Effective until July 1, 1998.)**

A. In expending public money for any purpose involving the care of vision, any state board, commission or department created or existing by statute, including public schools or other state or municipal agencies or any of their employees, who, in the performance of their duties, are responsible for such expenditures shall not, directly or indirectly, refer the name or address of any particular ocular practitioner or system of practice to any person eligible for a vision examination or the correction of any visual or muscular anomaly, except in emergency situations. For the purpose of this subsection, "ocular practitioner" includes all validly licensed optometrists, physicians and surgeons.

B. Every policy of insurance or medical or health service contract providing for payment or reimbursement for any eye care service shall be construed to include payment or reimbursement for professional services rendered by a licensed optometrist, and no insurance policy or medical or health service contract shall discriminate between ocular practitioners rendering similar services.

**History:** 1953 Comp., § 67-1-14, enacted by Laws 1973, ch. 353, § 14; 1985, ch. 241, § 6.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

#### **61-2-17. Power to enjoin violations. (Effective until July 1, 1998.)**

Upon conviction of any person for violation of any provision of the Optometry Act [this article], the board or any interested person may, in addition to the penalty herein provided, petition the district court for an order restraining and enjoining said person from further or continued violation of the Optometry Act and the order may be enforced by contempt proceedings.

**History:** 1953 Comp., § 67-1-15, enacted by Laws 1973, ch. 353, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-2-18 NMSA 1978 and notes thereto.

**Cross-references.** - For penalties for violation of the Optometry Act, see 61-2-14 NMSA 1978.

**Severability clauses.** - Laws 1973, ch. 353, § 16, provides for the severability of the Optometry Act if any part or application thereof is found invalid.

#### **61-2-18. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of optometry is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 2 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 2 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-2-18, enacted by Laws 1979, ch. 12, § 3; 1981, ch. 241, § 16; 1985, ch. 87, § 1; 1991, ch. 189, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 2 amends this section to repeal Chapter 61, Article 2 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and "July 1, 1998" for "July 1, 1992" in the first and third sentences.

## **ARTICLE 3 NURSING**

### **61-3-1. Short title. (Effective until July 1, 1998.)**

Sections 61-3-1 through 61-3-30 NMSA 1978, may be cited as the "Nursing Practice Act".

**History:** 1953 Comp., § 67-2-1, enacted by Laws 1968, ch. 44, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**Cross-references.** - As to abandonment or abuse of child, see 30-6-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

### **61-3-2. Purpose. (Effective until July 1, 1998.)**

The purpose of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing and schools of nursing in the state.

**History:** 1953 Comp., § 67-2-2, enacted by Laws 1968, ch. 44, § 2; 1991, ch. 190, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "promote, preserve and protect the public health, safety and welfare" for "safeguard life and health and to promote the public welfare" and made a minor stylistic change.

**Requiring nurse to "float" not unlawful or serious misconduct.** - A hospital's "floating" policy is not necessarily something that "public policy would condemn." Therefore, requiring a nurse to "float" is not the kind of unlawful or serious misconduct

for which recognition of the tort of wrongful discharge was intended. *Francis v. Memorial Gen. Hosp.*, 104 N.M. 698, 726 P.2d 852 (1986).

### **61-3-3. Definitions. (Effective until July 1, 1998.)**

As used in the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978]:

A. "board" means the board of nursing;

B. "certified nurse practitioner" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board;

C. "certified registered nurse anesthetist" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a certified registered nurse anesthetist and whose name and pertinent information are entered on the list of certified registered nurse anesthetists maintained by the board;

D. "clinical nurse specialist" means a registered nurse whose qualifications are endorsed by the board for expanded practice as a clinical nurse specialist and whose name and pertinent information are entered on the list of clinical nurse specialists maintained by the board;

E. "collaboration" means the cooperative working relationship with another health care provider in the provision of patient care, and such collaborative practice includes the discussion of patient diagnosis and cooperation in the management and delivery of health care;

F. "expanded practice" means the practice of professional registered nursing by a registered nurse who has been prepared through a formal educational program in an institution of higher learning to function beyond the scope of practice of professional registered nursing;

G. "licensed practical nurse" means a nurse who practices licensed practical nursing and whose name and pertinent information are entered in the register of licensed practical nurses maintained by the board;

H. "licensed practical nursing" means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician or dentist licensed to practice in this state. This practice includes, but is not limited to:

(1) contributing to the assessment of the health status of individuals, families and communities;

- (2) participating in the development and modification of the plan of care;
- (3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;
- (4) collaborating with other health care professionals in the management of health care; and
- (5) participating in the evaluation of responses to interventions;

I. "nursing diagnosis" means a clinical judgment about individual, family or community responses to actual or potential health problems or life processes, which judgment provides a basis for the selection of nursing interventions to achieve outcomes for which the person making the judgment is accountable;

J. "practice of nursing" means assisting individuals, families or communities in maintaining or attaining optimal health, assessing and implementing a plan of care to accomplish defined goals and evaluating responses to care and treatment. This practice is based on specialized knowledge, judgment and nursing skills acquired through educational preparation in nursing and in the biological, physical, social and behavioral sciences and includes but is not limited to:

- (1) initiating and maintaining comfort measures;
- (2) promoting and supporting optimal human functions and responses;
- (3) establishing an environment conducive to well-being or to the support of a dignified death;
- (4) collaborating on the health care regimen;
- (5) administering medications and performing treatments prescribed by a person authorized in this state or in any other state in the United States to prescribe them;
- (6) recording and reporting nursing observations, assessments, interventions and responses to health care;
- (7) providing counseling and health teaching;
- (8) delegating nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978]; and
- (9) maintaining accountability for safe and effective nursing care;

K. "professional registered nursing" means the practice of the full scope of nursing requiring substantial knowledge of the biological, physical, social and behavioral

sciences and of nursing theory and may include expanded practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

- (1) assessing the health status of individuals, families and communities;
- (2) establishing a nursing diagnosis;
- (3) establishing goals to meet identified health care needs;
- (4) developing a plan of care;
- (5) determining nursing intervention to implement the plan of care;
- (6) implementing the plan of care commensurate with education and verified competence;
- (7) evaluating responses to interventions;
- (8) teaching based on the theory and practice of nursing;
- (9) managing and supervising the practice of nursing;
- (10) collaborating with other health care professionals in the management of health care; and
- (11) conducting nursing research; and

L. "registered nurse" means a nurse who practices professional registered nursing and whose name and pertinent information are entered in the register of licensed registered nurses maintained by the board.

**History:** 1978 Comp., § 61-3-3, enacted by Laws 1991, ch. 190, § 2; 1993, ch. 61, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1991, ch. 190, § 2 repeals former 61-3-3 NMSA 1978, as enacted by Laws 1968, ch. 44, § 3, relating to definitions, effective June 14, 1991, and enacts the above section. For provisions of former section, see 1989 Replacement Pamphlet.

**The 1993 amendment,** effective June 18, 1993, added "As used in the Nursing Practice Act" at the beginning; inserted current Subsection E and redesignated former Subsections E through K as Subsections F through L, and inserted "or any other state in the United States" in Paragraph (5) of Subsection J.

**Additional midwife license not required.** - A family nurse practitioner authorized by the board of nursing to perform services constituting midwifery need not, as well, have a midwife license from the health services division (now department of health). 1981 Op. Att'y Gen. No. 81-7.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 7.

Nurse as physician within rule as to privileged communications, 68 A.L.R. 177.

Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

### **61-3-4. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978].

**History:** 1953 Comp., § 67-2-3.1, enacted by Laws 1974, ch. 78, § 12.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

### **61-3-5. License required. (Effective until July 1, 1998.)**

A. Unless licensed as a registered nurse under the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978], no person shall:

(1) practice professional nursing;

(2) use the title "registered nurse", "professional nurse", "professional registered nurse" or the abbreviation "R.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate that the person is a registered nurse; or

(3) engage in a nursing specialty as defined by the board.

B. Unless licensed as a licensed practical nurse under the Nursing Practice Act, no person shall:

(1) practice licensed practical nursing; or

(2) use the title "licensed practical nurse" or the abbreviation "L.P.N." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or devices to indicate that the person is a licensed practical nurse.

C. Unless endorsed as a certified nurse practitioner under the Nursing Practice Act, no person shall:

(1) practice as a certified nurse practitioner; or

(2) use the title "certified nurse practitioner" or the abbreviations "C.N.P." or "N.P." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified nurse practitioner.

D. Unless endorsed as a certified registered nurse anesthetist under the Nursing Practice Act, no person shall:

(1) practice as a nurse anesthetist; or

(2) use the title "certified registered nurse anesthetist" or the abbreviation "C.R.N.A." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified registered nurse anesthetist.

E. Unless endorsed as a clinical nurse specialist under the Nursing Practice Act, no person shall:

(1) practice as a clinical nurse specialist; or

(2) use the title "clinical nurse specialist" or the abbreviation "C.N.S." or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a clinical nurse specialist."

**History:** 1953 Comp., § 67-2-4, enacted by Laws 1968, ch. 44, § 4; 1977, ch. 220, § 2; 1985, ch. 67, § 2; 1991, ch. 190, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, inserted " 'professional registered nurse' " in Paragraph (2) of Subsection A; inserted "licensed" in Paragraph (1) of Subsection B; substituted "endorsed" for "certified" in the introductory phrases in Subsections C and D; inserted "certified" in Paragraph (1) in Subsection C; and added Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 26.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 12.

### **61-3-6. Administration of anesthetics. (Effective until July 1, 1998.)**

It is unlawful for any person, other than a person licensed in New Mexico to practice medicine, osteopathy or dentistry or a currently certified registered nurse anesthetist to administer anesthetics to any person. Nothing in this section prohibits a person currently licensed in the healing arts from administering local anesthetics or from using hypnosis.

**History:** 1953 Comp., § 67-2-4.1, enacted by Laws 1973, ch. 149, § 2; 1979, ch. 379, § 2; 1985, ch. 67, § 3; 1991, ch. 190, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "anesthetics" for "anesthesia exceptions" in the catchline and for "anesthesia" in the second sentence, and, in the first sentence, substituted "to administer anesthetics" for "when acting under the direction of and in the immediate area of a licensed physician, or dentist, to administer anesthesia".

**Nursing license required.** - The board of nursing may not license a person as an anesthetist if he is not a registered nurse or a licensed practical nurse in the state of New Mexico. 1973 Op. Att'y Gen. No. 73-62.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

Malpractice: duty and liability anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Liability of hospital for negligence of nurse assisting operating surgeon, 29 A.L.R.3d 1065.

Medical malpractice: who are "health care providers," or the like, whose actions fall within statutes specifically governing actions and damages for medical malpractice, 12 A.L.R.5th 1.

### **61-3-7. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 379, § 12, repeals 61-3-7 NMSA 1978, as enacted by Laws 1973, ch. 149, § 3, exempting persons employed to administer general anesthesia on the effective date of the act from the provisions of the act, effective April 6, 1979. For provisions of former section, see the 1978 Original Pamphlet.

**61-3-8. Board created; members; qualifications; terms; vacancies; removal. (Effective until July 1, 1998.)**

A. There is created a seven-member "board of nursing". The board shall consist of four licensed nurses, one preferably a licensed practical nurse, and three members who shall represent the public and shall not have been licensed as registered or licensed practical nurses, nor shall the public members have any significant financial interest, direct or indirect, in the profession regulated. Not more than two board members shall be appointed from any one county, and not more than two registered nurse members shall be from any one field of nursing. Members of the board shall be appointed by the governor for staggered terms of four years each. Nurse members shall be appointed from lists submitted to the governor by any generally recognized organization of nurses in this state. Appointments shall be made in such manner that the terms of no more than two board members expire on July 1 of each year. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy. Board members shall serve until their successors have been appointed and qualified.

B. Members of the board shall be citizens of the United States and residents of this state. Registered nurse members shall be licensed in this state, shall have had, since graduation, at least five years' experience in nursing, shall be currently engaged in professional nursing and shall have been actively engaged in professional nursing for at least three years immediately preceding appointment or reappointment. The licensed practical nurse member shall be licensed in this state, shall have been graduated from an approved licensed practical nursing education program, shall have been licensed by examination, shall have had at least five years' experience since graduation, shall be currently engaged in licensed practical nursing and shall have been actively engaged in licensed practical nursing for at least three years immediately preceding appointment or reappointment.

C. No board member shall serve more than two full or partial terms, consecutive or otherwise.

D. Any board member failing to attend seventy percent of meeting days annually, either regular or special, shall automatically be removed as a member of the board.

E. The governor may remove any member from the board for neglect of any duty required by law, for incompetency or for unprofessional or dishonorable conduct, in accordance with regulations prescribed by the board.

F. In the event of a vacancy on the board for any reason, the secretary of the board shall immediately notify the governor, the board members and any generally recognized

nursing organization of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

**History:** 1953 Comp., § 67-2-5, enacted by Laws 1968, ch. 44, § 5; 1977, ch. 220, § 3; 1979, ch. 379, § 3; 1991, ch. 189, § 3; 1991, ch. 190, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 189, § 3 and Laws 1991, ch. 190, § 5, effective June 14, 1991, which, in Subsection A, rewrote the second sentence which read "The board shall consist of four registered nurses, two licensed practical nurses and one member who shall represent the public and shall not have been licensed as a registered or practical nurse, nor shall such public member have any significant financial interest, direct or indirect, in the occupation regulated", deleted the former fourth sentence, relating to members of the board holding office on the effective date of the act, deleted "The nurse" at the beginning and substituted "four years" for "three years" in the present fourth sentence, added "Nurse members shall be appointed" at the beginning of the fifth sentence, rewrote the sixth sentence which read "Appointments shall be made in such manner that the terms of three board members expire on July 1 of one year, the terms of three board members expire on July 1 of the next year, and the terms of two board members expire on July 1 of the succeeding year" and made related and minor stylistic changes; substituted "seventy percent of meeting days annually" for "three consecutive meetings" in Subsection D; and made related and minor stylistic changes in Subsections B and F. The section is set out as amended by Laws 1991, ch. 190, § 5. See 12-1-8 NMSA 1978.

**Number of terms.** - For purposes of Subsection C of this section, the number of terms served is computed as of the time the law went into effect, that is, the appointment of the first board under the present Nursing Practice Act. 1973 Op. Att'y Gen. No. 73-24.

A board member who had served one full term under the present Nursing Practice Act, as well as a partial term prior to the time that the act went into effect, could be reappointed for a term of office. 1973 Op. Att'y Gen. No. 73-24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-3-9. Board meetings; quorum; officers. (Effective until July 1, 1998.)**

A. The board shall annually elect a chairman, vice chairman and secretary from its entire membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of three or more members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after any meeting.

C. A majority of the board, including at least one officer, constitutes a quorum.

**History:** 1953 Comp., § 67-2-6, enacted by Laws 1968, ch. 44, § 6; 1985, ch. 67, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-3-10. Powers; duties. (Effective until July 1, 1998.)**

The board:

A. shall adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] and to maintain high standards of practice;

B. shall prescribe standards and approve curricula for educational programs preparing persons for licensure under the Nursing Practice Act;

C. shall provide for surveys of educational programs preparing persons for licensure under the Nursing Practice Act;

D. shall grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, provided that a majority of the board concurs in any decision;

E. shall provide for the examination, licensing and renewal of licenses of applicants;

F. shall conduct hearings upon charges relating to discipline of a licensee or the denial, suspension or revocation of a license in accordance with the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

G. shall cause the prosecution of all persons, including firms, associations, institutions and corporations, violating the Nursing Practice Act and have the power to incur such expense as is necessary therefor;

H. shall keep a record of all proceedings;

I. shall make an annual report to the governor;

J. shall appoint and employ a qualified registered nurse who shall not be a member of the board, to serve as executive officer to the board and shall define the duties and responsibilities of the executive officer, except that the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the Nursing Practice Act shall not be delegated by the board;

K. shall provide for such qualified assistants as may be necessary to carry out the provisions of the Nursing Practice Act. Such employees shall be paid a salary commensurate with their duties;

L. shall, for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current nursing knowledge and practice, adopt rules and regulations establishing continuing education requirements as a condition of license renewal;

M. may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of healthcare to assist it in the performance of its duties. Committee members may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978];

N. may adopt and revise rules and regulations designed to maintain an inactive status listing for registered nurses and licensed practical nurses;

O. may adopt rules and regulations to regulate the expanded practice of professional registered nursing and advanced practice of licensed practical nursing; and

P. shall endorse the qualifications of certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists.

**History:** 1953 Comp., § 67-2-7, enacted by Laws 1968, ch. 44, § 7; 1977, ch. 220, § 4; 1991, ch. 190, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, substituted "educational" for "education" in Subsections D and L; substituted "at least one member who is a board member and at least two members" for "at least three members" in Subsection M; added Subsections O and P; and made a minor stylistic change in Subsection J and related stylistic change in Subsection M.

**Duplicate certificate.** - Under 61-8-8 NMSA 1978, the board could establish regulations for issuing a duplicate certificate, but no fee could be charged therefor. 1966 Op. Att'y Gen. No. 66-99.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22 to 24.

**61-3-10.1. Hemodialysis technicians; training programs; certification. (Effective until July 1, 1998.)**

A. As used in this section:

(1) "hemodialysis technician" means a person who is certified by the board to assist with the direct care of a patient undergoing hemodialysis, including performing arteriovenous punctures for dialysis access, injecting intradermal lidocaine in preparation for dialysis access, administering heparin bolus and connecting a dialysis access to isotonic saline or heparinized isotonic saline according to standards adopted by the board; and

(2) "training program" means an educational program approved by the board for persons seeking certification as hemodialysis technicians.

B. Unless certified as a hemodialysis technician pursuant to this section, no person shall practice as a hemodialysis technician or use the title "certified hemodialysis technician", "hemodialysis technician" or other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a hemodialysis technician.

C. The board shall:

(1) maintain a permanent register of all hemodialysis technicians;

(2) adopt rules and regulations that set reasonable requirements for training programs, including prescribing standards and approving curricula;

(3) provide for periodic evaluation of training programs at least every two years;

(4) grant, deny or withdraw approval from training programs for failure to meet prescribed standards; and

(5) conduct hearings on charges relating to discipline of a hemodialysis technician and may deny certification, place a technician on probation or suspend or revoke a certificate in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. Every applicant for certification as a hemodialysis technician shall pay the required application fee, submit written evidence of having completed a training program and

successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. A certificate shall be renewed biennially upon payment of the required fee, proof of employment as a hemodialysis technician and proof of having met any continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification of a hemodialysis technician by examination, not to exceed sixty dollars (\$60.00);

(2) for renewal of certification of a hemodialysis technician, not to exceed sixty dollars (\$60.00);

(3) for reactivation of a certificate of a hemodialysis technician after failure to renew a certificate, not to exceed thirty dollars (\$30.00);

(4) for initial review and approval of a training program, not to exceed one hundred fifty dollars (\$150);

(5) for each subsequent review and approval of a training program where the hemodialysis unit has changed the program, not to exceed fifty dollars (\$50.00);

(6) for each subsequent review and approval of a training program when a change has been required by a change in board policy, rules or regulations, not to exceed twenty-five dollars (\$25.00); and

(7) for periodic evaluation of a training program, not to exceed seventy-five dollars (\$75.00).

**History:** 1978 Comp., § 61-3-10.1, enacted by Laws 1993, ch. 61, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1993, ch. 61, § 2 repeals former 61-3-10.1 NMSA 1978, as enacted by Laws 1989, ch. 93, § 1, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-3-10.2. Medication aides. (Effective until July 1, 1998.)**

A. This section shall permit the operation of a trial program for certification of medication aides and medication aide training programs in licensed intermediate care facilities for the mentally retarded. The purpose of the trial program is to effectuate a cost

containment and efficient program for the administration of the medicaid program. The trial program shall be evaluated, and a report of the results and the necessity of continuing the trial program shall be submitted to the second session of the forty-second legislature. It is the intention of the legislature that costs of initiating the program shall be provided through appropriate agreements between the board and licensed intermediate care facilities for the mentally retarded.

B. For the purposes of this section, "medication aide" means a person who, under the direction of a registered nurse in a licensed intermediate care facility for the mentally retarded, is permitted to administer oral medications according to the standards adopted by the board.

C. Unless certified as a medication aide under the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978], no person shall:

(1) practice as a medication aide; or

(2) use the titles "certified medication aide" or "medication aide" or any other title, abbreviation, letters, figures, signs or devices to indicate or imply that the person is a certified medication aide.

D. The board shall:

(1) maintain a permanent register of all persons to whom certification to practice as a certified medication aide is provided;

(2) adopt rules and regulations that set reasonable requirements for medication aide educational or training programs and certification that protect the health and well-being of the mentally retarded while facilitating low-cost access to medication services; and

(3) conduct hearings upon charges relating to discipline of a certified medication aide or the denial, suspension or revocation of a medication aide certificate in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

E. Every applicant for certification as a medication aide shall pay the required application fee, submit written evidence of having completed a board-approved program for the certification of medication aides and successfully complete a board-approved examination.

F. The board shall issue a certificate enabling a person to function as a medication aide to any person who fulfills the requirements for medication aides set by law.

G. Every certificate issued by the board to practice as a medication aide shall be renewed biennially upon payment of the required fee. The medication aide seeking renewal shall submit proof of employment as a medication aide and proof of having met any continuing education requirements adopted by the board.

H. Applicants for certification or renewal of certification as certified medication aides shall pay the following fees:

(1) for initial certification by examination or certification after a failure to renew timely an initial certification, the fee shall be set by the board not to exceed thirty dollars (\$30.00); and

(2) for renewal of certification, the fee shall be set by the board not to exceed thirty dollars (\$30.00).

I. The board shall:

(1) prescribe standards and approve curricula for educational or training programs preparing persons as medication aides;

(2) set a reasonable fee for the review and approval of educational or training programs for certification as certified medication aides not to exceed one hundred fifty dollars (\$150) for each initial review and approval, or fifty dollars (\$50.00) for each subsequent review and approval in case of change or modification in a training program, except where the change or modification has been required by a change in board policy or board rules and regulations, in which case the fee for each review and approval shall not exceed twenty-five dollars (\$25.00);

(3) provide for periodic evaluation at intervals of no less than two years of educational or training programs preparing persons for certification as certified medication aides, including setting a reasonable fee for each periodic evaluation, which shall not exceed seventy-five dollars (\$75.00); and

(4) grant, deny or withdraw approval from medication aide programs for failure to meet prescribed standards; provided that in the event of a denial or withdrawal of approval, none of the fees provided for in this section shall be refundable.

**History:** 1978 Comp., § 61-3-10.2, enacted by Laws 1991, ch. 209, § 1; 1993, ch. 138, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, substituted "shall permit the operation of a" for "is enacted to permit the initiation and operation of a two-year" in the first sentence, added the present second sentence, and deleted "at the end of the second full year of implementation" following "evaluated" and substituted "and the necessity of continuing" for "of" and "second session of the forty-second legislature" for "first session of the forty-first legislature" in the present third sentence; in Subsection B,

added "For the purposes of this section" to the beginning and substituted "registered" for "licensed"; and in Subsection C, deleted "certified" preceding "medication".

### **61-3-11. Bonds; expenses. (Effective until July 1, 1998.)**

A. The executive officer and any employee of the board who handles money or who certifies the receipt or disbursement of money received by the board, shall, within thirty days after election or employment by the board, execute a bond in a penal sum to be set by the board, conditioned on the faithful performance of the duties of the office and on accounting for all funds coming into his hands. The bonds shall be signed by a surety company authorized to do business in this state and shall be in such form as to meet the approval of the board.

B. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 67-2-8, enacted by Laws 1968, ch. 44, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

### **61-3-12. Examination; notice to applicants. (Effective until July 1, 1998.)**

The board shall provide for the examination of all applicants seeking licensure under the provisions of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978].

**History:** 1953 Comp., § 67-2-9, enacted by Laws 1968, ch. 44, § 9; 1975, ch. 40, § 1; 1979, ch. 379, § 4; 1993, ch. 61, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, deleted "At least twice a year" at the beginning of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-3-13. Qualifications for licensure as a registered nurse. (Effective until July 1, 1998.)**

Before being considered for licensure as a registered nurse, either by endorsement or examination, under Section 61-3-14 NMSA 1978, an applicant shall furnish evidence satisfactory to the board that the applicant:

A. has completed at least an approved high school course of study or the equivalent as determined by the regulations of the board; and

B. has completed a course of study and has graduated from an approved school of nursing.

**History:** 1953 Comp., § 67-2-10, enacted by Laws 1968, ch. 44, § 10; 1977, ch. 220, § 5; 1979, ch. 379, § 5; 1991, ch. 190, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, deleted "four-year" preceding "high school" and made a minor stylistic change in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-3-14. Licensure of registered nurses. (Effective until July 1, 1998.)**

A. Applicants for licensure by examination shall be required to pass the national licensing examination for registered nurses. The applicant who successfully passes the examination may be issued by the board a license to practice as a registered nurse.

B. The board may issue a license to practice as a registered nurse without an examination to an applicant who has been duly licensed by taking the national licensing examination for registered nurses under the laws of another state if the applicant meets the qualifications required of registered nurses in this state.

C. The board may issue a license to practice as a registered nurse to an applicant licensed under the laws of another territory or foreign country if the applicant meets the qualifications required of registered nurses in this state, is proficient in English and passes the national licensing examination for registered nurses.

**History:** 1953 Comp., § 67-2-11, enacted by Laws 1968, ch. 44, § 11; 1977, ch. 220, § 6; 1979, ch. 379, § 6; 1982, ch. 108, § 1; 1991, ch. 190, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, inserted "is proficient in English" and made a minor stylistic change in Subsection C.

**Successful passing of examination prerequisite for license.** - The qualifications referred to in Subsection B clearly include the successful passing of the test pool examination or the equivalent; if the applicant's examination or mark elsewhere do not meet the equivalent standards in New Mexico, the application for licensure should be denied and the applicant required to qualify by examination. 1968 Op. Att'y Gen. No. 68-112.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-3-15. Temporary licensure for registered nurses. (Effective until July 1, 1998.)**

An applicant for licensure as a registered nurse, pursuant to Subsection B of Section 61-3-14 NMSA 1978, may be issued a temporary license for a period not exceeding six months or for a period of time necessary for the board to insure that the applicant has met the requirements set out in Section 61-3-14 NMSA 1978, whichever is less.

**History:** 1953 Comp., § 67-2-12, enacted by Laws 1968, ch. 44, § 12; 1976, ch. 22, § 1; 1977, ch. 220, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

### **61-3-16. Fees for licensure as registered nurses. (Effective until July 1, 1998.)**

Applicants for licensure as registered nurses shall pay the following fees, which fees shall not be returnable:

A. for licensure without examination, the fee shall be set by the board not to exceed one hundred fifty dollars (\$150);

B. for licensure by examination when the examination is the first for the applicant in this state, the fee shall be set by the board not to exceed one hundred fifty dollars (\$150);

C. for licensure by examination when the examination is other than the first examination, the fee shall be set by the board not to exceed sixty dollars (\$60.00); and

D. for initial endorsement as a certified nurse practitioner, certified registered nurse anesthetist and clinical nurse specialist, the fee shall be set by the board not to exceed fifty dollars (\$50.00). This fee shall be in addition to the fee paid for registered nurse licensure.

**History:** 1953 Comp., § 67-2-13, enacted by Laws 1968, ch. 44, § 13; 1977, ch. 220, § 8; 1982, ch. 108, § 2; 1991, ch. 190, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, substituted "one hundred fifty dollars (\$150)" for "seventy-five dollars (\$75.00)" in Subsections A and B; substituted "sixty dollars (\$60.00)" for "thirty dollars (\$30.00) for each section taken" in Subsection C; and added Subsection D.

### **61-3-17. Registration under previous law. (Effective until July 1, 1998.)**

Any person licensed as a professional or registered nurse under any prior laws of this state, whose license is valid on the effective date of the Nursing Practice Act, shall be held to be licensed as a registered nurse under the provisions of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] and shall be entitled to renewal of this license as provided in the Nursing Practice Act.

**History:** 1953 Comp., § 67-2-14, enacted by Laws 1968, ch. 44, § 14; 1977, ch. 220, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**"Effective date of the Nursing Practice Act".** - The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

### **61-3-18. Qualifications for licensure as a licensed practical nurse. (Effective until July 1, 1998.)**

Before being considered for licensure as a licensed practical nurse, either by endorsement or examination, under Section 61-3-19 NMSA 1978, an applicant shall furnish evidence satisfactory to the board that the applicant:

A. has completed at least an approved high school course of study or the equivalent as determined by reasonable regulations of the board; and

B. has completed a state approved course of study for the preparation of licensed practical nurses.

**History:** 1953 Comp., § 67-2-15, enacted by Laws 1968, ch. 44, § 15; 1973, ch. 182, § 1; 1977, ch. 220, § 10; 1991, ch. 190, § 10.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "61-3-19 NMSA 1978" for "67-2-16 NMSA 1953" in the introductory paragraph; deleted "four-year" preceding "high school" in Subsection A; substituted "a state approved course" for "an approved course" in Subsection B; and made a minor stylistic change in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

### **61-3-19. Licensure of licensed practical nurses. (Effective until July 1, 1998.)**

A. Applicants for licensure by examination shall be required to pass the national licensing examination for licensed practical nurses. The applicant who successfully passes the examination may be issued by the board a license to practice as a licensed practical nurse.

B. The board may issue a license as a licensed practical nurse without an examination to an applicant who has been duly licensed by taking the national licensing examination for licensed practical nurses under the laws of another state if the applicants meet the qualifications required of licensed practical nurses in this state.

C. The board may issue a license to practice as a licensed practical nurse to an applicant licensed under the laws of another territory or foreign country if the applicant meets the qualifications required of licensed practical nurses in this state, is proficient in English and successfully passes the national licensing examination for licensed practical nurses.

**History:** 1953 Comp., § 67-2-16, enacted by Laws 1968, ch. 44, § 16; 1977, ch. 220, § 11; 1979, ch. 379, § 7; 1982, ch. 108, § 3; 1991, ch. 190, § 11.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, inserted "is proficient in English" and made minor stylistic changes in Subsection C.

**Successful passing of examination prerequisite for license.** - The qualifications referred to in Subsection B clearly include the successful passing of the test pool examination or the equivalent; if the applicant's examination or mark elsewhere does not meet the equivalent standards in New Mexico, the application for licensure should be denied and the applicant required to qualify by examination. 1968 Op. Att'y Gen. No. 68-112.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-3-20. Temporary licensure for licensed practical nurses. (Effective until July 1, 1998.)**

An applicant for licensure as a licensed practical nurse, pursuant to Subsection B of Section 61-3-19 NMSA 1978, may be issued a temporary license for a period not exceeding six months or for a period of time necessary for the board to insure that the applicant has met the requirements set out in Section 61-3-19 NMSA 1978, whichever is less.

**History:** 1953 Comp., § 67-2-17, enacted by Laws 1968, ch. 44, § 17; 1976, ch. 22, § 2; 1977, ch. 220, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

### **61-3-21. Registration under previous law. (Effective until July 1, 1998.)**

Any person licensed as a practical nurse under any prior laws of this state whose license is valid on the effective date of the Nursing Practice Act shall be held to be licensed under the provisions of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] and shall be entitled to renewal of this license as provided in the Nursing Practice Act.

**History:** 1953 Comp., § 67-2-18, enacted by Laws 1968, ch. 44, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**"Effective date of the Nursing Practice Act".** - The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

### **61-3-22. Fees for licensure as licensed practical nurses. (Effective until July 1, 1998.)**

Applicants for licensure as licensed practical nurses shall pay the following fees, which fees shall not be returnable:

A. for licensure without examination, the fee shall be set by the board not to exceed ninety dollars (\$90.00);

B. for licensure by examination when the examination is the first for the applicant in this state, the fee shall be set by the board not to exceed ninety dollars (\$90.00); and

C. for licensure by examination when the examination is other than the first examination, the fee shall be set by the board not to exceed thirty dollars (\$30.00) for each examination.

**History:** 1953 Comp., § 67-2-19, enacted by Laws 1968, ch. 44, § 19; 1977, ch. 220, § 13; 1991, ch. 190, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "ninety dollars (\$90.00)" for "forty-five dollars (\$45.00)" in Subsections A and B; substituted "by the board not to exceed thirty dollars (\$30.00)" for "at fifteen dollars (\$15.00)" in Subsection C; and made a minor stylistic change in the introductory paragraph.

### **61-3-23. Permit to practice for graduate nurses. (Effective until July 1, 1998.)**

A. The board may issue a permit to practice to an applicant upon completion of an approved course of study and upon application to take the first available national licensing examination after graduation.

B. The permit to practice shall be issued for practice under direct supervision at a specified place of employment in the state.

C. The permit to practice shall be valid from issuance until the results of the national licensing examination are disseminated by the board office to the examinee, at which

time the permit is void and the applicant who has passed the examination may be issued a license to practice.

**History:** 1953 Comp., § 67-2-19.1, enacted by Laws 1977, ch. 220, § 14; 1982, ch. 108, § 4; 1993, ch. 61, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, inserted "available" near the end of Subsection A and substituted the language beginning "the examinee" for "the examinees, at which time all permits are void and those applicants who have passed the examination may be issued a license to practice" at the end of Subsection C.

### **61-3-23.1. Permit to practice for graduate nursing specialties. (Effective until July 1, 1998.)**

A one-time, nonrenewable permit may be issued to graduate nurse anesthetists, nurse practitioners and clinical nurse specialists awaiting examination and results in accordance with requirements set forth by the board in the rules and regulations.

**History:** 1978 Comp., § 61-3-23.1, enacted by Laws 1979, ch. 379, § 8; 1991, ch. 190, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "nurse anesthetists, nurse practitioners and clinical nurse specialists" for "nurse specialists" and made minor stylistic changes throughout the section.

### **61-3-23.2. Certified nurse practitioner; qualifications; practice; examination. (Effective until July 1, 1998.)**

A. The board may endorse for expanded practice as a certified nurse practitioner an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) has successfully completed a post-graduate program for the education and preparation of nurse practitioners;

(3) has successfully completed the national certifying examination in the applicant's specialty area; and

(4) is certified by a national nursing organization.

B. Certified nurse practitioners may:

(1) perform an expanded practice that is beyond the scope of practice of professional registered nursing; and

(2) make independent decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription and distributing of dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, regulations, guidelines and formularies for individual certified nurse practitioners promulgated by the board. As used in this subsection, "prescriptive authority" means the ability of the certified nurse practitioner to practice independently, serve as a primary health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

D. Certified nurse practitioners who have fulfilled requirements for prescribing drugs may distribute to their patients dangerous drugs, including controlled substances included in Schedules II through V of the Controlled Substances Act, that have been prepared, packaged or fabricated by a registered pharmacist or doses of drugs that have been prepackaged by a pharmaceutical manufacturer in accordance with the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [26-1-1 to 26-1-26 NMSA 1978].

E. Certified nurse practitioners endorsed by the board on and after December 2, 1985 shall successfully complete the national certifying examination and shall maintain certification in their specialty area. Certified nurse practitioners endorsed by the board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization.

**History:** 1978 Comp., § 61-3-23.2, enacted by Laws 1991, ch. 190, § 14; 1993, ch. 61, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, rewrote Subsections B and C; substituted "including controlled substances included in Schedules II through V of" for

"other than controlled substances as defined in" and deleted "unit" preceding "doses of drugs" in Subsection D; and deleted former Subsection F, defining "collaboration".

**Controlled Substances Act.** - See 30-31-1 NMSA 1978 and notes thereto.

**61-3-23.3. Certified registered nurse anesthetist; qualifications; endorsement; practice. (Effective until July 1, 1998.)**

A. The board may endorse for expanded practice as a certified registered nurse anesthetist an applicant who furnishes evidence satisfactory to the board that the applicant:

(1) is a registered nurse;

(2) is a graduate of an approved school of nurse anesthesia; and

(3) is certified by the American association of nurse anesthetists' council on certification.

B. A certified registered nurse anesthetist may provide pre-operative, intra-operative and post-operative anesthesia care and related services in accordance with the current American association of nurse anesthetists' guidelines for nurse anesthesia practice.

C. Certified registered nurse anesthetists shall function under the direction of and in collaboration with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 60 [Chapter 61], Article 5, 6, 8 or 10 NMSA 1978 in performing the expanding practice of nurse anesthesia care. As used in this subsection, "collaboration" means the process in which a certified registered nurse anesthetist functions jointly with a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to Chapter 60 [Chapter 61], Articles 5, 6, 8 or 10 NMSA 1978 to deliver health care services within the scope of the certified registered nurse anesthetist's expertise. Collaboration includes systematic formal planning and evaluation between the professionals involved in the collaborative practice arrangements.

**History:** 1978 Comp., § 61-3-23.3, enacted by Laws 1991, ch. 190, § 15.

**ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**Bracketed material.** - The bracketed references in Subsection C were inserted by the compiler to correct apparently erroneous references. The bracketed material was not enacted by the legislature and is not part of the law.

**61-3-23.4. Clinical nurse specialist; qualifications; endorsement. (Effective until July 1, 1998.)**

The board may endorse for expanded practice as a clinical nurse specialist an applicant who furnishes evidence satisfactory to the board that the applicant:

- A. is a registered nurse;
- B. has a master's degree or doctoral degree in a defined clinical nursing specialty; and
- C. is certified by a national nursing organization.

**History:** 1978 Comp., § 61-3-23.4, enacted by Laws 1991, ch. 190, § 16.

**ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**61-3-24. Renewal of licenses. (Effective until July 1, 1998.)**

A. Any person licensed under the provisions of the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] who intends to continue practice shall renew the license biennially by the end of the applicant's birthday month except when on active military duty during a military action.

B. At least six weeks before the end of the birthday month, the board shall mail to the licensee an application blank which shall be returned to the board before the end of the birthday month together with proof of completion of continuing education requirements as required by the board and the renewal fee set by the board in an amount not to exceed one hundred dollars (\$100).

C. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium. Renewal shall render the holder a legal practitioner of nursing for the period stated on the renewal certificate.

D. Applicants for renewal who have not been actually engaged in nursing for five years or more shall furnish the board evidence of having completed refresher courses of continuing education as required by regulations adopted by the board.

E. Any person who allows his license to lapse by failure to secure renewal as provided in this section shall be reinstated by the board on payment of the fee for the current biennium plus a reinstatement fee to be set by the board in an amount that shall not exceed two hundred dollars (\$200), provided that all requirements have been met.

**History:** 1953 Comp., § 67-2-20, enacted by Laws 1968, ch. 44, § 20; 1977, ch. 220, § 15; 1979, ch. 379, § 9; 1982, ch. 108, § 5; 1985, ch. 67, § 5; 1991, ch. 190, § 17.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, added "except when on active military duty during a military action" at the end of Subsection A; substituted "one hundred dollars (\$100)" for "thirty dollars (\$30.00)" at the end of Subsection B; and, in Subsection E, substituted "two hundred dollars (\$200)" for "sixty dollars (\$60.00)" and made a minor stylistic change.

### **61-3-25. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 190, § 24 repeals 61-3-25 NMSA 1978, as amended by Laws 1979, ch. 379, § 10, relating to licenses, effective June 14, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-3-26. Schools of nursing; standards; approval. (Effective until July 1, 1998.)**

A. An institution desiring to conduct a nursing education program to prepare registered or licensed practical nurses shall apply to the board for approval and submit evidence that:

(1) it is prepared to carry out a program in professional nursing education or a program in licensed practical nursing education, as the case may be; and

(2) it is prepared to meet such standards as are established by the board.

B. A survey of the institution with which the school is to be affiliated shall be made by a member of the board or an authorized employee of the board who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for approval are met, a certificate of approval shall be issued.

C. From time to time, as deemed necessary by the board, it is the duty of the board, through a board member or an authorized employee, to survey all schools of nursing in this state.

D. For the purpose of evaluating the educational qualifications for licensure of a candidate as either a registered or licensed practical nurse under Subsection B of either Section 61-3-13 or 61-3-18 NMSA 1978, the board shall set standards comparable to

the minimum standards applicable in this state for recognition of schools of nursing in other jurisdictions.

**History:** 1953 Comp., § 67-2-22, enacted by Laws 1968, ch. 44, § 22; 1977, ch. 220, § 16; 1991, ch. 190, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, substituted "61-3-13 or 61-3-18 NMSA 1978" for "67-2-10 or 67-2-15 NMSA 1953" in Subsection D and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 C.J.S. Schools and School Districts § 6.

### **61-3-27. Fund established; disposition; method of payment. (Effective until July 1, 1998.)**

A. There is created a "board of nursing fund".

B. All funds received by the board and money collected under the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any interest earned on the fund shall be credited to the fund.

C. Payments out of the board of nursing fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.

D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act, the duties imposed by that act and the promotion of nursing education and standards in this state. All money unused at the end of the fiscal year shall remain in the board of nursing fund for use in accordance with the provisions of the Nursing Practice Act to further the purposes of that act.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in administration of the Nursing Practice Act.

**History:** 1953 Comp., § 67-2-23, enacted by Laws 1968, ch. 44, § 23; 1977, ch. 220, § 17; 1991, ch. 190, § 19.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, added the third sentence in Subsection B and made minor stylistic changes throughout the section.

**61-3-28. Disciplinary proceedings; judicial review; application of Uniform Licensing Act; limitation. (Effective until July 1, 1998.)**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] or reprimand or place a licensee on probation upon grounds that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;

(7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act; or

(8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. Notwithstanding Section 61-1-3.1 NMSA 1978, the board shall not initiate a disciplinary action more than two years after the date that it receives a sworn complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

**History:** 1953 Comp., § 67-2-24, enacted by Laws 1968, ch. 44, § 24; 1977, ch. 220, § 18; 1982, ch. 108, § 6; 1985, ch. 67, § 6; 1991, ch. 253, § 1; 1993, ch. 61, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, added "Limitation" to the catchline; in Subsection A, inserted "or reprimand or place a licensee on probation" in the introductory paragraph, added "as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act" at the end of Paragraph (6), and added "including any rule or regulation adopted by the board pursuant to that act" at the end of Paragraph (7); and added Subsections D and E.

**The 1993 amendment,** effective June 18, 1993, deleted "subsequent to licensure" following "felony" in Paragraph (2) of Subsection A; rewrote Paragraph (8) of Subsection A; and substituted "NMSA 1978" for "of the Uniform Licensing Act" in Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Privilege of communications by or to nurse or attendant, 47 A.L.R.2d 742.

Nurse's liability for her own negligence or malpractice, 51 A.L.R.2d 970.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Validity, construction and application of statutes making public proceedings open to the public, 38 A.L.R.3d 1070.

Revocation of nurse's license to practice profession, 55 A.L.R.3d 1141.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

**61-3-29. Exceptions. (Effective until July 1, 1998.)**

The Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] shall not apply to or affect:

- A. gratuitous nursing by friends or members of the family;
- B. nursing assistance in case of emergencies;
- C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;
- D. nursing in this state by a legally licensed nurse of another state whose employment requires the nurse to accompany and care for a patient temporarily residing in this state, provided that the temporary residence does not exceed three months and the nurse does not claim to be licensed in this state;
- E. nursing in this state by any person who is employed by the United States government or any bureau, division or agency thereof, while in the discharge of his official duties;
- F. the practice of midwifery by any person other than a registered nurse who is certified or licensed in this state to practice midwifery;
- G. any person working as a home health aide, unless performing acts defined as professional nursing or practical nursing under the Nursing Practice Act;
- H. any nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing under the Nursing Practice Act;
- I. any registered nurse holding a current license in another jurisdiction who is enrolled in any professional course requiring nursing practice as a part of the educational program;
- J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess his own needs;  
or
- K. medication aides in licensed intermediate care facilities for the mentally retarded who complete a board-approved medication aide training program and who are certified by the board to administer routine oral medications, which could be expanded to include all medications except subcutaneous, intramuscular and intravenous injections, unless the

medication aide is performing acts defined as professional or practical nursing under the Nursing Practice Act.

**History:** 1953 Comp., § 67-2-25, enacted by Laws 1968, ch. 44, § 25; 1977, ch. 220, § 19; 1985, ch. 67, § 7; 1990, ch. 112, § 1; 1991, ch. 190, § 20; 1991, ch. 209, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1990 amendment,** effective May 16, 1990, added Subsection J.

**1991 amendments.** - Laws 1991, ch. 190, § 20, effective June 14, 1991, adding "or disasters" at the end of Subsection B; rewriting Subsection I; and making a related stylistic change, was approved on April 4, 1991. However, Laws 1991, ch. 209, § 2, effective July 1, 1991, adding Subsection K and making related stylistic changes, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 209, § 2. See 12-1-8 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Midwifery: state regulation, 59 A.L.R.4th 929.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 5, 13.

### **61-3-29.1. Diversion program created; advisory committee; renewal fee; requirements; immunity from civil actions. (Effective until July 1, 1998.)**

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more diversion evaluation advisory committees, hereinafter called the "advisory committee", each of which shall be composed of at least five members with expertise in chemical dependency. Two members of each advisory committee shall be registered nurses and one member shall be a licensed practical nurse. No current member of the board shall be appointed to an advisory committee. The executive officer of the board or his designee shall be the liaison between each advisory committee and the board.

C. Each advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to an advisory committee to:

- (1) establish criteria for admission and continuance in the program;
- (2) review sworn complaints filed with the board against a licensed nurse involving drug abuse or alcohol;
- (3) review voluntary requests of each nurse requesting diversion;
- (4) develop a written diversion agreement to be approved by the board which sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;
- (5) recommend to the board in favor of or against each nurse's admission into and release from a diversion program;
- (6) receive and review all reports regarding each nurse's progress in treatment and recovery;
- (7) report violations to the board;
- (8) submit statistical reports to the board;
- (9) coordinate educational programs and research related to chemically dependent nurses; and
- (10) monitor peer-assistant and employee-assistant programs in the state.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars (\$20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except for making a report to the board concerning any nurse who is not cooperating and complying with the diversion agreement. However, such files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. Any person making a report to the board or to an advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action

resulting from such reports, provided such reports are made in good faith and with some reasonable basis in fact.

G. Any person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section, or with the rules and regulations adopted by the board pursuant to this section, or with the written diversion agreement or with any amendments to the written diversion agreement may be subject to disciplinary action in accordance with Section 61-3-28 NMSA 1978.

**History:** 1978 Comp., § 61-3-29.1, enacted by Laws 1987, ch. 285, § 1; 1991, ch. 190, § 21; 1991, ch. 253, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 190, § 21 and Laws 1991, ch. 253, § 2, effective June 14, 1991, which inserted "or his designee" in the final sentence in Subsection B; substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in Subsection D; added Subsection G; and made minor stylistic changes in Subsections A, B and C. The section is set out as amended by Laws 1991, ch. 253, § 2. See 12-1-8 NMSA 1978.

### **61-3-30. Violations; penalties. (Effective until July 1, 1998.)**

It is a misdemeanor for any person, firm, association or corporation to:

A. sell, fraudulently obtain or furnish any nursing diploma, license, examination or record or to aid or abet therein;

B. practice professional nursing as defined by the Nursing Practice Act [61-3-1 to 61-3-30 NMSA 1978] unless exempted or duly licensed to do so under the provisions of that act;

C. practice licensed practical nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so under the provisions of that act;

D. use in connection with his name any designation tending to imply that such person is a registered nurse or a licensed practical nurse unless duly licensed under the provisions of the Nursing Practice Act;

E. conduct a school of nursing or a course for the education of professional or licensed practical nurses for licensing unless the school or course has been approved by the board;

F. practice nursing after his license has lapsed or been suspended or revoked. Such person shall be considered an illegal practitioner;

G. employ unlicensed persons to practice as registered nurses or as licensed practical nurses;

H. practice or employ a person to practice as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist unless endorsed as a certified registered nurse anesthetist, certified nurse practitioner or clinical nurse specialist pursuant to the Nursing Practice Act; or

I. otherwise violate any provisions of the Nursing Practice Act.

The board shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Nursing Practice Act. In prosecutions under the Nursing Practice Act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt constitutes a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both.

**History:** 1953 Comp., § 67-2-26, enacted by Laws 1968, ch. 44, § 26; 1977, ch. 220, § 20; 1985, ch. 67, § 8; 1991, ch. 190, § 22.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-3-31 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, added Subsection H; redesignated former Subsection H as Subsection I and made a related stylistic change in Subsection G; and made minor stylistic changes in Subsections C and E.

### **61-3-31. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of nursing is terminated on July 1, 1997, pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 3 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 3 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-3-31, enacted by Laws 1979, ch. 379, § 11; 1981, ch. 241, § 17; 1985, ch. 67, § 9; 1985, ch. 87, § 2; 1991, ch. 189, § 4; 1991, ch. 190, § 23.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 190, § 23 amends this section to repeal Chapter 61, Article 3 NMSA 1978, effective July 1, 1998.

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 189, § 4 and Laws 1991, ch. 190, § 23, effective June 14, 1991, which substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences. The section is set out as amended by Laws 1991, ch. 190, § 23. See 12-1-8 NMSA 1978.

## **ARTICLE 4 CHIROPRACTIC**

### **61-4-1. Short title. (Effective until July 1, 1998.)**

Chapter 61, Article 4 NMSA 1978 may be cited as the "Chiropractic Physician Practice Act".

**History:** 1953 Comp., § 67-3-9, enacted by Laws 1968, ch. 3, § 1; 1993, ch. 198, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to practice of chiropractic being unaffected by act relating to osteopathic medicine and surgery, see 61-10-4 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, rewrote this section, which formerly read "This act may be cited as the 'Chiropractic Practice Act'."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Evidence of confidential communications, 68 A.L.R. 177.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Competency as expert in personal injury action as to injured person's condition, medical requirements, nature and extent of injury and the like, 52 A.L.R.2d 1384.

Competency of physician or surgeon, of school of practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

## **61-4-2. Definitions. (Effective until July 1, 1998.)**

As used in the Chiropractic Physician Practice Act [this article]:

A. "chiropractic" means the science, art and philosophy of things natural, the science of locating and removing interference with the transmissions or expression of nerve forces in the human body by the correction of misalignments or subluxations of the articulations and adjacent structures, more especially those of the vertebral column and pelvis, for the purpose of restoring and maintaining health for treatment of human disease primarily by, but not limited to, adjustment and manipulation of the human structure. It shall include, but not be limited to, the use of all natural agencies to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements, homeopathic remedies and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery and prescription or use of controlled or dangerous drugs;

B. "board" means the New Mexico board of chiropractic;

C. "chiropractic physician" includes doctor of chiropractic, chiropractor and chiropractic physician and means a person who practices chiropractic as defined in the Chiropractic Physician Practice Act; and

D. "chiropractic assistant" means a person who practices under the on-premises supervision of a licensed chiropractic physician.

**History:** 1953 Comp., § 67-3-10, enacted by Laws 1968, ch. 3, § 2; 1993, ch. 198, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, inserted "Physician" in the introductory paragraph and in Subsection C; rewrote Subsection A; substituted "board of chiropractic" for "chiropractic board" in Subsection B; substituted "'chiropractic physician'" for "'chiropractor'" and inserted "chiropractor" in Subsection C; added Subsection D; and made minor stylistic changes.

**Chiropractor is not a "physician"** and his profession or calling is not the practice of medicine; he is one skilled in the art of healing in a limited manner, although not one skilled in physic since such latter term refers to the practice of medicine. 1959-60 Op. Att'y Gen. No. 59-96.

**Licensed chiropractor must be considered a "practitioner of the healing arts."**  
Katz v. New Mexico Dep't of Human Servs., 95 N.M. 530, 624 P.2d 39 (1981).

**Acupuncture falls within scope of chiropractic.** 1976 Op. Att'y Gen. No. 76-32.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 5.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

**61-4-3. Board created; appointment; officers; duties; compensation.  
(Effective until July 1, 1998.)**

A. There is created the "chiropractic board". The board shall consist of six persons. Four shall have been continuously engaged in the practice of chiropractic in New Mexico for five years immediately prior to their appointment. Two persons shall represent the public and shall not have practiced chiropractic in this state or any other jurisdiction. No person shall be appointed to the board who is an officer or employee of or who is financially interested in any school or college of chiropractic, medicine, surgery or osteopathy.

B. Members of the board shall be appointed by the governor for staggered terms; one of the members shall be appointed for a term ending July 1, 1980, one for a term ending July 1, 1981, one for a term ending July 1, 1982, one for a term ending July 1, 1983 and one for a term ending July 1, 1984. Thereafter, appointments shall be made for terms of five years or less and be made in such a manner that the term of one board member expires on July 1 of each year. A list of five names for each professional member vacancy shall be submitted by the New Mexico chiropractic associations to the governor for his consideration in the appointment of board members. A vacancy shall be filled by appointment for the unexpired term. Board members shall serve until their successors have been appointed and qualified.

C. The board shall annually elect a chairman and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chairman and shall be called upon the written request of two members of the board. Notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within thirty days after any meeting.

D. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

E. The board shall adopt a seal.

F. The board shall promulgate and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], all rules and regulations necessary for the implementation and enforcement of the provisions of the Chiropractic Physician Practice Act [this article], including educational requirements for a chiropractic assistant.

G. The board shall cause examinations to be held at least twice a year, and all applicants shall be notified in writing of each examination.

H. The board, for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness, shall establish by regulations adopted in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] mandatory continuing education requirements for chiropractors licensed in this state.

I. Failure to comply with the rules and regulations adopted by the board shall be grounds for investigation, which may lead to revocation of license.

J. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance for each day necessarily spent in the discharge of their duties.

**History:** 1953 Comp., § 67-3-11, enacted by Laws 1968, ch. 3, § 3; 1973, ch. 169, § 1; 1977, ch. 109, § 1; 1979, ch. 77, § 1; 1983, ch. 187, § 1; 1991, ch. 189, § 5; 1993, ch. 198, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "six persons" for "five persons" in the second sentence, "Four" for "Three" in the third sentence, "Two persons" for "The fifth person" at the beginning of the fourth sentence, and made a minor stylistic change.

**The 1993 amendment**, effective June 18, 1993, in Subsection B, substituted "chiropractic associations" for "chiropractic association" in the third sentence; in Subsection C, substituted "A majority" for "Three members" and "constitutes" for "constitute" in the second sentence and substituted "quarterly" for "at least every three months" in the third sentence; divided former Subsection E into Subsections E and F, deleting "and" at the end of Subsection E and adding "The board shall" at the beginning of Subsection F; inserted "Physician" and added "including educational requirements for

a chiropractic assistant" at the end of Subsection F; redesignated former Subsections F to I as Subsections G to J; and rewrote Subsection I.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21 to 24.

#### **61-4-4. Application requirements. (Effective until July 1, 1998.)**

Each applicant for a license to practice chiropractic shall:

A. make application on forms furnished by the board;

B. submit evidence on oath satisfactory to the board that the applicant has reached the age of majority, has completed a preliminary education equal to the requirements for graduation from high school, is of good moral character and, after January 1, 1976, except for any student presently enrolled in a college of chiropractic, has completed two years of college-level study in an accredited institution of higher learning and is a graduate of a college of chiropractic which meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

C. pay in advance to the board fees:

(1) for examination; and

(2) for issuance of a license.

**History:** 1953 Comp., § 67-3-12, enacted by Laws 1968, ch. 3, § 4; 1973, ch. 35, § 1; 1973, ch. 237, § 1; 1978, ch. 114, § 1; 1983, ch. 187, § 2; 1993, ch. 198, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to the age of majority, see 28-6-1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, rewrote Paragraphs (1) and (2) of Subsection C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 60.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

**61-4-5. Evidence of graduation; creditation of college. (Effective until July 1, 1998.)**

In addition to the requirements prescribed in Section 61-4-4 NMSA 1978, all applicants for licensure who have matriculated at a chiropractic college after October 1, 1975 shall present evidence of having graduated from a chiropractic college having status with the accrediting commission of the council on chiropractic education or the equivalent criterion thereof.

**History:** Laws 1968, ch. 3, § 5; 1953 Comp., § 67-3-13; Laws 1975, ch. 176, § 1; 1993, ch. 198, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, substituted "61-4-4 NMSA 1978" for "67-3-12 NMSA 1953" and made a stylistic change.

### **61-4-6. Examination; subjects; method of treatment; recording license. (Effective until July 1, 1998.)**

A. The board shall recognize successful completion of all parts of the national board examination.

B. The board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications.

C. The board shall issue a license to all applicants whose applications have been filed with and approved by the board and who have paid the required fees and passed the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent. A license shall be refused to any applicant who fails to make application as provided in this section, fails the examination or fails to pay the required fees.

D. The license, when granted by the board, carries with it the title of doctor of chiropractic and entitles the holder to diagnose using any necessary diagnostic procedures, excluding invasive procedures, except as provided by the board by rule and regulation, and treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic by the use of any or all methods as provided in this section, including but not limited to palpating, diagnosing, adjusting and treating injuries and defects of human beings by the application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and mechanical appliances, herbs, nutritional supplements and homeopathic remedies, but excluding operative surgery and prescription or use of controlled or dangerous drugs. The holder may also supervise the use of any or all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity, mechanical appliances, herbs, nutritional supplements and homeopathic remedies administered by a chiropractic assistant.

E. Failure to display the license shall be grounds for the suspension of the license to practice chiropractic until so displayed and shall subject the licensee to the penalties for practicing without a license.

**History:** 1953 Comp., § 67-3-14, enacted by Laws 1968, ch. 3, § 6; 1975, ch. 176, § 2; 1983, ch. 187, § 3; 1993, ch. 198, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-4-7. Disposition of funds; chiropractic fund created; method of payment; bond. (Effective until July 1, 1998.)**

A. There is created the "chiropractic fund".

B. All funds received by the board and money collected under the Chiropractic Physician Practice Act [this article] shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the chiropractic fund.

C. Payments out of the chiropractic fund shall be made on vouchers issued and signed by the secretary of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department of finance and administration.

D. All amounts paid into the chiropractic fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the performance of the purposes of the Chiropractic Physician Practice Act, the duties imposed by that act and the promotion of chiropractic education and standards in this state. All money unused at the end of the fiscal year shall remain in the chiropractic fund for use in accordance with the provisions of the Chiropractic Physician Practice Act to further its purpose.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in the administration of the Chiropractic Physician Practice Act.

F. The treasurer of the board shall give bond in the amount of five thousand dollars (\$5,000) for the faithful discharge of his duties, in such form as meets the approval of the board. The treasurer shall make, at the first meeting after July 1 of each year, an itemized report of all receipts and disbursements of the board for the prior year.

G. The board shall, by rule, designate a portion of the annual licensing fee for the exclusive purposes of investigating and funding hearings regarding complaints against doctors of chiropractic.

**History:** 1953 Comp., § 67-3-15, enacted by Laws 1968, ch. 3, § 7; 1993, ch. 198, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, inserted "Physician" in the first sentence of Subsection B, in the first and second sentences of Subsection D, and in Subsection E; deleted "chiropractic" preceding "board" in Subsection E; added Subsection G; and made minor stylistic changes in Subsections D and E.

### **61-4-8. License without examination. (Effective until July 1, 1998.)**

The board may, in its discretion, issue a license without examination to a chiropractor who has been licensed in any state, territory or foreign jurisdiction and who is a graduate of [a] standard college of chiropractic, if:

A. the applicant is of good moral character;

B. the requirements of practice in the state, territory or province in which the applicant is licensed are equal to those of this state; and

C. the applicant pays the fee designated in Section 4 [61-4-4 NMSA 1978].

The board may also, in its discretion, issue a license without examination to any chiropractor who has continuously practiced in another state for at least seven of the last ten years prior to application, or to any chiropractor who is a graduate of a standard college of chiropractic and has served in the military services of the United States for two years or more within one year prior to application, or to any applicant showing evidence of having passed the examination conducted by the national board of chiropractic examiners.

**History:** 1953 Comp., § 67-3-16, enacted by Laws 1968, ch. 3, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 61, 67, 68.

### **61-4-9. Privileges and obligations. (Effective until July 1, 1998.)**

A. Licensed chiropractic physicians shall observe all health and hygiene laws and regulations of the state and its political subdivisions and shall report births and deaths to the proper authorities. Reports rendered by chiropractors shall be accepted by officers of departments or agencies to which they are made.

B. It is the purpose of the Chiropractic Physician Practice Act [this article] to grant to chiropractors the right to practice chiropractic as taught and practiced in standard colleges of chiropractic and to entitle the holder of a license the right to diagnose, palpate and treat injuries, deformities and other physical or mental conditions relating to the basic concepts of chiropractic by use of any methods provided in the Chiropractic Physician Practice Act, as provided in rules and regulations established and monitored by the board, but excluding operative surgery and prescription or use of controlled or dangerous drugs as provided in rules and regulations established and monitored by the board.

**History:** 1953 Comp., § 67-3-17, enacted by Laws 1968, ch. 3, § 9; 1993, ch. 198, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to incorporation of chiropractors under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

**The 1993 amendment,** effective June 18, 1993, inserted subsection designations; substituted "chiropractic physicians" for "chiropractors" in the first sentence of Subsection A; and in Subsection B, inserted "Physician" near the beginning and substituted the language beginning "Physician Practice Act, as provided in rules" for "Practice Act, such as by application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and drugless appliances, but excluding operative surgery and prescription or use of drugs or medicine, except that X ray, analytical instruments and routine laboratory procedures, not involving the penetration of human tissues except for blood testing, may be used for the purpose of examination" at the end.

**Chiropractic as healing art.** - Restriction of 59-18-19 (now see 59A-22-32) NMSA 1978, prohibiting discrimination against an insured in the choice of a practitioner of the healing arts, applies to chiropractors. 1972 Op. Att'y Gen. No. 72-58.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 44, 132.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7.

### **61-4-10. Refusal, suspension or revocation of license. (Effective until July 1, 1998.)**

A. The board may refuse to issue or may suspend or revoke any license in accordance with the procedures as contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] upon the grounds that the licensee or applicant:

(1) is convicted of a felony; a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of such conviction;

(2) is guilty of fraud or deceit in procuring or attempting to procure a license in the chiropractic profession or in connection with applying for or procuring license renewal;

(3) is guilty of incompetence;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice chiropractic;

(5) is guilty of practicing or attempting to practice under an assumed name or fails to use the title "doctor of chiropractic", chiropractic physician or the initials "D.C." in connection with his practice or advertisements;

(6) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act [this article] or rules and regulations promulgated by the board and filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978];

(7) is guilty of willfully or negligently practicing beyond the scope of chiropractic practice as defined in the Chiropractic Physician Practice Act;

(8) is guilty of advertising by means of knowingly false statements;

(9) has been declared mentally incompetent by regularly constituted authorities or is manifestly incapacitated to practice chiropractic;

(10) advertises or attempts to attract patronage in any unethical manner prohibited by the rules and regulations of the board;

(11) is guilty of obtaining any fee by fraud or misrepresentation;

(12) is guilty of making false or misleading statements regarding his skill or the efficacy or value of treatment or remedy prescribed or administered by him or at his direction;

(13) is guilty of aiding or abetting the practice of chiropractic by a person not licensed by the board;

(14) has incurred a prior suspension or revocation in another state where the suspension or revocation of a license to practice chiropractic was based upon acts by the licensee similar to acts described in this section and by board rules promulgated pursuant to Paragraph (6) of this subsection a certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof;

(15) is guilty of making a false, misleading or fraudulent claim; or

(16) is guilty of unprofessional conduct that includes but is not limited to the following:

(a) procuring, aiding or abetting a criminal abortion;

(b) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;

(c) willfully or negligently divulging a professional confidence;

(d) conviction of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;

(e) impersonating another person licensed in the practice of chiropractic or permitting or allowing any person to use his license;

(f) gross negligence in the practice of chiropractic;

(g) fee splitting;

(h) conduct likely to deceive, defraud or harm the public;

(i) repeated similar negligent acts;

(j) employing abusive billing practices;

(k) failure to report to the board any adverse action taken against him by: 1) another licensing jurisdiction; 2) any peer review body; 3) any health care entity; 4) any

governmental agency; or 5) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(l) failure to report to the board surrender of a license or other authorization to practice chiropractic in another state or jurisdiction or surrender of membership on any chiropractic staff or in any chiropractic or professional association or society following, in lieu of, and while under disciplinary investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(m) failure to furnish the board, its investigators or representatives with information requested by the board;

(n) abandonment of patients;

(o) failure to adequately supervise, as provided by board regulation, a chiropractic assistant or technician or professional licensee who renders care;

(p) intentionally engaging in sexual contact with a patient other than his spouse during the doctor-patient relationship; and

(q) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

B. The board may at its discretion hire investigators to investigate complaints made to the board regarding chiropractic physicians.

C. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

**History:** 1953 Comp., § 67-3-18, enacted by Laws 1968, ch. 3, § 10; 1971, ch. 67, § 1; 1981, ch. 235, § 1; 1993, ch. 198, § 9.

## ANNOTATIONS

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, designated all the provisions of this section as Subsection A; in Subsection A, redesignated former Subsections A to O as Paragraphs (1) to (15) and added Paragraph (16), deleted "provided" preceding "a copy" in Paragraph (1), inserted "chiropractic physician" in Paragraph (5), inserted "Physician" in Paragraphs (6) and (7), and substituted "another state" for "a sister state" and "Paragraph (6) of this subsection" for "subsection F of this section; provided" in Paragraph (14); and added Subsections B and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Competency of physician or surgeon, of school of practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

### **61-4-11. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Chiropractic Physician Practice Act [this article].

**History:** 1953 Comp., § 67-3-18.1, enacted by Laws 1974, ch. 78, § 13; 1993, ch. 198, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, inserted "Physician".

### **61-4-12. Penalties.**

A. Each of the following acts constitutes a misdemeanor punishable upon conviction by a fine of not less than fifty dollars (\$50.00) or more than one thousand dollars (\$1,000) or by imprisonment not to exceed one year, or both:

- (1) practice of chiropractic or an attempt to practice chiropractic without a license;
- (2) obtaining or attempting to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentation;
- (3) willfully falsifying any oath or affirmation required by the Chiropractic Physician Practice Act [this article];
- (4) practicing or attempting to practice under an assumed name; or
- (5) advertising or attempting to attract patronage in any unethical manner prohibited by the rules and regulations of the board.

B. Any second violation of the act constitutes a fourth degree felony.

**History:** 1953 Comp., § 67-3-19, enacted by Laws 1968, ch. 3, § 11; 1975, ch. 176, § 3; 1993, ch. 198, § 11.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, designated all of the provisions of this section as Subsection A and redesignated former Subsections A to E as Paragraphs (1) to (5) of that subsection; in Subsection A, substituted "or more than one thousand dollars (\$1000)" for "nor more than five hundred dollars (\$500)" and "one year" for "six months" in the introductory paragraph, inserted "Physician" in Paragraph (3), and made a minor stylistic change; and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 53 to 57.

### **61-4-13. Annual renewal of license; fee; notice. (Effective until July 1, 1998.)**

A. Any person licensed to practice chiropractic in this state shall, on or before July 1 of each year, pay to the board an annual fee set by regulation and shall submit proof of completion of continuing education requirements as required by the board. The board shall send written notice to every person holding a license prior to June 1 of each year, directed to the last known address of the licensee, notifying him that it is necessary for him to pay the renewal fee as provided in the Chiropractic Physician Practice Act [this article]. Proper forms shall accompany the notice upon which the licensee shall make application for the renewal of his license. The licensee is responsible for renewal of the license even if the licensee does not receive the renewal notice.

B. The board shall establish a schedule of reasonable fees for applications, licenses, renewals, placement or inactive status and administrative fees.

**History:** 1953 Comp., § 67-3-20, enacted by Laws 1968, ch. 3, § 12; 1977, ch. 109, § 2; 1978, ch. 114, § 2; 1983, ch. 187, § 4; 1993, ch. 198, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, designated the provisions of this section as Subsection A; in Subsection A, deleted "in an amount not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) for a certificate of renewal for his license to practice chiropractic" following "regulation" in the first sentence, inserted "Physician" in the second sentence, and added the final sentence; and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 44, 56.

### **61-4-14. Failure to renew; cancellation; reinstatement; permissive temporary cancellation. (Effective until July 1, 1998.)**

Any licensee who fails to comply with the requirements for renewal as set forth in Section 12 [61-4-13 NMSA 1978], shall, upon order of the board, forfeit his right to practice chiropractic in this state and his license and any certificates of renewal shall be cancelled. The board may reinstate him upon payment of all fees or penalties due and upon the presentation of evidence of attendance at educational programs as may be provided by rules and regulations of the board. Any person licensed to practice chiropractic in this state who desires to withdraw from active practice in this state may apply to the board for a temporary suspension of his license with the right to renew and reinstate his license upon a showing that he has paid his annual license renewal fee on or before the first day of July of each year, provided that no suspension shall be granted for a period of less than one year.

**History:** 1953 Comp., § 67-3-21, enacted by Laws 1968, ch. 3, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 52.

## **61-4-15. Exemptions. (Effective until July 1, 1998.)**

The Chiropractic Physician Practice Act [this article] does not apply to:

- A. any commissioned officer of the armed forces of the United States in the discharge of his official duties;
- B. a chiropractor who is legally qualified to practice in the state or territory in which he resides, when in actual consultation with a licensed chiropractor of this state; or
- C. any bona fide student of any standard chiropractic college chiropractically analyzing and adjusting the human body under supervision of a licensed chiropractor.

**History:** 1953 Comp., § 67-3-22, enacted by Laws 1968, ch. 3, § 14; 1993, ch. 198, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, inserted "Physician" in the introductory paragraph; deleted former Subsection D, exempting chiropractors residing on the border of an adjacent state; and deleted the former final paragraph authorizing regularly licensed physicians or surgeons who procure licenses to practice chiropractic to practice medicine, surgery and chiropractic.

## **61-4-16. Existing licensees. (Effective until July 1, 1998.)**

Any person licensed as a chiropractor under any prior law of this state whose license is valid on the effective date of the Chiropractic Physician Practice Act shall be deemed as licensed under the provisions of the Chiropractic Physician Practice Act [this article].

**History:** 1953 Comp., § 67-3-23, enacted by Laws 1968, ch. 3, § 15; 1993, ch. 198, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-4-17 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, inserted "Physician" in two places.

**"Effective date of the Chiropractic Practice Act".** - The "effective date of the Chiropractic Practice Act", referred to in this section, is February 9, 1968, which is the effective date of Laws 1968, ch. 3, § 17.

## **61-4-17. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The chiropractic board is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 4 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 4 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-4-17, enacted by Laws 1979, ch. 77, § 2; 1981, ch. 241, § 18; 1985, ch. 87, § 3; 1991, ch. 189, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 6 amends this section to repeal Chapter 61, Article 4 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 5 DENTISTRY**

### **61-5-1. Short title. (Effective until July 1, 1998.)**

This act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] may be cited as the "Dental Act".

**History:** 1953 Comp., § 67-4-1, enacted by Laws 1971, ch. 125, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1971, ch. 125, § 1, repeals 67-4-1, 1953 Comp., relating to the creation of the board of dental examiners, and enacts the above section. For present provisions relating to the creation of the board of dental examiners, see 61-5-4 NMSA 1978.

**Former dentistry act not monopolistic.** - Laws 1919, ch. 35, regulating dentistry, was not an attempt to confer a monopoly upon those able to comply with its conditions, as the conditions were just and reasonable. *State v. Culdice*, 33 N.M. 641, 275 P. 371 (1929).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability of dentist for injury by X ray, 41 A.L.R. 385.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Newspapers, magazines or radio broadcasting stations, practice of dentistry through, 114 A.L.R. 1506.

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

Dental hygienists, constitutionality, construction and application of statute regulating, 11 A.L.R.2d 724.

Regulation of prosthetic dentistry, 45 A.L.R.2d 1243.

Malpractice: duty and liability anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Liability of dentist for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Duty and liability of dentist to patient, 11 A.L.R.4th 748.

Liability for dental malpractice in provision or fitting of dentures, 77 A.L.R.4th 222.

Liability of orthodontist for malpractice, 81 A.L.R.4th 632.

## **61-5-2. Definitions. (Effective until July 1, 1998.)**

As used in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978]:

A. "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy or surgical operation for any disease, pain, deformity, deficiency, injury, lesion or other physical condition of human teeth, gums, jaws, oral cavity or adjacent tissues by an individual or his agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, device, anesthetic or other therapeutic or diagnostic substance or technique;

(2) the representation, directly or indirectly, publicly or privately, of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection; or

(3) with specific reference to the teeth, gums, jaws, oral cavity or adjacent tissues in living persons, for an individual, his agent or employee to do, propose, agree or attempt to do or make an examination or give an estimate of cost with intent to:

(a) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(b) diagnose or treat any condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(c) correct a malposition;

(d) treat a fracture;

(e) remove calcareous deposits;

(f) replace missing anatomy with an artificial substitute;

(g) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or take orders for such work from a regularly licensed dentist or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(h) give interpretations or readings of dental roentgenograms; or

(i) do any other remedial, corrective or restorative work;

B. "board" means the board of dentistry;

C. "dentist" means an individual who has graduated and received a diploma from a reputable dental college, school or dental department of a university, as classified by the council on dental education of the American dental association, and, except as the context otherwise requires, holds a license to practice dentistry in New Mexico;

D. "dental hygienist" means a person licensed as a dental hygienist under the Dental Act to perform dental hygiene, to take roentgenograms and perform such activities and functions under the general supervision of a dentist as provided for under the Dental Act and the rules and regulations of the board;

E. "dental hygiene" means the science and practice of the prevention of oral disease through the provision of educational, clinical and therapeutic services, including but not limited to the treatment of human teeth by removing from the surface thereof calcareous deposits and stains, by removing accumulated accretions and polishing the surface of the teeth, administering a local anesthetic under the indirect supervision of a dentist and by performing such other dental functions under the general supervision of a dentist as permitted by the rules and regulations of the board;

F. "certified dental assistant" means a person certified by the board as meeting qualifications set forth in the rules and regulations of the board filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978];

G. "general supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist and the execution of the procedures in accordance with the dentist's diagnosis and treatment plan; and

H. "indirect supervision" means that the dentist is in the dental office, authorizes the procedures and remains in the dental office while the procedures are being performed by the dental hygienist.

**History:** Laws 1945, ch. 35, § 1; 1941 Comp. Supp., § 51-412a; 1953 Comp., § 67-4-13; Laws 1963, ch. 219, § 1; reenacted as 1953 Comp., § 67-4-2, by Laws 1971, ch. 125, § 2; 1985, ch. 130, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Former definition of dentistry not vague.** - Laws 1919, ch. 35, § 9, defining the practice of dentistry, was not too vague, indefinite and uncertain to serve as basis for a criminal information for practicing dentistry contrary to the provisions of the act, the actions complained of being within the police power of the state. *State v. Culdice*, 33 N.M. 641, 275 P. 371 (1929).

**Board cannot permit unlicensed persons to practice dentistry.** - The board cannot, by rules and regulations, allow unlicensed persons to perform services which, under statutory provisions, constitute the practice of dentistry. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**Supervision of dental hygienist.** - No services which constitute dental hygiene can be performed unless a licensed dentist is physically and immediately present in the office or building where the work is being performed, in order that he can meet his statutory duty to supervise the services of the dental hygienist. 1971 Op. Att'y Gen. No. 71-121.

**Actions by unlicensed assistants held to be unlawful practice.** - Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 6.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

### **61-5-3. License required. (Effective until July 1, 1998.)**

A. Unless licensed to practice dentistry under the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], no person shall:

(1) practice dentistry;

(2) use the title "dentist," "dental surgeon," "oral surgeon" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dentist; or

(3) perform any of the acts enumerated under the definition of the practice of dentistry as defined in Section 61-5-2 NMSA 1978.

B. Unless licensed as a dental hygienist under the Dental Act, no person shall:

(1) practice dental hygiene as defined in the Dental Act and in the rules and regulations of the board; or

(2) use the title "dental hygienist" or the abbreviation "D.H." or any other abbreviation thereof, or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist.

C. Unless certified as a dental assistant by the board as provided in the Dental Act, no person shall:

(1) practice as a "certified dental assistant" as defined in the rules and regulations of the board; or

(2) use the title or represent himself as a certified "dental assistant" or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is certified as a dental assistant.

**History:** 1953 Comp., § 67-4-3, enacted by Laws 1971, ch. 125, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1971, ch. 125, § 3, repeals 67-4-3, 1953 Comp., relating to districts for selection of members of board of dental examiners, and enacts the above section. For present provisions relating to districts, see 61-5-5 NMSA 1978.

**Actions by unlicensed assistants held to be unlawful practice of dentistry.** - Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 26.

Entrapment to commit offense of practicing dentistry without license, 18 A.L.R. 186, 66 A.L.R. 478, 86 A.L.R. 263.

Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Corporation or individual not himself licensed, right of, to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12, 16.

**61-5-4. Board created; members; qualifications; terms; vacancies. (Effective until July 1, 1998.)**

A. There is created a "board of dentistry". The nine-member board consists of five practicing dentists, each from a separate dental district of the state as defined in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], two licensed dental hygienists and two persons who shall represent the public. The public members of the board shall not have been licensed as dentists or dental hygienists, nor shall the public members have any significant financial interest, direct or indirect, in the occupation regulated. The duty of the board is to carry out the purposes and enforce the provisions of the Dental Act.

B. Dentist members of the board and the dental hygienist members shall be appointed by the governor for staggered terms from a list of names of five qualified persons for each vacancy, to be supplied to him by the New Mexico dental association and the New Mexico dental hygienist association. One of the dentist members shall be appointed for a term ending February 1, 1972, and the four remaining dentist members shall be appointed for terms ending February 1 of 1973, 1974, 1975 and 1976, respectively. Thereafter, appointments for dentist members are for terms of five years or less and made so that the term of one dentist member expires on February 1 of each year. A dentist-member vacancy is filled by appointment by the governor for the unexpired term within ninety days of the vacancy from a list of five names submitted by the New Mexico dental association.

C. The governor shall appoint the two public members. Each public member shall serve a term of five years; provided that of the public members initially appointed, one member shall serve a four-year term and one member shall serve a five-year term. Thereafter, all public members shall serve a five-year term. The at-large dental hygienist member shall serve a five-year term. The president of the dental hygienist committee of the board of dentistry shall serve ex officio as one dental hygienist member of the board. All board members shall serve until their successors have been appointed and qualified.

D. Dentist members of the board, at the time of their appointment, shall:

(1) be residents of the state and the dental district from which they are appointed;

(2) be licensed dentists who have practiced in New Mexico for five years or more immediately preceding their appointment; and

(3) not be connected in any way with a dental college or school or the dental department of any institution of learning.

E. The dental-hygienist members shall be residents of the state and shall not be connected in any way with a dental college or school or the dental department of any institution of learning.

F. No board member shall serve more than two full or partial terms, consecutive or otherwise.

G. Any dentist member not residing in the dental district from which he was appointed and any board member who is absent from three consecutive meetings, either regular or special, is automatically removed as a member of the board.

H. The governor may remove any member from the board for neglect of any duty required by law, for incompetency or for unprofessional or dishonorable conduct as defined by the board's regulations.

I. In the event of any vacancy, the secretary-treasurer of the board shall immediately notify the governor, the board members and the New Mexico dental association of the vacancy, the reason for its occurrence and action taken by the board, so as to expedite appointment of a new board member.

**History:** Laws 1919, ch. 35, § 2; C.S. 1929, § 37-102; 1941 Comp., § 51-402; Laws 1951, ch. 73, § 1; 1953, ch. 21, § 1; 1953 Comp., § 67-4-2; Laws 1965, ch. 65, § 1; reenacted as 1953 Comp., § 67-4-4, by Laws 1971, ch. 125, § 4; 1979, ch. 121, § 1; 1991, ch. 189, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - For establishment of dental districts, see 61-5-5 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, in the second sentence in Subsection A, substituted "nine-member board" for "seven-member board", "two licensed dental hygienists" for "one licensed dental hygienist" and "two persons" for "one person"; rewrote Subsection C which read "On July 1, 1979, the governor shall appoint the two remaining members of the board of dentistry, one person licensed as a dental hygienist, to a term expiring February 1, 1982, and one person who shall represent the public, to a term expiring February 1, 1984. Thereafter, appointments for the two such members are for terms of five years or less so that the expiration dates fall in five-year periods based upon the initial expiration dates stated in this subsection. All board members shall serve until their successors have been appointed and qualified"; substituted "secretary-treasurer" for "secretary" in Subsection I, and made related and minor stylistic changes in Subsections A, B, E and I.

**Residential restrictions.** - There is no reason why residential restrictions cannot be placed on membership on a professional board so long as the whole state is represented. 1953-54 Op. Att'y Gen. No. 5750.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-5-5. Dental districts created. (Effective until July 1, 1998.)**

For the purpose of selecting members of the board of dentistry under the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], there are created five dental districts, composed of the following counties:

A. dental district number one consists of the counties of San Juan, Rio Arriba, Taos, Sandoval, McKinley, Santa Fe and Los Alamos;

B. dental district number two consists of the counties of Colfax, Union, Mora, Harding, San Miguel, Curry, Quay and Guadalupe;

C. dental district number three consists of the counties of Bernalillo, Valencia and Torraine;

D. dental district number four consists of the counties of Catron, Socorro, Grant, Sierra, Hidalgo, Luna, Dona Ana and Otero; and

E. dental district number five consists of the counties of Lincoln, De Baca, Roosevelt, Chaves, Eddy and Lea.

**History:** Laws 1953, ch. 21, § 3; 1941 Comp. Supp., § 51-402a; 1953 Comp., § 67-4-3; reenacted as 1953 Comp., § 67-4-5, by Laws 1971, ch. 125, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-6. Board meetings; quorum; officers; register of licenses; bond of secretary-treasurer; compensation. (Effective until July 1, 1998.)**

A. The board shall elect annually a president, vice president and secretary-treasurer from its membership, each of whom shall serve until his successor is elected. A majority of the board constitutes a quorum for the transaction of business.

B. The board shall hold regular quarterly meetings and such other special meetings as may be called by the president or which shall be called upon the written requests of two or more board members. Examinations for licensure as a dentist or a dental hygienist shall be held in June of each year, and subsequent examinations shall be held if ten or more applications for either examination are received by the board secretary prior to October 1. The examinations shall be held at such times and places as will be most convenient and practical to both the applicants and the board.

C. Notification of special meetings shall be made by certified mail unless waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail to board members at least ten days prior to the meeting. Notice of all examinations shall be made by certified mail to each applicant at least thirty days prior to the date of such examination and copies of the minutes of all meetings shall be mailed to each board member within forty-five days after any meeting.

D. The board shall keep a record book in which shall be registered the name, license number, date of original issuance, the name of the school, college or university from which each licensee graduated and the date of such graduation, the current address of the licensee and a record of credit for the annual dues or renewal fees.

E. Members of the board and their authorized representatives shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance except for the secretary-treasurer who shall be allowed, in addition to per diem and mileage, a reasonable salary which shall be fixed by the board.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursal of money received by the board shall, within thirty days after election or employment by the board, execute a bond in a penal sum to be fixed by the board, conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands. The bond shall be signed by a

surety company authorized to do business in this state and shall be in such form as to meet the approval of the board.

G. The board shall maintain a minute book in which the minutes of all meetings and transactions of the board shall be kept, and shall keep a cash book or other journal where all money received and expended by the board is shown.

**History:** Laws 1919, ch. 35, § 3; C.S. 1929, § 37-103; 1941 Comp., § 51-403; 1953 Comp., § 67-4-4; reenacted as 1953 Comp., § 67-4-6, by Laws 1971, ch. 125, § 6; 1976 (S.S.), ch. 2, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-5-7. Duties and powers of board. (Effective until July 1, 1998.)**

The board shall:

A. adopt and periodically review and revise, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], such rules and regulations as may be necessary to:

- (1) regulate the examination and licensure of dentists and dental hygienists;
- (2) provide for the certification of dental assistants and the regulation of their practice;
- (3) regulate the practice of dentistry and dental hygiene; and
- (4) carry into effect and enforce the provisions of the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978];

B. adopt a seal, maintain an office, provide bylaws for its own government and have the power to sue and be sued;

C. prescribe standards and approve curricula both for educational programs for the preparation of persons for licensure or certification under the Dental Act and for any programs for continuing education which may be adopted by rules or regulations of the board;

D. approve, deny or withdraw accreditation from educational programs for failure to meet standards as prescribed by the council on dental education of the American dental association;

E. provide for the examination, licensing or renewal of licenses of applicants for licensure as dentists or dental hygienists and the certification of dental assistants;

F. conduct hearings upon charges relating to the discipline of a licensee or the denial, suspension or revocation of a license as a dentist or a dental hygienist or the certification as a dental assistant in accordance with the procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

G. cause the prosecution of all persons violating the Dental Act and have the power to incur such expenses as is [are] necessary therefor;

H. keep a record of all transactions and proceedings;

I. by regulation set procedures and a system of warnings and minor penalties for lesser infractions of the Dental Act or the rules and regulations of the board;

J. make an annual report to the governor;

K. provide for such qualified assistants as may be necessary to carry out the provisions of the Dental Act. Such employees shall be paid a salary commensurate with their duties;

L. appoint a licensed dentist to serve as the board's representative to the western interstate commission for higher education;

M. adopt and file, in accordance with the provisions of the State Rules Act, regulations establishing continuing education requirements as a condition for the renewal of licensure and certification; and

N. the board may employ a competent attorney and fix the compensation to be paid such attorney from the funds of the board.

**History:** Laws 1919, ch. 35, § 1; C.S. 1929, § 37-101; 1941 Comp., § 51-401; 1953 Comp., § 67-4-1; reenacted as 1953 Comp., § 67-4-7, by Laws 1971, ch. 125, § 7; 1976, (S.S.), ch. 2, § 2; 1979, ch. 121, § 2; 1981, ch. 230, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Employment of attorney.** - The state board of dental examiners (now the board of dentistry) was specifically authorized, under former dental act, to employ and pay an attorney from funds appropriated to it in order to assist in prosecutions to prevent unauthorized practice of dentistry. 1937-38 Op. Att'y Gen. 162.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 45.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22 to 24.

**61-5-7.1. Dental hygienist committee; creation; appointment; powers and duties; administration. (Effective until July 1, 1998.)**

A. There is created the dental hygienist committee, consisting of five members, one from each of the five dental districts. The governor shall appoint the initial members of the dental hygienist committee in such manner that one member shall be appointed for a one-year term, one member shall be appointed for a two-year term, one member shall be appointed for a three-year term, one shall be appointed for a four-year term and one member shall be appointed for a five-year term. Thereafter the members of the dental hygienist committee shall be appointed for staggered terms of five years each. The members shall be appointed from a list of qualified dental hygienists submitted to the governor by the New Mexico dental hygienist association.

B. The members of the dental hygienists [hygienist] committee, at the time of their appointment, shall:

- (1) be residents of the state and the dental district from which they are appointed;
- (2) be licensed dental hygienists who have practiced in New Mexico for five years or more immediately preceding their appointment; and
- (3) not be connected in way with a dental college or school or the dental department of any educational institution.

C. The members shall receive per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

D. Notwithstanding any other provisions of the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], no action shall be taken by the board in any of the following areas without first receiving the recommendation of the dental hygienist committee:

- (1) areas and methods of practice for dental hygienists;
- (2) licensure of dental hygienists, including the contents and conduct of any examination;
- (3) disciplinary actions taken against any dental hygienist; or
- (4) the promulgation or implementation of any rule or regulation affecting or regulating dental hygienists.

E. The board shall act in a timely manner on the recommendations of the dental hygienist committee unless the board finds that a recommendation is:

- (1) arbitrary or capricious;
- (2) beyond the jurisdiction of the dental hygienist committee; or
- (3) not supported by the record.

F. The dental hygienist committee is authorized to hold hearings or conduct quarterly meetings and take any other action which it deems necessary to make the recommendations required by Subsection D of this section. The dental board shall provide the necessary expenses incurred by the dental hygienist committee and the board in implementing and executing the provisions of this section.

**History:** 1978 Comp., § 61-5-7.1, enacted by Laws 1987, ch. 181, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Recommendations to board of dentistry.** - The dental hygiene committee may make recommendations about the practice of dental hygiene to the board of dentistry upon the request of the board or on its own initiative, but the board of dentistry is not required to follow those recommendations. 1987 Op. Att'y Gen. No. 87-82.

**Compliance with Open Meetings Act.** - The dental hygiene committee must comply fully with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978. 1987 Op. Att'y Gen. No. 87-82.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21, 22.

### **61-5-8. Unlicensed practice prohibited; qualifications for dentistry license; application; prior licenses valid. (Effective until July 1, 1998.)**

No person shall practice or attempt to practice dentistry as defined in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] without first applying for and obtaining a license for this purpose from the board, except those persons who at the time of passage of the Dental Act hold a valid license to practice dentistry in New Mexico under prior laws. An applicant for licensure as a dentist, either by endorsement or examination, under Section 61-5-9 NMSA 1978 shall make application for licensure on forms furnished by the board and shall furnish evidence satisfactory to the board that he:

A. is of good moral character;

B. has reached the age of majority;

C. has completed at least an approved four-year high school course of study or its equivalent as determined by regulation of the board;

D. is a graduate of, and holds a diploma from, a reputable dental college, school or dental department of a university, as classified by the council on dental education of the American dental association; and

E. has paid in advance to the board:

(1) for licensure as a dentist by examination, a fee set by the board in an amount not to exceed two hundred fifty dollars (\$250); or

(2) for licensure as a dentist without written examination, a fee set by the board not to exceed two hundred fifty dollars (\$250); and

(3) for initial issuance of a license as a dentist, a license fee of fifteen dollars (\$15.00).

**History:** Laws 1919, ch. 35, § 4; C.S. 1929, § 37-104; Laws 1939, ch. 201, § 1; 1941 Comp., § 51-404; 1953 Comp., § 61-4-5; reenacted as 1953 Comp., § 67-4-8, by Laws 1971, ch. 125, § 8; 1973, ch. 74, § 1; 1981, ch. 230, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - For the age of majority, see 28-6-1 NMSA 1978.

**Compiler's note.** - The phrase "at the time of passage of the Dental Act" in the introductory paragraph refers to the time of passage of Laws 1971, ch. 125, which was approved on March 17, 1971.

**State's legitimate interest in licensing persons to practice dentistry** or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

**Fee not returnable.** - Application fee for examination could not be returned in the event that the examination was not taken by the applicant. 1939-40 Op. Att'y Gen. 87.

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Practicing dentistry without a license as a continuing or separate offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 16, 19, 20.

**61-5-9. Licensure as a dentist; contents of license; renewal.  
(Effective until July 1, 1998.)**

A. Applicants for licensure as a dentist by examination shall be required to pass the national dental examination of the council of national board of dental examiners of the American Dental Association or, if this test is not available, then another written examination determined by the board. Each written examination shall be supplemented by the board's administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice dentistry. Upon an applicant successfully passing the written and clinical examinations, the board shall issue to him a license to practice dentistry.

B. The board shall issue a license as a dentist without written examination to an applicant who has been duly licensed by examination as a dentist under the laws of another state or territory if:

(1) the applicant meets the qualifications set forth in Section 61-5-8 NMSA 1978 and either:

(a) the written portion of the examination was approved by the council of national board of dental examiners of the American Dental Association and was monitored or proctored by a member of the dental board of such state; or

(b) the written examination was not a national board examination and the applicant has practiced as a licensed dentist in a state or in federal service for a minimum of seven consecutive years immediately prior to the year in which his application is filed; and

(2) the applicant has passed such clinical or practical examinations as the board deems necessary.

C. All dental licenses issued by the board shall bear:

(1) a serial number;

(2) the full name of the licensee;

(3) the date of issue;

- (4) the seal of the board;
- (5) the signatures of a majority of the board members; and
- (6) the attestation of the board president and secretary.

D. All licensees shall be required to renew their licenses triennially. Each licensee shall be given a thirty-day notice of the triennial renewal date pertinent to that licensee by June 1 of the renewal year. Each licensee shall, before July 1 of the renewal year, transmit to the secretary of the board a signed statement stating his current address, his compliance with the regulations requiring continuing education, the serial number of his license and a renewal fee in an amount set by regulation of the board not to exceed one hundred dollars (\$100) for each year. Any license granted by the board is automatically suspended if its holder fails to apply for his renewal certificate by July 1 of the renewal year and shall be automatically revoked unless the licensee furnishes proof that he has met the continuing education requirements and pays to the board a late fee in an amount set by regulation of the board not to exceed one hundred dollars (\$100), together with all other unpaid fees, by August 1 of the renewal term.

Each licensee's triennial renewal year shall be determined by the last digit of the licensee's serial number, and by beginning July 1, 1984:

- (1) those licensees whose license serial numbers have as the last digit zero through three shall renew their licenses for one year by July 1, 1984 and shall renew their licenses every three years thereafter;
- (2) those licensees whose license serial numbers have as the last digit four through six shall renew their licenses for two years by July 1, 1984 and shall renew their licenses every three years thereafter; and
- (3) those licensees whose license serial numbers have as a last digit seven through nine shall renew their licenses for three years by July 1, 1984 and shall renew their licenses every three years thereafter.

E. Any dentist who wishes to retire from the practice of dentistry shall notify the board in writing before the expiration of his current license, and the secretary of the board shall acknowledge the receipt of such notice and record the same. If, within a period of five years from the year of retirement, the dentist wishes to resume practice, he shall so notify the board in writing and, upon giving proof of completing such refresher courses as prescribed by regulation of the board and the payment of an amount equivalent to all lapsed renewal fees, his certificate of license shall be restored to him in full effect.

F. Any person who practices dentistry after his license has lapsed or has been retired, suspended or revoked shall be considered an illegal practitioner, subject to the penalties provided for this violation of the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978].

**History:** Laws 1919, ch. 35, §§ 4, 5, 8, 10; C.S. 1929, §§ 37-104, 37-105, 37-108, 37-110; 1941 Comp., §§ 51-404, 51-405, 51-407, 51-408; 1953 Comp., §§ 67-4-5, 67-4-6, 67-4-8, 67-4-9; Laws 1959, ch. 268, § 2; 1961, ch. 18, § 1; reenacted as 1953 Comp., § 67-4-9 by Laws 1971, ch. 125, § 9; 1981, ch. 230, § 3; 1983, ch. 200, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - As to disciplinary proceedings for violations of the Dental Act, see 61-5-14 NMSA 1978.

As to penalties for violations, see 61-5-21 NMSA 1978.

**State's legitimate interest in licensing persons to practice dentistry** or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 59, 60, 67, 68, 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 23.

### **61-5-10. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978].

**History:** 1953 Comp., § 67-4-9.1, enacted by Laws 1974, ch. 78, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-11. Unlicensed practice as a dental hygienist prohibited; limitations on practice; qualifications for license; application; prior licenses valid. (Effective until July 1, 1998.)**

No person shall practice or attempt to practice dental hygiene as defined in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] and in regulations of the board without first applying for and obtaining a license for this purpose from the board, except

those persons who at the time of passage of the Dental Act hold a valid license to practice as a dental hygienist under the former Dental Hygienist Act. An applicant for licensure as a dental hygienist, either by examination or endorsement under Section 61-5-12 NMSA 1978 shall make application on forms furnished by the board and shall submit evidence satisfactory to the board that he:

A. is of good moral character;

B. is at least eighteen years of age;

C. has completed at least an approved four-year high school course or its equivalent as determined by regulation of the board;

D. has successfully completed a course of training or the equivalent thereof in dental hygiene that is recognized by the board and is approved by the council on [dental] education of the American dental association; and

E. has paid in advance to the board:

(1) for licensure as a dental hygienist by examination, an examination fee set by the board in an amount not to exceed two hundred dollars (\$200); and

(2) for initial issuance of a license as a dental hygienist, a license fee of fifteen dollars (\$15.00); or

(3) for licensure as a dental hygienist without examination, a fee set by the board not to exceed two hundred dollars (\$200), which fee also includes the initial license fee.

**History:** 1953 Comp., § 67-4-10, enacted by Laws 1971, ch. 125, § 10; 1981, ch. 230, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1971, ch. 125, § 10 repealed former 67-4-10, 1953 Comp., relating to suspension or revocation of licenses, and enacted a new 67-4-10, 1953 Comp. For present provisions relating to the suspension or revocation of licenses, see 61-5-14 NMSA 1978.

**Compiler's note.** - The phrase "at the time of passage of the Dental Act," in the introductory paragraph, refers to the time of passage of Laws 1971, ch. 125, which was approved on March 17, 1971.

The former Dental Hygienist Act, referred to in the introductory paragraph, which appeared as 67-4-22 to 67-4-34, 1953 Comp., was repealed by Laws 1971, ch. 125, § 23, and is now covered by the Dental Act.

**State's legitimate interest in licensing persons to practice dentistry** or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Constitutionality, construction and application of statute relating to dental hygienists, 11 A.L.R.2d 724.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 19, 20.

**61-5-12. Licensure as a dental hygienist; contents of license; renewal. (Effective until July 1, 1998.)**

A. Applicants for licensure as a dental hygienist by examination shall be required to pass the national dental hygiene examinations of the council of national board of dental examiners of the American Dental Association or, if this test is not available, then another written examination determined by the board. Each written examination shall be supplemented by a practical examination in the removal of deposits from and the polishing of the surface of the teeth and in such other subject matter as the board deems necessary to test the qualifications of the applicant. Upon an applicant successfully passing the written and clinical examinations, the board shall issue to him a license as a dental hygienist.

B. The board shall issue a license as a dental hygienist without written examination to an applicant who has been duly licensed by examination under the laws of another state or territory if:

(1) the applicant meets the qualifications set forth in Section 61-5-11 NMSA 1978;

(2) the written portion of the examination was approved by the council of national board of dental examiners of the American Dental Association and was monitored or proctored by a member of the dental board of such state; and

(3) the applicant has passed such clinical or practical examinations as the board deems necessary.

C. All dental hygiene licenses issued by the board shall bear:

(1) a serial number;

(2) the full name and address of the licensee;

(3) the date of issue;

(4) the seal of the board;

(5) signatures of a majority of the board; and

(6) the attestation of the board president and secretary.

D. All licensees shall be required to renew their licenses triennially. Each licensee shall be given a thirty-day notice of the triennial renewal date pertinent to that licensee by June 1 of the renewal year. Each licensee shall, before July 1 of the renewal year, transmit to the secretary of the board a signed statement stating his current address, the licensee's compliance with the regulations requiring continued education, the serial number of his license and a renewal fee in an amount set by regulation of the board not to exceed fifty dollars (\$50.00) for each year. Any license as a dental hygienist granted by the board is automatically suspended if its holder fails to apply for his renewal certificate by July 1 of the renewal year and shall be automatically revoked unless the licensee furnishes proof that he has met the continuing education requirements and pays to the board a late fee in an amount set by regulation of the board not to exceed one hundred dollars (\$100), together with all other unpaid fees, by August 1 of the renewal year.

Each licensee's triennial renewal year shall be determined by the last digit of the licensee's serial number, and beginning by July 1, 1984:

(1) those licensees whose license serial numbers have as the last digit zero through three shall renew their licenses for one year by July 1, 1984 and shall renew their licenses every three years thereafter;

(2) those licensees whose license serial numbers have as the last digit four through six shall renew their licenses for two years by July 1, 1984 and shall renew their licenses every three years thereafter; and

(3) those licensees whose license serial numbers have as a last digit seven through nine shall renew their licenses for three years by July 1, 1984 and shall renew their licenses every three years thereafter.

E. Any dental hygienist who wishes to retire from practice as a dental hygienist shall notify the board in writing before the expiration of his current license, and the secretary of the board shall acknowledge the receipt of such notice and record the same. If, within a period of five years from the date of retirement, the dental hygienist wishes to resume practice, he shall so notify the board in writing and, upon giving proof of completing such refresher courses as prescribed by regulations of the board and the payment of an amount set by the board in lieu of all lapsed renewal fees, his certificate of license shall be restored to him in full effect.

F. Any person who practices as a dental hygienist after his license has lapsed, been retired, suspended or revoked shall be considered an illegal practitioner, subject to the

penalties provided for this violation of the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978].

G. Any holder of a valid license and renewal certificate who desires to change to the employment of another dentist or institution shall return his present permit to practice in the designated location to the secretary of the board and, upon payment of a three dollar (\$3.00) transfer fee, the board shall issue a new certificate valid for the new employment location.

H. The board shall adopt rules and regulations governing the issuance of renewal certificates and change of location permits.

**History:** Laws 1951, ch. 78, §§ 5 to 9; 1941 Comp. Supp., §§ 51-421 to 51-424; 1953 Comp., §§ 67-4-23 to 67-4-26; Laws 1959, ch. 267, [§ 1]; reenacted as 1953 Comp., § 67-4-11, by Laws 1971, ch. 125, § 11; 1981, ch. 230, § 5; 1983, ch. 200, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - For penalty for violation of the Dental Act, see 61-5-21 NMSA 1978.

**State's legitimate interest in licensing persons to practice dentistry** or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Dental hygienists, constitutionality, construction and application of statute regulating, 11 A.L.R.2d 724.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

### **61-5-13. Fund established; disposition; method of payment. (Effective until July 1, 1998.)**

A. There is created a "board of dentistry fund."

B. All funds received by the board and money collected under the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall credit this money to the board of dentistry fund.

C. Payment out of the board of dentistry fund shall be on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts paid into the board of dentistry fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the

provisions and duties of the Dental Act, and for promoting dental education and standards in this state. All money unused at the end of any fiscal year remains in the board of dentistry fund for use in accordance with provisions of the Dental Act.

E. All funds which have accumulated to the credit of the board under any previous law shall be continued for use by the board in administration of the Dental Act.

**History:** Laws 1945, ch. 74, § 6; 1941 Comp. Supp., § 51-2806; 1953 Comp., § 67-5-22; Laws 1961, ch. 11, § 3; reenacted as 1953 Comp., § 67-4-12, by Laws 1971, ch. 125, § 12.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-14. Disciplinary proceedings; application of Uniform Licensing Act. (Effective until July 1, 1998.)**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], upon grounds that the licensee or applicant:

- (1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certification provided for in the Dental Act;
- (2) has been adjudged mentally incompetent by regularly constituted authorities;
- (3) has repeatedly and persistently violated any of the dental laws of New Mexico or any other state or territory, and has been convicted thereof;
- (4) has been convicted of a felony;
- (5) is addicted to the use of habit-forming drugs or is chronically or persistently inebriated;
- (6) employs a solicitor for the purpose of procuring dental patients;
- (7) employs or permits, or has employed or permitted, unlicensed persons to practice dentistry or dental hygiene in the office under his control or management;
- (8) has been convicted of practicing dentistry under a corporate or trade or firm name in violation of any provisions of the Dental Act;
- (9) has been convicted of the commission of any illegal operation;

(10) has failed, neglected or refused to comply with any part of the Dental Act or with any of the rules and regulations of the board which are filed under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978];

(11) has failed, neglected or refused to annually renew any license or certificate provided for under the Dental Act;

(12) is grossly inefficient or incompetent in the practice of dentistry or dental hygiene as defined by rules and regulations of the board;

(13) advertised or attempted to attract patronage in any false, misleading or deceptive manner prohibited by rules and regulations of the board;

(14) obtained or attempted to obtain any fee by fraud or misrepresentation;

(15) made false or misleading statements regarding his skill or the efficacy or value of the dental treatment, prosthesis or remedy prescribed or administered by him or at his direction in the treatment of any disease or other condition of the human mind or body;  
or

(16) dispenses, prescribes, administers or distributes controlled substances as defined in the New Mexico Controlled Substances Act [30-31-1 to 30-31-40 NMSA 1978] for any person other than in the course of his professional practice.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

**History:** Laws 1919, ch. 35, § 6; C.S. 1929, § 37-106; Laws 1937, ch. 62, § 1; 1941 Comp., § 51-409; 1953 Comp., § 67-4-10; reenacted as 1953 Comp., § 67-4-13, by Laws 1971, ch. 125, § 13; 1981, ch. 230, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Burden of proof for suspension of license.** - The standard of proof utilized by the board of dentistry in determining that a dentist's license should be suspended is a preponderance of the evidence. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

**Conviction as sufficient basis for revocation.** - Where a dentist was convicted of four counts of making or permitting a false claim for reimbursement for public assistance services, a conviction itself, as distinguished from the underlying conduct, is a sufficient

basis for revoking a dental license. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Standard for use of conviction to revoke license.** - In order for a conviction to be used as a basis for a license revocation, the licensing agency must explicitly state its reasons for a decision prohibiting the licensee from engaging in his or her employment or profession, and the agency must find that the licensee has not been sufficiently rehabilitated to warrant the public trust and must give reasons for this finding. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100, 102, 106, 107.

Validity of statute providing for revocation of license, 5 A.L.R. 94, 79 A.L.R. 323.

Grounds for revocation of license, 54 A.L.R. 1504, 82 A.L.R. 1184.

Restoration of license wrongfully revoked, 95 A.L.R. 1424.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to, within statute making conviction ground for refusing to grant license, 113 A.L.R. 1179.

Statutory power to revoke or suspend dentist's license for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Conviction as proof of ground for revocation or suspension of dentist's license where a conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to practice as dentist, 175 A.L.R. 803.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38 to 43.

### **61-5-15. Duties of attorney general and district attorneys. (Effective until July 1, 1998.)**

It shall be the attorney general's duty to represent the board of dentistry in any court in which an action is filed for review of an order of the board as provided for in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978]. The attorney general may, at his discretion, call to his assistance in such action the district attorney of the county in which the action is filed. Also, the board shall have the right to employ, out of its own funds, any other attorney or attorneys to represent the board in any such action.

**History:** Laws 1937, ch. 162, § 2; 1941 Comp., § 51-410; 1953 Comp., § 67-4-11; reenacted as 1953 Comp., § 67-4-14, by Laws 1971, ch. 125, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-16. Injunction to stop unlicensed dental practice. (Effective until July 1, 1998.)**

The attorney general, prosecuting attorney, board of dentistry or any citizen of any county where any person practices dentistry, as defined by the laws of New Mexico, without possessing a valid license to do so may, in accordance with the laws of New Mexico governing injunctions, maintain an action in the name of the state to enjoin such person from practicing dentistry until a valid license to practice dentistry be secured. And any person who has been so enjoined who violates the injunction shall be punished for contempt of court; provided, that the injunction does not relieve any person practicing dentistry without a valid license from a criminal prosecution therefor as provided by law. Such remedy by injunction is in addition to any remedy provided for the criminal prosecution of such offender. In charging any person in a complaint for

injunction, or in an affidavit, information or indictment with practicing dentistry without a valid license, it is sufficient to charge that the person did, upon a certain day and in a certain county, engage in the practice of dentistry without a valid license, without averring any further or more particular facts concerning the same.

**History:** Laws 1937, ch. 62, § 3; 1941 Comp., § 51-411; 1953 Comp., § 67-4-12; reenacted as 1953 Comp., § 67-4-15, by Laws 1971, ch. 125, § 15.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunction against further violations of the Dental Act by one convicted of a violation thereof, see 61-5-22 NMSA 1978.

As to injunctions generally, see Rules 1-065 and 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Right of one licensed as a regular physician to practice dentistry, 86 A.L.R. 624.

Corporation or individual not himself licensed, right to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

### **61-5-17. Practice under other than own name unlawful. (Effective until July 1, 1998.)**

It is unlawful for any person or persons to practice dentistry or dental surgery under the name of any company, association or corporation. Any person practicing or offering to practice dentistry or dental surgery shall practice under his own name or names only, provided that nothing in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] shall be construed to prevent licensed dentists from incorporating under the Professional Corporations Act.

**History:** Laws 1919, ch. 35, § 11; C.S. 1929, § 37-111; 1941 Comp., § 51-413; 1953 Comp., § 67-4-15; reenacted as 1953 Comp., § 67-4-16, by Laws 1971, ch. 125, § 16.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Professional Corporations Act.** - Laws 1963, ch. 16, enacts the Professional Corporations Act, the provisions of which are presently compiled as 53-6-1 to 53-6-3, 53-6-5, 53-6-7, 53-6-11 to 53-6-13 NMSA 1978.

**Dentists may form a professional corporation** for the practice of dentistry so long as the name of the corporation contains all of the names of the members of the professional corporation plus the words "professional corporation" or some other word or abbreviation of a word authorized by the Professional Corporations Act. 1969 Op. Att'y Gen. No. 69-63.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 87.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 57.

**61-5-18. Practice of dental hygiene; dental hygienists licensed in other states. (Effective until July 1, 1998.)**

A. A dental hygienist shall practice only under the supervision of a licensed dentist in accordance with the rules and regulations of the board.

B. The holder of a license certificate for the year of issue or of a license certificate for the current year, has the right to practice denial [dental] hygiene in New Mexico only:

(1) in the office of a duly licensed dentist;

(2) in a clinic or clinics as an employee of the health and environment department [department of health];

(3) in a clinic or clinics in a state institution as an employee of the institution;

(4) in a clinic established by a board-approved hospital, as an employee of the hospital, where service is rendered only to patients of the hospital; or

(5) as an employee of the state or a local board of education.

C. Any dental hygienist who has been lawfully licensed to practice in another state and who submits proof that he has received, in writing, a notification by the board that he possesses the necessary character and professional qualifications may enter into a contract of employment, to serve exclusively with any state hospital or state institution, [or] any institution or dental program approved or maintained by the health and environment department [department of health], providing that the dental hygienist shall practice only under the supervision of a licensed dentist in accordance with the rules and regulations of the board; and further provided that the dental hygienist must become duly licensed to practice by the board within eighteen months after the date of

employment or he shall be automatically terminated and shall not be rehired until he has obtained a license to practice dental hygiene in New Mexico.

**History:** Laws 1951, ch. 78, § 13; 1941 Comp. Supp., § 51-429; 1953 Comp., § 67-4-31; reenacted as 1953 Comp., § 67-4-17, by Laws 1971, ch. 125, § 17; 1972, ch. 6, § 2; 1981, ch. 230, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Presence of dentist necessary.** - No services which constitute dental hygiene can be performed unless a licensed dentist is physically and immediately present in the office or building where the work is being performed, in order that he can meet his statutory duty to supervise the services of the dental hygienist. 1971 Op. Att'y Gen. No. 71-121.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 26, 27.

### **61-5-19. Licensure under prior laws; display of license. (Effective until July 1, 1998.)**

A. Any person licensed as a dentist or a dental hygienist under any prior laws of this state whose license is valid on the effective date of the Dental Act is held to be licensed under the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] and is entitled to renewal of this license as provided in the Dental Act.

B. All licenses for practice as a dentist or as a dental hygienist shall be displayed in a conspicuous place in the office wherein he practices this profession and shall, upon request, be exhibited to any of the members of the board of dentistry or its authorized agent.

**History:** Laws 1919, ch. 35, § 5; C.S. 1929, § 37-105; 1941 Comp., § 51-405; Laws 1951, ch. 77, § 1; 1953 Comp., § 67-4-6; reenacted as 1953 Comp., § 67-4-18, by Laws 1971, ch. 125, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**"Effective date of the Dental Act".** - The "effective date of the Dental Act", referred to in Subsection A, is March 17, 1971, which is the effective date of Laws 1971, ch. 125, § 24.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 26.

### **61-5-20. Exemptions. (Effective until July 1, 1998.)**

Nothing in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] shall be construed to prohibit:

A. regularly licensed physicians or surgeons from extracting teeth or treating any disease coming within the province of the practice of medicine. The exception of this section does not apply to physicians and surgeons who have abandoned their practice as physicians and surgeons and are in fact practicing dentistry;

B. an unlicensed person from performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts or impressions for such work have been furnished by a licensed dentist and where the work is directly supervised by the dentist for whom done or under a written authorization signed by him. The burden of proving the written authorization or direct supervision is upon the person charged with the violation of this provision;

C. any dentist who meets the qualifications of Subsections A through E of Section 61-5-8 NMSA 1978 and who submits proof that he has received a written notification by the board of dentistry that he possesses the necessary character and professional qualifications, from entering into a contract to serve exclusively as a member of their medical staff, with any state hospital or state institution, any institution or dental program approved by resolution of the health services division of the health and environment department [department of health] or maintained by the health services division; provided, that the contracting dentist must be duly licensed to practice by the board of dentistry within eighteen months after the date of his employment or he shall be automatically terminated and may not be rehired until he has obtained his license; or

D. any dentist who has been lawfully licensed to practice dentistry in another state from appearing for educational purposes before any group of dentists licensed to practice dentistry in this state, any group of dental hygienists licensed to practice dental hygiene in this state, or any students duly enrolled in a school of dental hygiene recognized by the board of dentistry. Students of dental hygiene enrolled in a school of dental hygiene recognized by the board of dentistry are not in violation of the above sections while engaged in educational procedures offered by the school.

**History:** Laws 1945, ch. 35, § 2; 1941 Comp. Supp., § 51-412b; Laws 1951, ch. 72, § 1; 1953 Comp., § 67-4-14; Laws 1963, ch. 97, § 1; reenacted as 1953 Comp., § 67-4-19, by Laws 1971, ch. 125, § 19; 1972, ch. 6, § 1; 1979, ch. 120, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**State license exemption.** - Since this section allows any dentist licensed in another state, who receives notification by the board that he possesses the necessary character and qualifications, to practice dentistry exclusively as a member of the medical staff of a state institution, the state personnel board may not promulgate rules requiring a New Mexico license; however, the board may require other qualifications to establish the professional competency of its employees. 1974 Op. Att'y Gen. No. 74-20.

**Actions by unlicensed assistants held to be unlawful practice of dentistry.** - Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Center v. New Mexico Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 36, 45, 63, 67.

### **61-5-21. Penalty. (Effective until July 1, 1998.)**

A. Any person who practices or attempts to practice dentistry in this state without having a current license as provided in the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978] is guilty of a fourth degree felony. Any person who practices or attempts to practice dental hygiene in this state without having a current license as provided in the Dental Act, or any person who violates any of the provisions of the Dental Act for which no specific penalty has been provided, is guilty of a misdemeanor and shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or imprisoned for not more than one year, or both.

B. The district attorney shall prosecute all violations under the Dental Act.

**History:** Laws 1919, ch. 35, § 12; 1927, ch. 92, § 1; C.S. 1929, § 37-112; 1941 Comp., § 51-414; Laws 1951, ch. 78, § 15; 1941 Comp. Supp., § 51-432; 1953 Comp., §§ 67-4-16, 67-4-33; reenacted as 1953 Comp., § 67-4-20, by Laws 1971, ch. 125, § 20; 1981, ch. 230, § 8.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Practicing dentistry without a license as a continuing or separate offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

### **61-5-22. Injunction. (Effective until July 1, 1998.)**

Upon conviction of any person for violation of any provision of the Dental Act [61-5-1 to 61-5-9, 61-5-11 to 61-5-22 NMSA 1978], the convicting court may, in addition to the penalty provided in Section 61-5-21 NMSA 1978, enjoin him from any further or continued violations of the Dental Act and enforce the order by contempt proceedings.

**History:** Laws 1927, ch. 92, § 2; C.S. 1929, § 37-113; 1941 Comp., § 51-415; 1953 Comp., § 67-4-17; Laws 1963, ch. 219, § 3; reenacted as 1953 Comp., § 67-4-21, by Laws 1971, ch. 125, § 21.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunction against unlicensed practice of dentistry, see 61-5-16 NMSA 1978.

**Severability clauses.** - Laws 1971, ch. 125, § 22, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 122.

### **61-5-23. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of dentistry is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 5 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 5 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-5-23, enacted by Laws 1979, ch. 121, § 3; 1981, ch. 241, § 19; 1985, ch. 87, § 4; 1985, ch. 130, § 2; 1991, ch. 189, § 8.

## ANNOTATIONS

**Delayed repeals.** - Laws 1991, ch. 189, § 8 amends this section to repeal Chapter 61, Article 5 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

### **61-5-24. Short title. (Effective until July 1, 1998.)**

This act [61-5-24 to 61-5-34 NMSA 1978] may be cited as the "Impaired Dentist Act".

**History:** Laws 1981, ch. 229, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-25. Definition. (Effective until July 1, 1998.)**

As used in the Impaired Dentist Act [61-5-24 to 61-5-34 NMSA 1978] "board" means the board of dentistry.

**History:** Laws 1981, ch. 229, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-26. Grounds for restriction, suspension or revocation of license. (Effective until July 1, 1998.)**

The license of any dentist to practice dentistry in this state shall be subject to restriction, suspension or revocation in case of inability of the licensee to practice dentistry with reasonable skill and safety to patients by reason of one or more of the following:

A. mental illness;

B. physical illness including, but not limited to, deterioration through the aging process or loss of motor skill; or

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 to 30-31-40 NMSA 1978], or alcohol.

**History:** Laws 1981, ch. 229, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

### **61-5-27. Board; additional powers and duties. (Effective until July 1, 1998.)**

A. If the board has reasonable cause to believe that a dentist licensed to practice dentistry in this state is unable to practice dentistry with reasonable skill and safety to patients because of a condition described in Section 3 [61-5-26 NMSA 1978] of the Impaired Dentist Act, the board shall cause an examination, as described in Subsection B of this section, of such dentist to be made and shall, following the examination, take appropriate action within the provisions of that act [61-5-24 to 61-5-34 NMSA 1978].

B. Examination of a dentist under this section shall be conducted by an examining committee as provided in the following:

(1) except as otherwise provided in Paragraph (2) of this subsection, the board shall refer all cases of an examination to the board of dentistry for examination by an examining committee created by the board of dentistry solely for the purpose of each examination; the examining committee shall be composed of three practicing physicians contracted for by the board of dentistry and at least one physician shall be a licensed psychiatrist if a case of mental illness is involved; or

(2) in the event that the board of dentistry can contract or arrange with the state medical society for the use of the examining committees created pursuant to Paragraph (1) of Subsection B of Section 61-7-4 NMSA 1978, the examination of the dentist's ability to practice with reasonable skill and safety shall be determined by such committee in cooperation with the board of dentistry.

**History:** Laws 1981, ch. 229, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Compiler's note.** - Section 61-7-4 NMSA 1978, referred to in Subsection B(2), no longer has a Subsection B(1) following the 1991 amendment of that section.

### **61-5-28. Examination by committee. (Effective until July 1, 1998.)**

A. The examining committee assigned to examine a dentist pursuant to referral by the board under Section 4 [61-5-27 NMSA 1978] of the Impaired Dentist Act shall conduct

an examination of the dentist for the purpose of determining the dentist's fitness to practice dentistry with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the dentist examined possesses one or more of the impairments set forth in Section 3 [61-5-26 NMSA 1978] of the Impaired Dentist Act and such impairment does, in fact, affect the ability of the dentist to skillfully and safely practice dentistry. The examining committee shall order the dentist to appear before it for hearing and give him ten days' notice of time and place of the hearing, together with a statement of the cause for such examination. The notice shall be served upon the dentist either personally or by registered or certified mail with return receipt requested.

B. If the examining committee, in its discretion, deems a mental or physical examination of the dentist necessary to its determination of the fitness of the dentist to practice, the examining committee shall order the dentist to submit to such examination. Any person licensed to practice dentistry in this state shall, by so practicing or by making or filing an annual registration to practice dentistry in this state, be deemed to have:

(1) given his consent to submit to mental or physical examination when so directed by the examining committee; and

(2) waived all objections to the admissibility of the examining committee's report to the board on the grounds of privileged communication.

C. Any dentist ordered to a hearing before the examining committee under the provisions of Subsection A of this section shall be entitled to a mental or physical examination by that committee if he makes a request therefor.

D. Any dentist who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate his own physician to be present at the examination and make an independent report to the board.

E. Failure of a dentist to comply with an examining committee order under Subsection B of this section to appear before it for hearing or to submit to mental or physical examination under this section shall be reported by the examining committee to the board, and, unless due to circumstances beyond the control of the dentist, shall be grounds for the immediate and summary suspension by the board of the dentist's license to practice dentistry in this state until the further order of the board.

**History:** Laws 1981, ch. 229, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

## **61-5-29. Voluntary restriction of licensure. (Effective until July 1, 1998.)**

A dentist may request in writing to the board a restriction of his license to practice dentistry. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the dentist to practice dentistry within specified limitations and waive the commencement of any proceeding under Section 8 [61-5-31 NMSA 1978] of the Impaired Dentist Act. Removal of a voluntary restriction on licensure to practice dentistry shall be subject to the procedure for reinstatement of license in Section 9 [61-5-32 NMSA 1978] of the Impaired Dentist Act.

**History:** Laws 1981, ch. 229, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

## **61-5-30. Report to the board; action. (Effective until July 1, 1998.)**

A. The examining committee shall report to the board its findings on the examination of the dentist under Section 5 [61-5-28 NMSA 1978] of the Impaired Dentist Act, the determination of the examining committee as to the fitness of the dentist to engage in the practice of dentistry with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any management that the examining committee may recommend. Such recommendation by the examining committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject the recommendation of the examining committee to permit a dentist to continue to practice with or without any restriction on his license to practice dentistry or may refer the matter back to the examining committee for further examination and report thereon.

C. In the absence of a voluntary agreement by a dentist under Section 6 [61-5-29 NMSA 1978] of the Impaired Dentist Act for restriction of the licensure of the dentist to practice dentistry, any dentist shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] before the board and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

**History:** Laws 1981, ch. 229, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

### **61-5-31. Proceedings. (Effective until July 1, 1998.)**

A. The board may formally proceed against a dentist under the Impaired Dentist Act [61-5-24 to 61-5-34 NMSA 1978] in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

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

(1) whether or not the dentist is impaired by one of the grounds for restriction, suspension or revocation listed in Section 3 [61-5-26 NMSA 1978] of the Impaired Dentist Act;

(2) whether or not such impairment, if found in Paragraph (1) of this subsection, does in fact limit the dentist's ability to practice dentistry skillfully and safely;

(3) to what extent such impairment limits the dentist's ability to practice dentistry skillfully and safely and whether the board finds that such impairment is such that the dentist [dentist's license] should be suspended, [or] revoked or [that he should be] restricted in his practice of dentistry; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the dentist's ability to practice dentistry, then the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how such suspension or restriction shall be carried out and supervised.

C. At the conclusion of the hearing, the board shall make a determination of the merits and may order one or more of the following:

(1) placement of the dentist 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 dentist to practice dentistry for the duration of his impairment;

(3) revocation of the license of the dentist to practice dentistry; or

(4) reinstatement of the dentist's license to practice dentistry without restriction.

D. The board may temporarily suspend the license of any dentist without a hearing, simultaneously with the institution of proceedings under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], if it finds that the evidence in support of the examining committee's determination is clear and convincing and that his continuation in practice would constitute an imminent danger to public health and safety.

E. Neither the record of the proceeding nor any order entered against a dentist may be used against him in any other legal proceeding except upon judicial review as provided in Section 10 [61-5-33 NMSA 1978] of the Impaired Dentist Act.

**History:** Laws 1981, ch. 229, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

#### **61-5-32. Reinstatement of license. (Effective until July 1, 1998.)**

A dentist whose licensure has been restricted, suspended or revoked under the Impaired Dentist Act [61-5-24 to 61-5-34 NMSA 1978], voluntarily or by action of the board, shall have a right at reasonable intervals to petition for reinstatement of his license and to demonstrate that he can resume the competent practice of dentistry with reasonable skill and safety to patients. The petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral to, and examination by, the examining committee pursuant to the provisions of Sections 4 and 5 [61-5-27 and 61-5-28 NMSA 1978] of that act. The board may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the dentist on a general or limited basis.

**History:** Laws 1981, ch. 229, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

#### **61-5-33. Judicial review. (Effective until July 1, 1998.)**

All orders of the board under Subsection C of Section 8 [61-5-31 NMSA 1978] of the Impaired Dentist Act shall be subject to judicial review as provided for under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. The decision of the board shall not be stayed or enjoined pending such review by a district court that [but] may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court.

**History:** Laws 1981, ch. 229, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

## **61-5-34. Protected action and communication. (Effective until July 1, 1998.)**

There shall be no liability on the part of and no action for damages against:

A. any member of the examining committee or the board for any action undertaken or performed by such member within the scope of the functions of the committee or board under the Impaired Dentist Act [61-5-24 to 61-5-34 NMSA 1978] when acting without malice and in the reasonable belief that the action taken by him is warranted; or

B. any person providing information to the examining committee or to the board without malice in the reasonable belief that such information is accurate.

**History:** Laws 1981, ch. 229, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-5-23 NMSA 1978 and notes thereto.

**Severability clauses.** - Laws 1981, ch. 229, § 12, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 6 MEDICINE AND SURGERY**

### **61-6-1. Short title; purpose. (Effective until July 1, 1998.)**

A. Chapter 61, Article 6 NMSA 1978 may be cited as the "Medical Practice Act".

B. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of medicine, it is necessary to provide laws and regulations controlling the granting and use of the privilege to practice medicine and to establish a board of medical examiners to implement and enforce those laws and regulations.

C. The primary duties and obligations of the board of medical examiners are to issue licenses to qualified physicians, to register qualified physician assistants, to discipline incompetent or unprofessional physicians or physician assistants and to aid in the rehabilitation of impaired physicians and physician assistants for the purpose of protecting the public.

**History:** 1978 Comp., § 61-6-1, enacted by Laws 1989, ch. 269, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 2 recompiles former 61-6-1 NMSA 1978, relating to appointment, qualifications and terms of board of medical examiners, as 61-6-2 NMSA 1978, effective July 1, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to sale of practice, 62 A.L.R.3d 918.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to partnership agreement, 62 A.L.R.3d 970.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to employment agreement, 62 A.L.R.3d 1014.

Liability for interference with physician-patient relationship, 87 A.L.R.4th 845.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

## **61-6-2. Board of medical examiners; appointment; terms; qualifications. (Effective until July 1, 1998.)**

A. There is created the "New Mexico board of medical examiners", consisting of eight members. The board shall be composed of two public members and six reputable physicians of known ability who are graduates of medical colleges or schools in good standing, as defined in Section 61-6-6 NMSA 1978, and who have been licensed physicians in and bona fide residents of New Mexico for a period of five years immediately preceding the date of their appointment. Public members of the board shall be residents of New Mexico, shall not have been licensed or have practiced as physicians and shall have no significant financial interest, direct or indirect, in the occupation regulated.

B. The governor shall appoint the physician members from a list of names submitted to him by the New Mexico medical society or its authorized governing body or council. The list shall contain five names of qualified physicians for each physician member to be appointed. Physician member vacancies shall be filled in the same manner.

C. Members shall be appointed to staggered terms beginning on January 1, 1992. Three physician members and one public member shall be appointed to two-year terms, and three physician members and one public member shall be appointed to four-year terms. Thereafter, the members shall be appointed to four-year terms. All board members shall hold office until their successors are appointed and qualified.

D. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown.

**History:** Laws 1923, ch. 44, § 1; C.S. 1929, § 110-101; 1941 Comp., § 51-501; Laws 1949, ch. 139, § 1; 1953 Comp., § 67-5-1; Laws 1955, ch. 44 [§ 1]; 1969, ch. 46, § 1; 1979, ch. 40, § 1; 1978 Comp., § 61-6-1, recompiled as § 61-6-2 by Laws 1989, ch. 269, § 2; 1991, ch. 189, § 9.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - For Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-1 NMSA 1978; inserted "or schools" near the middle of the second sentence of Subsection A; substituted the present provisions of Subsection D for " The public member, upon the effective date of this act, shall be appointed to a term expiring January 1, 1982. Thereafter the public member shall be appointed to a four-year term"; substituted all of the present language of Subsection E following "removed" for "as a member of this board"; and made minor stylistic changes throughout the section.

**The 1991 amendment,** effective June 14, 1991, in Subsection A increased the membership of the board from six members to eight members and, in the second sentence, substituted "two public members and six reputable physicians" for "one public member and five reputable physicians" and "licensed physicians" for "registered practitioners"; deleted former Subsection C which read "Two of the physician members of the board first appointed shall hold their offices for a period of two years, and the remaining three physician members shall hold their offices for a period of four years. Thereafter, the physician members shall hold their offices for a period of four years. All board members shall hold office until their successors are appointed and qualified"; designated former Subsections D and E as Subsections C and D, rewriting present Subsection C which read "The public member shall be appointed to a four-year term"; and made related and minor stylistic changes in Subsections A and B.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-2 NMSA 1978, as amended by Laws 1955, ch. 44, § 1, relating to meetings and quorums of the board, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-3 NMSA 1978.

**Governor's power not usurped.** - Requirement that the governor appoint to the board of medical examiner's nominees who were submitted by the New Mexico medical society, where only the governor has this prerogative, would not unconstitutionally usurp the governor's power. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Review of board's proceedings.** - On review of proceedings of board of medical examiners, court is limited to a determination of whether the board's order was reasonable, lawful and had substantial evidence to support it. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Corporation to perform medical services.** - Because the legislature chose to expressly prohibit the corporate practice, apart from professional corporations, in the case of dentists and podiatrists, and chose to expressly permit, with limitation, other forms of corporate practice in the case of psychologists and engineers, it may be inferred from the legislature's silence in the case of medical doctors that a corporation may be formed to provide medical services. 1987 Op. Att'y Gen. No. 87-39.

A corporation, organized and controlled by non-physicians, may provide medical services to the general public through employed physicians, unless prohibited by statute or unless it exercises lay control of medical judgment or engages in lay exploitation of the medical profession in a manner prohibited by public policy. 1987 Op. Att'y Gen. No. 87-39.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 131, 135.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Practice of medicine or surgery, interstate commerce clause as affecting requirement of license, 82 A.L.R. 1388.

Right of corporation or individual, not himself licensed, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Newspapers, magazines or radio, practice of medicine through, 114 A.L.R. 1506.

Dentist as a physician or surgeon within statutes, 115 A.L.R. 261.

Treatment by electricity as practice of medicine or surgery within statute, 115 A.L.R. 957.

Medical practice acts, health service plan as violation of, 119 A.L.R. 1290.

Prescriptions, one who fills under reciprocal arrangement with physician, as subject to charge of practice of medicine without license, 121 A.L.R. 1455.

Application to masseurs of statutes governing practice of medicine, 17 A.L.R.2d 1183.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Malpractice in diagnosis and treatment of brain injuries, diseases or conditions, 29 A.L.R.2d 501.

Liability for injury by X ray, 41 A.L.R.2d 329.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

Malpractice as to treatment of skin disease, disorder, blemish or scar, 45 A.L.R.2d 1271.

Malpractice: duty and liability anesthetist, 53 A.L.R.2d 142, 49 A.L.R.4th 63.

Malpractice: treatment of fractures or dislocations, 54 A.L.R.2d 200.

Liability of physician for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Liability of physician for lack of diligence in attending patient, 57 A.L.R.2d 379.

Liability of physician who abandons case, 57 A.L.R.2d 432.

Malpractice in nose and throat treatment, 58 A.L.R.2d 216.

Malpractice in administering medicine to which patient is unusually susceptible or allergic, 64 A.L.R.2d 1281.

Degree of care and skill required in eye treatment or surgery, 68 A.L.R.2d 426.

Malpractice in treatment of tuberculosis, 75 A.L.R.2d 814.

Malpractice in treatment of the ear, 76 A.L.R.2d 783.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia, 1 A.L.R.3d 1107.

Practice by attorneys and physicians as corporate entities or associations under professional service corporation statutes, 4 A.L.R.3d 383.

Physician's or surgeon's malpractice in connection with diagnosis or treatment of rectal or anal disease, 5 A.L.R.3d 916.

Malpractice in connection with intravenous or other forced or involuntary feeding of patient, 6 A.L.R.3d 668.

Validity and construction of contract exempting hospital or doctor from liability for negligence to patient, 6 A.L.R.3d 704.

Liability of physician, surgeon, anesthetist or dentist for injury resulting from foreign object left in patient, 10 A.L.R.3d 9.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Liability in connection with insertion of prosthetic or other corrective devices in patient's body, 14 A.L.R.3d 967.

Liability of physician or hospital where patient suffers heart attack or the like while undergoing unrelated medical procedure, 17 A.L.R.3d 796.

Malpractice in diagnosis and treatment of diseases or conditions of the heart or vascular system, 19 A.L.R.3d 825.

Doctor's liability for mistakenly administering drug, 23 A.L.R.3d 1334.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures, 27 A.L.R.3d 906.

Allowance of punitive damages in medical malpractice action, 27 A.L.R.3d 1274.

Malpractice in diagnosis and treatment of tetanus, 28 A.L.R.3d 1364.

Malpractice in connection with diagnosis and treatment of epilepsy, 30 A.L.R.3d 988.

Physician's failure to advise patient to consult specialist or one qualified in a method of treatment which physician is not qualified to give, 35 A.L.R.3d 349.

Attending physician's liability for injury caused by equipment furnished by hospital, 35 A.L.R.3d 1068.

Liability of physician or dentist for injury to patient from physical condition of office premises, 36 A.L.R.3d 1341.

Liability for negligence in diagnosing or treating aspirin poisoning, 36 A.L.R.3d 1358.

Surgeon's liability for inadvertently injuring organ other than that intended to be operated on, 37 A.L.R.3d 464.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Medical malpractice in connection with diagnosis, care or treatment of diabetic, 42 A.L.R.3d 482.

Recovery against physician on basis of breach of contract to achieve particular result or cure, 43 A.L.R.3d 1221.

Physician's tort liability for unauthorized disclosure of confidential information about patient, 48 A.L.R.4th 668.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 A.L.R.4th 1148.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21; 73 C.J.S. Public Administrative Law and Procedure § 13.

### **61-6-3. Meetings of the board; quorum. (Effective until July 1, 1998.)**

A. The board shall hold four regular meetings every fiscal year. Two of those meetings shall be licensing meetings.

B. During the second quarter of each year, the board shall hold its annual meeting during which it shall elect officers.

C. The board shall hold its regular licensing meetings during the second and fourth quarters of each fiscal year at a time and place determined by a quorum or at a time and place determined by the president. The president shall provide written notice to all members of the board.

D. In addition to the regular meetings, the board may hold special meetings at the call of the president after written notice to all members of the board or at the written request of any two members.

E. A majority of the members of the board shall constitute a quorum and shall be capable of conducting any board business. The vote of a majority of a quorum shall prevail, even though the vote may not represent an actual majority of all the board members.

**History:** 1978 Comp., § 61-6-3, enacted by Laws 1989, ch. 269, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1989, ch. 269, § 3 repeals 61-6-3 NMSA 1978, as amended by Laws 1979, ch. 63, § 1, relating to bond of secretary-treasurer, reimbursement of board members, and duties of officers, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

**Implied powers of board.** - Although the statutes are silent in respect to the powers of the board to contract generally, the board possesses the implied authority necessary to fulfill the duties for which the board was created. Among the implied powers of the board would be the authority to maintain office equipment, files and records incident to the carrying out of the board's statutory functions. 1961-62 Op. Att'y Gen. No. 62-87.

**Board of medical examiners may negotiate lease of office space** for board use; however, such lease may not, in the absence of specific statutory authority, lawfully be entered into for a time period in excess of that for which the legislature has made an appropriation for the payment of such expenses. 1961-62 Op. Att'y Gen. No. 62-87.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

### **61-6-4. Election; duties of officers; reimbursement of board members. (Effective until July 1, 1998.)**

A. At its annual meeting, the board shall elect a president, a vice president and a secretary-treasurer.

B. The president shall preside over the meetings and affairs of the board.

C. The vice president shall perform such duties as may be assigned by the president and shall serve as president due to the absence or incompetence of the president.

D. The secretary-treasurer shall:

(1) report to the governor the doings and proceedings of the board together with the amounts of all money received and disbursed by the board by December 1 of each year;

(2) with the advice and consent of the board, submit the board budget recommendation to the legislature and the department of finance and administration;

(3) keep a correct and itemized account of all money received and disbursed and make a report to the board at each meeting;

(4) issue interim licenses; and

(5) perform any other functions assigned by the board or by the president between meetings.

E. The secretary-treasurer may be compensated at the discretion of the board.

F. Board members shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance, except that the secretary-treasurer may be additionally compensated as provided in Subsection E of this section and board members may be additionally compensated in accordance with Subsection G of this section.

G. Board members performing interviews of applicants as required by Sections 61-6-11 and 61-6-13 NMSA 1978 may be compensated at the board's discretion.

**History:** 1978 Comp., § 61-6-4, enacted by Laws 1989, ch. 269, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 6 recompiles former 61-6-4 NMSA 1978, relating to definitions, as 61-6-6 NMSA 1978, effective July 1, 1989.

#### **61-6-5. Duties and powers. (Effective until July 1, 1998.)**

The board shall:

A. enforce and administer the provisions of the Medical Practice Act [this article], the Physician Assistant Act [61-6-7 to 61-6-10 NMSA 1978] and the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978];

B. adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], all rules and regulations for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act and the Impaired Physician Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

- E. take testimony on any matters within the board's jurisdiction;
- F. keep an accurate record of all its meetings, receipts and disbursements;
- G. keep a record of all examinations held, together with the names and addresses of all persons taking the examinations and the examination results, and at the earliest date possible give written examination results to each applicant examined;
- H. certify as passing each applicant who obtains a passing grade indicating successful completion of each subject upon which he is examined;
- I. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;
- J. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation physicians in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act;
- K. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;
- L. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;
- M. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the medical profession and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board, including those provided for in Section 61-6-28 NMSA 1978;
- N. establish continuing medical education requirements for physicians and continuing education requirements for physician assistants; and
- O. establish committees as it deems necessary for carrying on its business.

**History:** 1953 Comp., § 67-5-3.2, enacted by Laws 1973, ch. 361, § 2; 1989, ch. 269, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective July 1, 1989, substituted the present catchline for "Administration of act"; and substituted the present provisions for " The New Mexico board of medical examiners shall enforce and administer the provisions of this act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 23.

### **61-6-6. Definitions. (Effective until July 1, 1998.)**

As used in Chapter 61, Article 6 NMSA 1978:

A. "acting in good faith" means acting without malice as the primary motive, without knowledge or belief that one is in error in taking a particular action;

B. "board" means the New Mexico board of medical examiners;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] to practice medicine in New Mexico;

D. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

E. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

F. "person" means an individual or any legal entity of any kind whatever;

G. "physician assistant" means a skilled person registered by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the licensed physician who is responsible for the performance of that assistant;

H. "postgraduate year one" or "intern" means a first year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing approved by the board;

I. "postgraduate year two through five" or "resident" means a graduate of a medical college or school in good standing approved by the board who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "assistant resident" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this state;

(2) offering or undertaking to prescribe any drug or medicine for the use of any other person;

(3) offering or undertaking to give or administer any dangerous drug or medicine for the use of any other person, except as directed by a licensed physician;

(4) offering or undertaking to perform any operation or procedure upon any person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of any person; or

(6) acting as the representative or agent of any person in doing any of the things listed in Paragraphs (1) through (5) of this subsection;

K. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical practice; and

L. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical practice.

**History:** 1953 Comp., § 67-5-3.1, enacted by Laws 1973, ch. 361, § 1; 1982, ch. 110, § 1; 1978 Comp., § 61-6-4, recompiled as § 61-6-6 by Laws 1989, ch. 269, § 6; 1991, ch. 148, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-4 NMSA 1978; added present Subsection A; redesignated former Subsections A and B as present Subsections B and C; in present Subsection C substituted "medical doctor licensed under the Medical Practice Act" for "physician licensed"; added Subsections D, E, and F; redesignated former Subsection C as present Subsection G while substituting therein "physician assistant" for "physician's assistant" and "registered" for "certified"; and added Subsections H through J.

**The 1991 amendment**, effective June 14, 1991, substituted "or treat" for "and treat" near the beginning of Paragraph (5) in Subsection J; added Subsections K and L; and made related and other stylistic changes in Subsections D and I.

**Recompilations.** - Laws 1989, ch. 9, § 1 recompiles former 61-6-6 NMSA 1978, relating to certification as physician's assistant, as 61-6-7 NMSA 1978, effective March 4, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 3, 5.

**61-6-7. Short title; registration as a physician assistant; scope of practice; annual registration of employment; employment change; fees. (Effective until July 1, 1998.)**

A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be cited as the "Physician Assistant Act".

B. The board may register qualified persons as physician assistants. No person shall perform, attempt to perform or hold himself out as a physician assistant without first applying for and obtaining registration with the board and without annually registering his employment and supervising physician in accordance with board regulations.

C. Physician assistants may prescribe, administer and distribute dangerous drugs other than controlled substances provided that the prescribing, administering and distributing are done under the direction of a supervising physician and within the parameters of a board approved formulary and guidelines established under Subsection C of Section 61-6-9 NMSA 1978. The distribution process shall comply with state laws concerning prescription packaging, labeling and record keeping requirements. Physician assistants shall not otherwise dispense dangerous drugs.

D. A physician assistant shall perform only those acts and duties assigned him by a supervising physician that are within the scope of practice of the supervising physician.

E. An applicant for registration as a physician assistant shall complete application forms as supplied by the board and shall pay a registration fee as provided in Section 61-6-19 NMSA 1978 and if no fee is provided in that section, then a fee of not more than one hundred fifty dollars (\$150) shall be set by the board to defray the cost of processing the application, which fee is not returnable. Upon being registered by the board, the applicant shall have his name and address and other pertinent information enrolled by the board on a roster of physician assistants.

F. Each registered physician assistant shall annually submit proof of completion of continuing education as required by the board and shall annually renew his registration, supervising physician and place of employment with the board. Upon any change in employment or supervising physician between annual registrations, each physician

assistant shall reregister his employment and supervising physician and shall pay any additional registration fees as provided in Section 61-6-19 NMSA 1978 and if no fee is provided in that section, then a fee of not more than seventy-five dollars (\$75.00) shall be set by the board. All applications for registration shall include the applicant's name, current address, the name and office address of both his employer and the supervising licensed physician and other additional information as the board deems necessary. Upon any change of employment or change of supervising physician, prior registration shall automatically become void or inactive.

G. Each annual renewal of registration of employment shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978 and if no fee is provided in that section, then a fee of not more than seventy-five dollars (\$75.00) shall be set by the board and shall be used by the board in defraying the cost of administering the Physician Assistant Act.

**History:** 1953 Comp., § 67-5-3.3, enacted by Laws 1973, ch. 361, § 3; 1977, ch. 110, § 2; 1978 Comp., § 61-6-6, recompiled as § 61-6-7 by Laws 1989, ch. 9, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective March 4, 1989, renumbered this section, which formerly was 61-6-6 NMSA 1978; added present Subsection A; substituted the present provisions of Subsection B for former Subsection A, which read "No person shall perform or attempt to perform as a physician's assistant without first applying for and obtaining a certificate of qualification from the board as a physician's assistant and having his employment registered in accordance with board regulations"; added present Subsection C; redesignated former Subsection B as present Subsection D and made minor stylistic changes therein; rewrote former Subsections C and D and redesignated them as present Subsections E and F; and added Subsection G.

**Recompilations.** - Laws 1989, ch. 9, § 3 recompiles former 61-6-7 NMSA 1978, relating to denial, suspension or revocation, as 61-6-8 NMSA 1978, effective March 4, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Right of corporation or individual, not himself licensed, to practice medicine, surgery or dentistry through licensed employees, 103 A.L.R. 1240.

Liability of operating surgeon for negligence of nurse assisting him, 12 A.L.R.3d 1017.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

### **61-6-7.1. Definitions. (Effective until July 1, 1998.)**

As used in the Physician Assistant Act [61-6-7 to 61-6-10 NMSA 1978]:

A. "administer" means to apply a prepackaged drug directly to the body of a patient by any means;

B. "dispense" means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container;

C. "distribute" means to administer or supply directly to a patient under the direct care of the distributing physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container; and

D. "prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name of the drug prescribed, directions for use and the date of issue.

**History:** 1978 Comp., § 61-6-7.1, enacted by Laws 1989, ch. 9, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

### **61-6-8. Denial, suspension or revocation. (Effective until July 1 1998.)**

In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any registration to practice as a physician assistant or may place on probation, enter stipulation, censure, reprimand or fine any person registered as a physician assistant for:

A. procuring, aiding or abetting a criminal abortion;

B. soliciting patients for any practitioner of the healing arts;

C. soliciting or receiving any form of compensation from any person other than his registered employer for performing as a physician assistant;

D. willfully or negligently divulging a professional confidence or discussing a patient's condition or a physician's diagnosis without the express permission of the physician and patient;

- E. conviction for any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- F. the habitual or excessive use of intoxicants or drugs;
- G. fraud or misrepresentation in applying for or procuring registration to perform as a physician assistant in this state or in applying for or procuring an annual registration;
- H. impersonating another person registered as a physician assistant or allowing any person to use his certificate of qualification or registration;
- I. aiding or abetting the practice of medicine by a person not licensed by the board;
- J. gross negligence in the performance of duties, tasks or functions assigned to him by a licensed physician;
- K. manifest incapacity or incompetence to perform as a physician assistant;
- L. conduct resulting in the suspension or revocation by another state of a registration, license or certification to perform as a physician assistant, based upon acts by the physician assistant similar to acts constituting grounds for suspension or revocation in New Mexico. A certified copy of the record of the suspension or revocation of the state imposing the penalty is conclusive evidence thereof;
- M. conduct unbecoming in a person registered as a physician assistant or detrimental to the best interests of the public;
- N. conduct outside the scope of duties assigned by the supervising physician;
- O. repeated similar negligent acts; or
- P. injudicious prescribing, administering or distributing of dangerous drugs.

**History:** 1953 Comp., § 67-5-3.4, enacted by Laws 1973, ch. 361, § 4; 1978 Comp., § 61-6-7, recompiled as § 61-6-8 by Laws 1989, ch. 9, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective March 4, 1989, renumbered this section which formerly was 61-6-7 NMSA 1978; substituted all of the language of the undesignated introductory paragraph beginning with "revoke" for "or suspend any registration or deny or revoke any certificate of qualification upon the grounds that the applicant or physician's assistant is guilty of "; in Subsection D, substituted "confidence" for "secret"

and added "and patient" at the end of the subsection; inserted "conviction for" at the beginning of Subsection E; substituted "registration" for "a certificate of qualification" near the beginning of Subsection G; added Subsections N through P; and made minor stylistic changes throughout the section.

**Recompilations.** - Laws 1989, ch. 9, § 4 recompiles former 61-6-8 NMSA 1978, relating to rules and regulations, as 61-6-9 NMSA 1978, effective March 4, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Bias of members of license revocation board, 97 A.L.R.2d 1210.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 A.L.R.4th 668.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 42.

### **61-6-9. Physician assistants; rules and regulations. (Effective until July 1, 1998.)**

The board may adopt and enforce reasonable rules and regulations:

A. setting qualifications of education, skill and experience for registration of a person as a physician assistant and providing forms and procedures for obtaining certificates of registration, and for annual registration of employment, supervising physician and place of employment;

B. for examining and evaluating applicants for registration as a physician assistant as to their skill, knowledge and experience in the field of medical care;

C. establishing administrative guidelines under which physician assistants shall prescribe, administer and distribute dangerous drugs other than controlled substances, but these guidelines shall restrict distribution privileges to distribution for immediate or acute medical needs of patients unless the board determines that special circumstances exist, such as distribution in a family planning clinic or clinic services for poor persons who, because of their circumstances, could not purchase the needed drugs from a retail pharmacy; and

D. for the purpose of carrying out all other provisions of the Physician Assistant Act [61-6-7 to 61-6-10 NMSA 1978].

Provided, however, the board shall not adopt any rule or regulation allowing a physician assistant to measure the powers, range or accommodative status of human vision; diagnose vision problems; prescribe lenses, prisms, vision training or contact lenses; or fit contact lenses, but this foregoing restriction does not preclude vision screening. The board shall not adopt any rule or regulation allowing a physician assistant to perform diagnosis or medical, surgical, mechanical, manipulative and orthopedic treatment of the human foot.

**History:** 1953 Comp., § 67-5-3.5, enacted by Laws 1973, ch. 361, § 5; 1978 Comp., § 61-6-8, recompiled as § 61-6-9 by Laws 1989, ch. 9, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective March 4, 1989, renumbered this section, which formerly was 61-6-8 NMSA 1978; added "Physician assistants" at the beginning of the catchline; in Subsection A substituted "registration" for "certification" near the beginning of the subsection, and "registration" for "qualification" near the end of the subsection, and added all of the language following "employment"; in Subsection B substituted "registration" for "certificates of qualification"; added present Subsection C; redesignated former Subsection C as present Subsection D; in Subsection D substituted "the Physician Assistant Act" for "this act"; and made minor stylistic changes throughout the section.

**Recompilations.** - Laws 1989, ch. 9, § 5 recompiles former 61-6-9 NMSA 1978, relating to responsibility, as 61-6-10 NMSA 1978, effective March 4, 1989.

**Rule disallowed which authorized delegation of dispensation of dangerous drugs.** - The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physicians's assistants the task of dispensing dangerous drugs in view of 61-6-16G(3) NMSA 1978 (now see 61-6-17 NMSA 1978). *New Mexico Pharmaceutical Ass'n v. State*, 106 N.M. 73, 738 P.2d 1318 (1987).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 C.J.S. Public Administrative Law and Procedure §§ 87 to 102.

### **61-6-10. Supervising physician; responsibility. (Effective until July 1, 1998.)**

A. As a condition of registration and annual renewal of registration, all physician assistants practicing in New Mexico shall inform the board of the physician under whose supervision they will practice. All supervising physicians shall be licensed under the Medical Practice Act [this article] and shall be approved by the board.

B. Every physician using, supervising or employing a registered physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the physician assistant. Nothing in this section shall be construed to relieve the physician assistant of any responsibility and liability for any of his own acts and omissions.

C. No physician may have under his supervision more than two currently registered physician assistants, except where a physician is working in a health facility providing health service to the public primarily on a free or reduced fee basis, which is funded in whole or in part out of public funds or the funds of private charitable institutions, the board may authorize a greater number upon a finding that the program provides adequate supervision of the physician assistants.

**History:** 1953 Comp., § 67-5-3.6, enacted by Laws 1973, ch. 361, § 6; 1978 Comp., § 61-6-9, recompiled as § 61-6-10 by Laws 1989, ch. 9, § 5.

### ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - As to notice required upon employment of physician's assistant, see 61-14C-1 NMSA 1978.

**The 1989 amendment,** effective March 4, 1989, renumbered this section, which formerly was 61-6-9 NMSA 1978; added "Supervising physician" at the beginning of the catchline; added Subsection A; designated the formerly undesignated first and second sentences as Subsection B; designated the formerly undesignated third sentence as Subsection C; and made minor stylistic changes throughout the section.

**Recompilations.** - Laws 1989, ch. 269, § 7 recompiles former 61-6-10 NMSA 1978, relating to admission to examination, as 61-6-11 NMSA 1978, effective July 1, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Joint and several liability of physicians whose independent negligence in treatment of patient causes indivisible injury, 9 A.L.R.5th 746.

### **61-6-11. Licensure by examination; admission to examination; graduates of foreign colleges. (Effective until July 1, 1998.)**

A. The board may admit to examination for license any person who is a graduate of a medical college or school in good standing as defined in Subsection D of Section 61-6-6

NMSA 1978 and who has completed one year of post-graduate training approved by the board in accordance with its regulations.

B. The board may administer the examination as prescribed by the federation of state boards of medical examiners. The board shall determine a grade constituting successful completion of the exam.

C. Alternatively, the board may issue a license to any applicant successfully completing an examination accepted by the board as administered in this or another state.

D. A graduate of a medical college located outside the United States and its possessions may be granted a license to practice medicine in New Mexico provided he presents evidence to the board that he is a person of good moral character and is a legal resident of the United States and provided that he presents satisfactory evidence to the board that he has successfully passed the examination as required and given by the educational council for foreign medical graduates, has successfully completed two years of post-graduate medical education and also successfully passes the examination as prescribed by the board.

E. All applicants for licensure by examination shall personally appear before the board or any designated member of the board for an interview.

F. Every applicant for licensure under this section shall pay an application fee and an examination fee as provided in Section 61-6-19 NMSA 1978.

**History:** Laws 1923, ch. 44, § 3; C.S. 1929, § 110-104; Laws 1939, ch. 80, § 1; 1941 Comp., § 51-504; 1953 Comp., § 67-5-4; Laws 1959, ch. 189, § 1; 1969, ch. 46, § 3; 1976, ch. 16, § 1; 1983, ch. 260, § 1; 1978 Comp., § 61-6-10, recompiled as § 61-6-11 by Laws 1989, ch. 269, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective July 1, 1989, renumbered this section, which formerly was 61-6-10 NMSA 1978; added "Licensure by examination" to the catchline and deleted therefrom "medical college in good standing defined" preceding "admission"; in Subsection A substituted "may admit" for "shall, upon production of evidence satisfactory to it, admit" and "person" for "reputable person who has applied for citizenship in the United States or is a citizen of the United States", inserted "or school", substituted "Subsection D of Section 61-6-6 NMSA 1978" for "this section", and deleted "in a hospital" following "training"; in Subsection B substituted the present provisions for the former definition of a "medical college in good standing"; added present Subsection C; redesignated former Subsection C as present Subsection D; in present Subsection D substituted "and is a legal resident" for "and has applied for citizenship in the United States or is a citizen", and inserted "has successfully completed two years of post-

graduate medical education"; deleted former Subsection D, relating to license by endorsement and without examination for graduates of foreign medical colleges; added Subsections E and F; and made minor stylistic changes throughout the section.

**Recompilations.** - Laws 1989, ch. 269, § 8 recompiles former 61-6-11 NMSA 1978, relating to criminal offender's character evaluation, as 61-6-12 NMSA 1978, effective July 1, 1989.

**Reinstatement after license revocation.** - Once a physician's license has been revoked the only method of reinstating the former licensee to full privileges is by means of reapplication. 1953-54 Op. Att'y Gen. No. 5839.

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 55 to 60.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

### **61-6-12. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Medical Practice Act [this article].

**History:** 1953 Comp., § 67-5-4.1, enacted by Laws 1974, ch. 78, § 15; 1978 Comp., § 61-6-11, recompiled as § 61-6-12 by Laws 1989, ch. 269, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-11 NMSA 1978, and substituted "the Medical Practice Act" for "Sections 67-5-1 through 67-5-26 NMSA 1953".

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-12 NMSA 1978, as amended by Laws 1979, ch. 63, § 2, relating to examinations, licenses without examination, and temporary licenses, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-13 NMSA 1978.

### **61-6-13. Licensure by endorsement. (Effective until July 1, 1998.)**

A. The board may grant a license without examination and by endorsement to an applicant who has been a regularly licensed physician in the district of Columbia or another state, territory or jurisdiction and who has qualifications and requirements equivalent to those required in New Mexico, provided that the applicant is properly endorsed by the officers of the examining board with jurisdiction and provided that the applicant shall not have failed an examination prescribed by the New Mexico board of medical examiners.

B. The board may grant a license without examination and by endorsement to any applicant who has been licensed in a province of the dominion of Canada if the license is certified by the Canadian medical council and provided that the applicant shall not have failed an examination prescribed by the board. The board may also extend such endorsement privileges as it deems fit and accept in lieu of the examination herein prescribed a certificate of examination issued by the national board of medical examiners.

C. A graduate of a medical college located outside the United States and its territories or possessions, who is of good moral character, who is a legal resident of the United States and who has been regularly licensed and has practiced medicine immediately preceding his application in another state or territory having qualifications and requirements equivalent to those required in New Mexico may, when properly endorsed by the officers of the examining board that has jurisdiction in the state or territory in which the applicant was examined and licensed, be granted a license by endorsement and without examination at the discretion of the board in the same manner as if the applicant had graduated from a medical college located in the United States or its possessions.

D. All applicants for licensure under this section shall personally appear before the board or any designated board member for an interview.

E. All applicants for licensure under this section shall pay an application fee as provided in Section 61-6-19 NMSA 1978.

**History:** 1978 Comp., § 61-6-13, enacted by Laws 1989, ch. 269, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - As to perjury generally, see 30-25-1 NMSA 1978.

**Recompilations.** - Laws 1989, ch. 269, § 10 recompiles former 61-6-13 NMSA 1978, relating to organized youth camp or school licenses, as 61-6-14 NMSA 1978, effective July 1, 1989.

**Practice of medicine limited.** - The practice of medicine, as characterized by the art of diagnosing, administration and prescribing of drugs and medicines, surgery, psychiatric examination, analysis and consultation, is limited in New Mexico to persons who, as determined by the New Mexico board of medical examiners, are duly accredited graduates of approved medical schools and have successfully passed a written examination or who have been granted their licenses by way of endorsement from the officers of examining boards of other states or certified to the New Mexico board of medical examiners by the national board of medical examiners. 1957-58 Op. Att'y Gen. No. 58-136.

**Entitlement to license.** - Absent properly issued and reasonable regulations, a person is entitled to a license if he meets all the qualifications established by the legislature. 1965 Op. Att'y Gen. No. 65-11.

**Function of interview.** - The interview is a helpful aid in determining whether or not an applicant has met the New Mexico qualifications for licensing by endorsement. 1965 Op. Att'y Gen. No. 65-11.

**Osteopath is a physician and surgeon** who has been trained in that "system or school of medicine which is taught and practiced in standard colleges of osteopathy and surgery," substantially the same as those in which applicants for a license to practice medicine are required to be examined. 1933-34 Op. Att'y Gen. 155.

**Findings regarding "equivalent" "qualifications and requirements".** - The district court may find that the differences in methodology of examination scoring between this state and another do not rationally relate to the question of "equivalent" "qualifications and requirements" as those terms are used in Subsection A. *Fiber v. New Mexico Bd. of Medical Exmrs.*, 93 N.M. 67, 596 P.2d 510 (1979).

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

For article, "Survey of New Mexico Law, 1979-80: Administrative Law," see 11 N.M.L. Rev. 1 (1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 67, 68.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

### **61-6-14. Organized youth camp or school temporary licenses and temporary licenses for out-of-state physicians. (Effective until July 1, 1998.)**

A. The secretary-treasurer of the board may issue to any applicant qualified to practice medicine and surgery in this state, either by examination or by endorsement, who will

be temporarily in attendance at any organized youth camp or school, a temporary license to practice medicine and surgery, the practice to be confined to enrollees, leaders and employees of the camp or school, and the following provisions shall apply:

(1) the temporary license shall be issued for a period not to exceed three months from date of issuance; and

(2) the temporary license may be issued upon written application of the applicant accompanied by such proof of his qualifications as the secretary-treasurer of the board, in his discretion, may require.

B. The secretary-treasurer of the board may issue to any applicant who is licensed to practice medicine in another state, territory of the United States or another country and who is qualified to practice medicine and surgery in this state a temporary license to practice medicine under the sponsorship of and in association with a licensed New Mexico physician. The following provisions shall apply:

(1) the temporary license may be issued upon written application of the applicant accompanied by such proof of his qualifications as the secretary-treasurer of the board, in his discretion, may require. Temporary licenses may be granted to allow the applicant to assist in teaching, conducting research, performing specialized diagnostic and treatment procedures and implementing new technology and for physician educational purposes. Licensees may engage in only those activities specified on the temporary license, and the temporary license shall identify the licensed New Mexico physician who will sponsor and associate with the applicant during the time the applicant practices medicine in New Mexico. The sponsoring or associating physician shall submit an affidavit attesting to the qualifications of the applicant and activities the applicant will perform; and

(2) the temporary license shall be issued for a period not to exceed three months from date of issuance and may be renewed upon application and payment of fees as provided in Section 61-6-19 NMSA 1978.

C. Whenever an eligible applicant has filed his application and complied with all other requirements of the Medical Practice Act [this article] in the interim between regular board meetings, the secretary-treasurer may issue an interim license to hold good until the next regular licensing meeting of the board.

D. The application for a temporary license under this section shall be accompanied by a license fee as provided in Section 61-6-19 NMSA 1978.

**History:** 1941 Comp., § 51-125; Laws 1953, ch. 48, § 2; 1953 Comp., § 67-5-7; Laws 1969, ch. 46, § 5; 1988, ch. 11, § 1; 1978 Comp., § 61-6-13, recompiled as § 61-6-14 by Laws 1989, ch. 269, § 10; 1991, ch. 148, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1988 amendment**, effective February 18, 1988, added "temporary" and "and temporary licenses for out-of-state physicians" to the catchline; deleted "of medical examiners" following "of the board" and "apply for a license to" following "qualified to" near the beginning of Subsection A, and added "and the following provisions shall apply" at the end of the Subsection; redesignated former Subsections B and C as present Subsections A(1) and A(2), substituting "permit may" for "permit shall" in Subsection A(2); deleted former Subsection D, regarding a \$25.00 license fee; and added present Subsection B.

**The 1989 amendment**, effective July 1, 1989, renumbered in this section, which formerly was 61-6-13 NMSA 1978; in Subsection A deleted "the average temporary daily population of which exceeds one hundred persons, for a period of not less than two weeks nor more than three months" following "school" near the middle of the introductory paragraph; added all of the language of Subsection B(2) following "fees"; added present Subsection C; redesignated former Subsection C as present Subsection D while substituting all of the language thereof following "fee" for "as determined by the board, but not to exceed one hundred dollars (\$100), payable to the board"; and deleted "or permit" following "license" several times throughout the section.

**The 1991 amendment**, effective June 14, 1991, in Paragraph (1) of Subsection B, added "and for physician educational purposes" at the end of the second sentence and inserted "licensed" preceding "New Mexico physician" in the third sentence.

**Recompilations.** - Laws 1989, ch. 269, § 11 recompiles former 61-6-14 NMSA 1978, relating to refusal, revocation or suspension of license, as 61-6-15 NMSA 1978, effective July 1, 1989.

**61-6-15. License may be refused, revoked or suspended; licensee may be fined, censured or reprimanded; procedure; practice after suspension or revocation; penalty; unprofessional and dishonorable conduct defined; fees and expenses; notice of claim. (Effective until July 1, 1998.)**

A. The board may refuse to license and may revoke or suspend any license that has been issued by the board or any previous board and may fine, censure or reprimand any licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct. All proceedings shall be as required by the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. The board may, in its discretion and for good cause shown, place the licensee on probation on such terms and conditions as it deems proper for protection of the public and for the purpose of the rehabilitation of the probationer, or both. Upon expiration of

the term of probation, if a term is set, further proceedings may be abated by the board if the holder of the license furnishes the board with evidence that he is competent to practice medicine, is of good moral character and has complied with the terms of probation.

C. If evidence fails to establish to the satisfaction of the board that the licensee is competent and is of good moral character or if evidence shows that he has not complied with the terms of probation, the board may revoke or suspend the license forthwith. If a license to practice medicine in this state is suspended, the holder of the license may not practice during the term of suspension; and any person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice medicine in New Mexico, unless his period of suspension has expired or been modified by the board or his license reinstated, is guilty of a felony and shall be punished as provided in Section 61-6-20 NMSA 1978.

D. "Unprofessional or dishonorable conduct", as used in this section, means among other things, but not limited to because of enumeration:

- (1) procuring, aiding or abetting a criminal abortion;
- (2) employing any person to solicit patients for him;
- (3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (4) obtaining any fee by fraud or misrepresentation;
- (5) willfully or negligently divulging a professional confidence;
- (6) conviction of any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- (7) habitual or excessive use of intoxicants or drugs;
- (8) fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring annual renewal, including cheating on or attempting to subvert the licensing examinations;
- (9) making false or misleading statements regarding his skill or the efficacy or value of the medicine, treatment or remedy prescribed or administered by him or at his direction in the treatment of any disease or other condition of the human body or mind;
- (10) impersonating another person licensed to practice medicine, permitting or allowing any person to use his license or certificate of registration or practicing medicine under a false or assumed name;

- (11) aiding or abetting the practice of medicine by a person not licensed by the board;
- (12) gross negligence in the practice of medicine;
- (13) manifest incapacity or incompetence to practice medicine;
- (14) the suspension or revocation by another state of a license to practice medicine, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension or revocation of the state making the suspension or revocation is conclusive evidence;
- (15) the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine;
- (16) fee splitting;
- (17) the prescribing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes;
- (18) conduct likely to deceive, defraud or harm the public;
- (19) repeated similar negligent acts;
- (20) employing abusive billing practices;
- (21) failure to report to the board any adverse action taken against him by:
  - (a) another licensing jurisdiction;
  - (b) any peer review body;
  - (c) any health care entity;
  - (d) any professional or medical society or association;
  - (e) any governmental agency;
  - (f) any law enforcement agency; or
  - (g) any court for acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;
- (22) failure to report to the board surrender of a license or other authorization to practice medicine in another state or jurisdiction or surrender of membership on any medical staff or in any medical or professional association or society following, in lieu of and while under disciplinary investigation by any of those authorities or bodies for acts or

conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(23) failure to furnish the board, its investigators or representatives with information requested by the board;

(24) abandonment of patients;

(25) being found mentally incompetent or insane by a court of competent jurisdiction;

(26) injudicious prescribing;

(27) failure to adequately supervise, as provided by board regulation, a medical or surgical assistant or technician or professional licensee who renders health care;

(28) intentionally engaging in sexual contact or sexual penetration with a patient other than one's spouse after representing or inferring that such activity is a legitimate part of the patient's treatment; and

(29) conduct unbecoming in a person licensed to practice medicine or detrimental to the best interests of the public.

E. As used in this section, "fee splitting" includes offering, delivering, receiving or accepting any unearned rebate, refunds, commission preference, patronage dividend, discount or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement of referring patients, clients or customers to any person irrespective of any membership, proprietary interest or co-ownership in or with any person to whom the patients, clients or customers are referred.

F. Licensees shall bear all costs of disciplinary proceedings unless exonerated.

G. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including but not limited to laboratory costs when laboratory testing of biological fluids are included as a condition of probation.

H. For the purpose of investigating the competence of medical practitioners covered by the Medical Practice Act [this article] who practice medicine in the state of New Mexico, any entity issuing professional liability insurance to physicians or indemnifying physicians for professional liability in New Mexico shall report to the board all settlements or judgments against licensed physicians whether they are tried in court or settled out of court.

**History:** 1953 Comp., § 67-5-9; Laws 1969, ch. 46, § 6; 1979, ch. 63, § 3; 1983, ch. 260, § 2; 1978 Comp., § 61-6-14, recompiled as § 61-6-15 by Laws 1989, ch. 269, § 11; 1991, ch. 148, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective July 1, 1989, renumbered this section, which formerly was 61-6-14 NMSA 1978, inserted in the catchline "licensee may be fined, censured or reprimanded", "unprofessional and dishonorable conduct defined", and "fees and expenses"; in Subsection A twice substituted "may" for "shall" and inserted "and may fine, censure or reprimand any licensee" in the first sentence, and deleted "in connection with the issuance, renewal, suspension or revocation of licenses" following "proceedings" in the second sentence; designated the former third and fourth sentences of Subsection A as present Subsection B; designated the former fifth and sixth sentences of Subsection A as present Subsection C, while substituting "61-6-20" for "61-6-18" at the end of the last sentence therein; redesignated former Subsection B as present Subsection D; substituted "confidence" for "secret" in Subsection D(5); substituted all of the present language of Subsection D(8) beginning with "annual" for "an annual registration"; added all of the language of Subsection D(10) following "registration"; substituted the present provisions of Subsection D(15) for "making a fraudulent claim"; added present Subsections D(18) through D(26); redesignated former Subsection D(18) as present Subsection D(27); redesignated former Subsection C as present Subsection E; deleted former Subsection D, relating to hospital report of loss of physician's privilege; added Subsections F and G; redesignated former Subsection E as present Subsection H; in Subsection H substituted "entity" for "company", inserted "or indemnifying physicians for professional liability", and substituted "settlements or judgments" for "malpractice claims"; and made minor stylistic changes throughout the section.

**The 1991 amendment**, effective June 14, 1991, in Subsection D, added Paragraphs (27) and (28), redesignated former Paragraph (27) as Paragraph (29) and made a related stylistic change and made a minor stylistic change in Subsection A.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-15 NMSA 1978, as amended by Laws 1973, ch. 361, § 7, relating to definition of "practice of medicine" and exceptions from this article, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet.

**Due process.** - Subsection D(27) of this section, defining "unprofessional or dishonorable conduct" to include conduct unbecoming in one licensed to practice medicine or detrimental to the best interests of the public, is not void for vagueness. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974).

**Terms of probation not unconstitutionally vague.** - Where one of the terms of probation imposed by the board on a physician found guilty of unprofessional conduct for falsely prescribing demerol for the alleged use of another when in fact the drug was for his own use was that he not take or have in this possession "any dangerous drugs" without the consent of his psychiatrist, and the physician thereafter prescribed the drug

ritalin for a patient and diverted some of it for his own use, revocation of the physician's license for violating his probation was justified, as under the facts the terms thereof were not unconstitutionally vague. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974).

**Prior judicial determination unnecessary.** - An administrative determination of "unlawful, illegal or unauthorized" conduct sufficient to support a conclusion of "unprofessional conduct," as provided in this section, is not dependent upon a prior judicial determination of criminal guilt. *Strance v. New Mexico Bd. of Medical Exmrs.*, 83 N.M. 15, 487 P.2d 1085 (1971).

**Restraint of proceedings.** - Board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice, and as statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Reinstatement after revocation.** - Board of medical examiners has the power to suspend a license inherent in its power to revoke, but when revocation is accomplished, the only method of reinstating revoked licensee to full privileges is by the means of reapplication. 1953-54 Op. Att'y Gen. No. 5839.

**Under former law, the legislature did not define unprofessional conduct,** nor prohibit advertising by physicians; former statute did not go far enough to give power to the board of medical examiners to revoke the license of a physician for advertising unless said advertising was false, immoral and against the public welfare. 1939-40 Op. Att'y Gen. 23.

**Subsection D(5) does not create privilege.** - Subsection D(5) does not create a privilege; it only describes ethical constraints placed upon a physician. *Trujillo v. Puro*, 101 N.M. 408, 683 P.2d 963 (Ct. App. 1984).

**No lay control of professional medical judgments.** - An entity, such as a clinic, hospital or other similar corporate entity employing physicians, may not engage in conduct amounting to the practice of medicine by exerting lay control of professional medical judgments. 1987 Op. Att'y Gen. No. 87-39.

**Law reviews.** - For article, "New Mexico's 1969 Criminal Abortion Law," see 10 Nat. Resources J. 591 (1970).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liability of doctor or other health practitioner to third party contracting contagious disease from doctor's patient, 3 A.L.R.5th 370.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

Advertising by physician, surgeon or other person professing healing arts, constitutionality of statute or ordinance prohibiting or regulating, 54 A.L.R. 400.

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to within statute making conviction ground for refusing license, 113 A.L.R. 1179.

Practice of medicine, dentistry or law through radio broadcasting stations, newspapers or magazines, 114 A.L.R. 1506.

Acquittal or dismissal in criminal prosecution, effect of, on revocation of license of physician, 123 A.L.R. 779.

Statutory power to revoke or suspend license of physician for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon his qualification to practice as physician or surgeon, 175 A.L.R. 803.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

Professional incompetency as ground for disciplinary measure, 28 A.L.R.3d 487.

Duty of physician or surgeon to warn or instruct nurse or attendant, 63 A.L.R.3d 1020.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Use, in attorney or physician disciplinary proceeding, of evidence obtained by wrongful police action, 20 A.L.R.4th 546.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 A.L.R.4th 668.

Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 A.L.R.4th 671.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 A.L.R.4th 609.

Recovery for emotional distress resulting from statement of medical practitioner or official, allegedly constituting outrageous conduct, 34 A.L.R.4th 688.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer, 86 A.L.R.4th 1024.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

Denial by hospital of staff privileges or referrals to physician or other health care practitioner as violation of Sherman Act (15 USCS § 1 et seq.), 89 A.L.R. Fed. 419.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 43, 50, 53 to 57.

**61-6-16. Reporting of settlements and judgments, professional review actions and acceptance of surrendered license; immunity from civil damages; penalty. (Effective until July 1, 1998.)**

A. All entities which make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of judgment in a medical malpractice action or claim, all hospitals, all health care entities and all professional review bodies shall report to the board all payments relating to malpractice actions or claims arising in New Mexico, all appropriate professional review actions of physicians and the acceptance or surrender of clinical privileges by a physician while under investigation or in lieu of an investigation. For the purposes of this section, the meaning of these terms shall be as contained in Section 431 of the Health Care Quality Improvement Act of 1986, 42 U.S.C.A. § 11151.

B. No hospitals required to report under this section, health care entities or professional review bodies which provide such information in good faith shall be subject to suit for civil damages as a result thereof.

C. Any hospital, health care entity or professional review body failing to comply with the reporting requirements provided in this section shall be subject to civil penalty not to exceed two thousand dollars (\$2,000).

**History:** 1978 Comp., § 61-6-16, enacted by Laws 1989, ch. 269, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 13 recompiles former 61-6-16 NMSA 1978, relating to exceptions from this article, as 61-6-17 NMSA 1978, effective July 1, 1989.

**Law reviews.** - For case note, "WORKERS' COMPENSATION LAW: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

### **61-6-17. Exceptions to act. (Effective until July 1, 1998.)**

The Medical Practice Act [this article] shall not apply to or affect:

A. gratuitous services rendered in cases of emergency;

B. the domestic administration of family remedies;

C. the practice of midwifery as regulated in this state;

D. commissioned medical officers of the armed forces of the United States and medical officers of the United States public health service or the veterans administration of the United States in the discharge of their official duties or within federally controlled facilities, provided that such persons who hold medical licenses in New Mexico shall be

subject to the provisions of the Medical Practice Act and provided that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;

E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation of a patient from inside of New Mexico to another state or back, provided that the physician is duly licensed in that state;

F. the practice, as defined and limited under their respective licensing laws, of:

(1) osteopathy;

(2) dentistry;

(3) podiatry;

(4) nursing;

(5) optometry;

(6) psychology;

(7) chiropractic;

(8) pharmacy;

(9) acupuncture and oriental medicine; or

(10) physical therapy;

G. any act, task or function performed by a physician assistant at the direction of and under the supervision of a licensed physician, when:

(1) the assistant is registered and has annually renewed his registration with the board as one qualified by training or experience to function as an assistant to a physician;

(2) the act, task or function is performed at the direction of and under the supervision of a licensed physician in accordance with rules and regulations promulgated by the board; and

(3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising physician and the acts are within the scope of the assistant's training;

H. any act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

(1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or

(2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's direct supervision any medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner, not in violation of any other statute, and if the person does not hold himself out to the public as being authorized to practice medicine. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts; and

J. the practice of the religious tenets of any church in the ministrations to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt any person from the operation or enforcement of the sanitary and quarantine laws of the state.

**History:** 1953 Comp., § 67-5-10.1, enacted by Laws 1973, ch. 361, § 8; 1978 Comp., § 61-6-16, recompiled as § 61-6-17 by Laws 1989, ch. 269, § 13; 1991, ch. 148, § 4; 1991, ch. 164, § 1; 1993, ch. 158, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - For Public Health Act, see 24-1-1 NMSA 1978 et seq.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-16 NMSA 1978; substituted "Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the introductory paragraph and Subsection I; substituted "regulated in this state" for "regulated by the health and social services department" in Subsection C; substituted present Subsection D for former Subsection D, which read "surgeons of the United States in the discharge of their official duties"; substituted present Subsection E for former Subsection F, which read as set out in the 1986 Replacement Pamphlet; added Subsections F(9) and F(10); made minor stylistic changes in Subsections G(1) and G(2); substituted present Subsection G(3) for former Subsection G(3), which read as set out in the 1986 Replacement Pamphlet; in

Subsection H(1) inserted "licensed physician or a" and substituted "health services division of the health and environment department" for "health and social services department"; and, in Subsection I, inserted "as provided by law".

**1991 amendments.** - Identical amendments to this section were enacted by Laws 1991, ch. 148, § 4 and Laws 1991, ch. 164, § 1, effective June 14, 1991, which, in Subsection H, rewrote the introductory paragraph following "nurse practitioners" which read "or medical technologists permitted by law or established by custom as part of the duties required in their employment by" and substituted "public health division" for "health services division" in Paragraph (1); added Subsection I; designated a formerly undesignated provision as Subsection J; and made a related stylistic change. The section is set out as amended by Laws 1991, ch. 164, § 1. See 12-1-8 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "and oriental medicine" in Paragraph (9) of Subsection F; and substituted "department of health" for "health and environment department" in Paragraph (1) of Subsection H.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-17 NMSA 1978, as amended by Laws 1982, ch. 110, § 2, relating to fees for license by endorsement application and for examination, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-19 NMSA 1978.

**Chiropractors' services are not physicians' services under the Medicaid program.** Chiropractors' services thus are not included in the general categories of medical treatment which must be included in the state plan. *Katz v. New Mexico Dep't of Human Servs.*, 95 N.M. 530, 624 P.2d 39 (1981).

**Board to determine credentials.** - While a New Mexico license was not required as a prerequisite to the employment of a doctor by the Carrie Tingley hospital, only the New Mexico board of medical examiners had authority to determine the present standing or validity of his credentials in other states. 1957-58 Op. Att'y Gen. No. 58-136.

**Delegation of dispensation of dangerous drugs.** - The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physicians' assistants the task of dispensing dangerous drugs. *New Mexico Pharmaceutical Ass'n v. State*, 106 N.M. 73, 738 P.2d 1318 (1987).

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers §§ 35 to 50.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 26, 27.

**61-6-18. Medical students; interns; residents. (Effective until July 1, 1998.)**

A. Nothing in the Medical Practice Act [this article] shall prevent a medical student properly registered or enrolled in a medical college or school in good standing from diagnosing or treating the sick or afflicted provided that the medical student does not receive compensation for services and such services are rendered under the supervision of the school faculty as part of his course of study.

B. Nothing in the Medical Practice Act shall require an intern who is appointed in a program accredited and approved by the board to obtain a license to pursue such training.

C. Any person serving in the assigned rotations and performing the assigned duties of an approved residency in a residency training program accredited in New Mexico may do so for an aggregate period not to exceed four years or completion of residency, whichever is shorter, without a license to practice medicine; provided, however, that any such person shall first register with the board in the manner and form required by the board and may not serve as a "resident" until the board has given its formal approval to the applicant.

**History:** 1978 Comp., § 61-6-18, enacted by Laws 1989, ch. 269, § 14.

**ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 16 recompiles former 61-6-18 NMSA 1978, relating to penalty for practicing without a license, as 61-6-20 NMSA 1978, effective July 1, 1989.

**61-6-19. Fees. (Effective until July 1, 1998.)**

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars (\$400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars (\$400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

- (3) an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost;
- (4) a triennial renewal fee not to exceed four hundred fifty dollars (\$450);
- (5) a late fee not to exceed one hundred fifty dollars (\$150) for applicants who fail to renew their license within forty-five days of the required renewal date;
- (6) a late fee not to exceed two hundred dollars (\$200) for applicants who fail to renew their licenses within ninety days of the renewal date;
- (7) a reinstatement fee not to exceed the current application fee for reinstatement of a revoked, suspended or inactive license;
- (8) a reasonable administrative fee for verification and duplication of license or registration and copying of records;
- (9) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act [this article];
- (10) an impaired physician fee not to exceed one hundred fifty dollars (\$150) for a three-year period;
- (11) an interim license fee not to exceed one hundred dollars (\$100);
- (12) a temporary license fee not to exceed one hundred dollars (\$100);
- (13) an application fee not to exceed one hundred fifty dollars (\$150) for physician assistants applying for initial registration; and
- (14) a registration fee not to exceed seventy-five dollars (\$75.00) for physician assistants annually reregistering their certificate of registration, supervising physician and place of employment.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently.

**History:** 1978 Comp., § 61-6-19, enacted by Laws 1989, ch. 269, § 15.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-19 NMSA 1978, as amended by Laws 1969, ch. 46, § 9, relating to rules and regulations of the board,

effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-5B NMSA 1978.

**Disposition of fees.** - The application fees paid pursuant to this section by applicants for licenses to practice medicine revert to the general fund at the end of the licensing year. 1959-60 Op. Att'y Gen. No. 60-28.

**Licensing year.** - The licensing year for physicians licensed to practice medicine in New Mexico is the calendar year. 1959-60 Op. Att'y Gen. No. 60-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 22; 73 C.J.S. Public Administrative Law and Procedure § 8.

### **61-6-20. Practicing without license; penalty. (Effective until July 1, 1998.)**

Any person who practices medicine or who attempts to practice medicine without first complying with the provisions of the Medical Practice Act [this article] and without being the holder of a license entitling him to practice medicine in New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced under the provisions of the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978] to imprisonment for a definite period not to exceed eighteen months and, in the discretion of the sentencing court, to a fine not to exceed five thousand dollars (\$5,000), or both. Each occurrence of practicing medicine or attempting to practice medicine without complying with the Medical Practice Act shall be a separate violation.

**History:** Laws 1923, ch. 44, § 9; C.S. 1929, § 110-110; 1941 Comp., § 51-510; 1953 Comp., § 67-5-12; Laws 1955, ch. 44 [§ 1]; 1969, ch. 46, § 8; 1978 Comp., § 61-6-18, recompiled as § 61-6-20 by Laws 1989, ch. 269, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - For definition of "practice of medicine," see 61-6-15 NMSA 1978.

As to injunction to prevent unauthorized practice of medicine, see 61-6-21 NMSA 1978.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-18 NMSA 1978; added the second sentence, and, in the first sentence, substituted "the Medical Practice Act" for "Sections 67-5-23 NMSA 1978" and the present language following "is guilty of" for "felony, upon conviction, punished by a fine not to exceed one thousand dollars (\$1,000.00) or imprisonment in the county jail not to exceed one year or by both such fine and imprisonment in the discretion of the court", and made minor stylistic changes.

**Compiler's note.** - Laws 1979, ch. 132, § 9, repealed former 61-6-20 NMSA 1978, as enacted by Laws 1977, ch. 207, § 1, relating to rules and regulations for care of infants born alive and for experimentation with aborted fetuses, effective March 27, 1979. For former provisions, see the 1978 Original Pamphlet. For present provisions, see 24-9A-3 and 24-9A-4 NMSA 1978.

**Injunction not precluded.** - The state has authority to punish one who engages in the practice of medicine without a license, but this remedy is not exclusive and does not preclude injunction to protect the public health, morals, safety and welfare from irreparable injury. *State ex rel. Marron v. Compere*, 44 N.M. 414, 103 P.2d 273 (1940).

**Law reviews.** - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

For comment, "Perspectives on the Abortion Decision," see 9 N.M.L. Rev. 175 (1978-79).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 44 A.L.R. 1418, 57 A.L.R. 978.

Entrapment to commit offense of practicing medicine without license, 86 A.L.R. 272.

Corporation or individual not himself licensed, right of, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Health service plan as violation of medical practice acts, 119 A.L.R. 1290.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice of medicine or optometry without license, 121 A.L.R. 1455.

Group medical and hospital service plan as illegal practice of medicine, 167 A.L.R. 327.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28 to 33.

**61-6-21. Continuing medical education; penalty. (Effective until July 1, 1998.)**

A. The board may establish rules and regulations pertaining to continuing medical education for physicians and continuing education for physician assistants.

B. The board may suspend the license or registration of any physician or physician assistant who fails to comply with continuing medical education or continuing education requirements, until such time as the requirements are fulfilled.

**History:** 1978 Comp., § 61-6-21, enacted by Laws 1989, ch. 269, § 17.

**ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 18 recompiles former 61-6-21 NMSA 1978, relating to injunction to prevent practice without a license, as 61-6-22 NMSA 1978, effective July 1, 1989.

**61-6-22. Injunction to prevent practice without a license. (Effective until July 1, 1998.)**

The attorney general, the prosecuting attorney, the board or any citizen of any county where any person engages in the practice of medicine as defined by the laws of New Mexico without possessing a valid license to do so may, in accordance with the laws of the state governing injunctions, maintain an action in the name of the state to enjoin such person from engaging in the practice of medicine until a valid license to practice medicine is secured from the board. Any person who has been so enjoined who violates the injunction shall be punished for contempt of court. Provided, however, the injunction shall not relieve the person practicing medicine without a valid license from criminal prosecution therefor as provided by law, but such remedy by injunction shall be in addition to any remedy now provided for criminal prosecution of such offender. In charging any person in a petition for injunction or in an information or indictment with a violation of law by practicing medicine without a valid license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of medicine without having a valid license without alleging any further or more particular facts.

**History:** 1953 Comp., § 67-5-15; Laws 1969, ch. 46, § 10; 1978 Comp., § 61-6-21, recompiled as § 61-6-22 by Laws 1989, ch. 269, § 18.

**ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Cross-references.** - For penalty for practicing medicine without a license, see 61-6-18 NMSA 1978.

As to injunctions, see Rules 1-065 and 1-066.

**The 1989 amendment,** effective July 1, 1989, renumbered this section which formerly was 61-6-21 NMSA 1978, corrected a misspelling in the catchline, substituted "the board" for "the board of medical examiners" in two places in the first sentence, and made numerous minor stylistic changes.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-22 NMSA 1978, as amended by Laws 1987, ch. 204, § 1, relating to annual registration fees, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 122.

43A C.J.S. Injunctions § 242.

### **61-6-23. Investigation; subpoena. (Effective until July 1, 1998.)**

For the purpose of investigating complaints against physicians or physician assistants licensed or registered under the provisions of Chapter 61, Article 6 NMSA 1978, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA 1978.

**History:** 1978 Comp., § 61-6-23, enacted by Laws 1989, ch. 269, § 19.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 23 recompiles former 61-6-23 NMSA 1978, relating to issuance and display of registration certificate, as 61-6-27 NMSA 1978, effective July 1, 1989.

### **61-6-24. Limitations on actions. (Effective until July 1, 1998.)**

A. No action that would have any of the effects specified in Sections 61-6-8 and 61-6-15 NMSA 1978 may be initiated by the board later than two years after it is brought to the board's attention.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising substantially from the same facts, conduct, transaction or transactions which would be the basis of the board's decision.

**History:** 1978 Comp., § 61-6-24, enacted by Laws 1989, ch. 269, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 24 recompiles former 61-6-24 NMSA 1978, relating to practitioners changing location or beginning practice, as 61-6-28 NMSA 1978, effective July 1, 1989.

#### **61-6-25. False statement; penalty. (Effective until July 1, 1998.)**

Any person making a false statement under oath or a false affidavit shall be guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978] to eighteen months imprisonment and, in the sentencing court's discretion, to a fine of not more than five thousand dollars (\$5,000).

**History:** 1978 Comp., § 61-6-25, enacted by Laws 1989, ch. 269, § 21.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-25 NMSA 1978, as amended by Laws 1969, ch. 46, § 14, relating to publication and distribution of lists of registrants, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-29 NMSA 1978.

#### **61-6-26. Triennial renewal fees; penalty for failure to renew license. (Effective until July 1, 1998.)**

A. Before July 1 of every third year, every licensed practitioner of medicine in this state shall have applied for a certificate of triennial renewal of license for the ensuing three years. The board may establish a method to provide for staggered triennial renewal terms and may prorate triennial renewal fees and impaired physicians fees until staggered triennial renewal is established. The fact that a practitioner has not received a renewal form from the board shall not relieve him of the duty to renew his license nor shall such omission on the part of the board operate to exempt him from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed practitioners shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and all practitioners shall re turn the completed renewal form together with the renewal fee and proof of continuing medical education.

C. Each application for triennial renewal of license shall state the practitioner's full name, business address, the date and number of his license and all other information requested by the board.

D. Any practitioner who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal within forty-five days thereafter shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. Any practitioner who fails to submit application for triennial renewal between forty-five and ninety days of the July 1 deadline shall be assessed a cumulative late fee as provided in Paragraphs (5) and (6) of Subsection A of Section 61-6-19 NMSA 1978.

F. The board may, in its discretion, summarily suspend for nonpayment of fees the license of any practitioner who has failed to renew his license within ninety days of July 1.

**History:** 1978 Comp., § 61-6-26, enacted by Laws 1989, ch. 269, § 22.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 26 recompiles former 61-6-26 NMSA 1978, relating to fees and other requirements for delinquent registrants, as 61-6-30 NMSA 1978, effective July 1, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 38; 73 C.J.S. Public Administrative Law and Procedure §§ 60, 100.

### **61-6-27. Issuance and display of renewal certificate. (Effective until July 1, 1998.)**

The board shall issue to each duly licensed practitioner, upon his application in accordance with the provisions of the Medical Practice Act [this article] and upon payment of the appropriate fees and upon documentation of continuing education requirements, a certificate of triennial renewal, under the seal of the board, for the ensuing three years. The certificate of renewal shall contain the practitioner's name, his business address, the date and number of his license to practice and such other information as the board deems advisable. The certificate of triennial renewal shall, at

all times, be displayed conspicuously in the principal office or practice location of the practitioner to whom it has been issued.

**History:** 1941 Comp., § 51-2802, enacted by Laws 1945, ch. 74, § 2; 1953 Comp., § 67-5-18; Laws 1969, ch. 46, § 12; 1978 Comp., § 61-6-23, recompiled as § 61-6-27 by Laws 1989, ch. 269, § 23.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-27 NMSA 1978; substituted "renewal certificate" for "registration certificate" in the catchline; divided the former first sentence into the present first two sentences; in the first sentence, substituted "in accordance with the provisions of the Medical Practice Act and upon payment of the appropriate fees and upon documentation of continuing education requirements" for "in accordance with the provisions of Sections 67-5-1 through 67-5-23 NMSA 1953", "certificate of triennial renewal" for "certificate of annual registration", and "for the ensuing three years" for "for the ensuing year and ending December 31st of that year"; in the second sentence, substituted "certificate of renewal" for "certificate of registration"; in the last sentence, substituted "certificate of triennial renewal" for "certificate of annual registration" and "the principal office of practice location" for "the office"; and made minor stylistic changes throughout the section.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-27 NMSA 1978, as amended by Laws 1961, ch. 11, § 3, relating to disposal of registration fees, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-19 NMSA 1978.

### **61-6-28. Practitioners changing location or beginning practice. (Effective until July 1, 1998.)**

Any practitioner who changes the location of his office or residence during the period between any two triennial renewal dates shall, before doing so, notify the board of such change. Any person who desires to begin the practice of medicine and surgery in this state shall, before beginning such practice, register and pay the triennial renewal fee for that year as provided in the Medical Practice Act [this article].

**History:** 1941 Comp., § 51-2803, enacted by Laws 1945, ch. 74, § 3; 1953 Comp., § 67-5-19; Laws 1969, ch. 46, § 13; 1978 Comp., § 61-6-24, recompiled as § 61-6-28 by Laws 1989, ch. 269, § 24.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective July 1, 1989, renumbered this section, which formerly was 61-6-24 NMSA 1978, and substituted "triennial renewal" for "annual registration" in both sentences and "the Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the second sentence.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-28 NMSA 1978, as amended by Laws 1969, ch. 46, § 16, relating to the penalty for failure to register, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet. For present comparable provisions, see 61-6-26 NMSA 1978.

### **61-6-29. Publication and distribution of lists of registrants. (Effective until July 1, 1998.)**

The board shall publish annually a printed list of all practitioners registered under the Medical Practice Act [this article]. The board shall distribute the published listing to practicing physicians licensed under that act, to each district attorney's office, to the attorney general and to other interested parties as the board sees fit.

**History:** 1978 Comp., § 61-6-29, enacted by Laws 1989, ch. 269, § 25.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1989, ch. 269, § 25 repeals former 61-6-29 NMSA 1978, as enacted by Laws 1961, ch. 130, § 1, relating to suspension of license for mental illness, and enacts the above section, effective July 1, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

### **61-6-30. Restoration of good standing; fees and other requirements for delinquent registrants. (Effective until July 1, 1998.)**

A. Before restoring to good standing a license or certificate of registration which has been in a revoked, suspended or inactive status for any cause for more than two years, the board may require the applicant to pass an oral or written examination, or both, to determine his present fitness to resume practice and may impose conditions in its discretion.

B. The authority of the board to impose terms and conditions includes, but is not limited to, the following:

(1) requiring the applicant to obtain additional training and to pass an examination upon completion of such training; or

(2) restricting or limiting the extent, scope or type of practice of the applicant.

C. The board shall also consider the moral background and the activities of the applicant during the period of suspension or inactivity.

D. If the board in its discretion determines that the applicant is qualified to be reissued a license or certificate of registration in good standing, the applicant shall also pay to the board all fees for the current and all delinquent years.

**History:** 1953 Comp., § 67-5-21; Laws 1969, ch. 46, § 15; 1978 Comp., § 61-6-26, recompiled as § 61-6-30 by Laws 1989, ch. 269, § 26.

## ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-26 NMSA 1978; in the catchline, inserted "Restoration of good standing"; in Subsection A, inserted "license or", "revoked", and "and may impose conditions in its discretion" and deleted "state medical" preceding "board"; in the introductory language of Subsection B, inserted "but is not limited to"; in Subsection D, inserted "license or" and substituted "all fees" for "the regular annual registration fee"; and made minor stylistic changes.

**Compiler's note.** - Laws 1989, ch. 269, § 32 repeals former 61-6-30 NMSA 1978, as enacted by Laws 1961, ch. 130, § 2, relating to clerk of court's order of commitment establishing mental illness of licensee, effective July 1, 1989. For former provisions, see 1986 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52; 73 C.J.S. Public Administrative Law and Procedure §§ 27, 28.

### **61-6-31. Disposition of funds; board of medical examiners fund created; method of payments. (Effective until July 1, 1998.)**

A. There is created the "board of medical examiners fund".

B. All funds received by the board and money collected under the Medical Practice Act [this article], the Physician Assistant Act [61-6-7 to 61-6-10 NMSA 1978] and the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978] shall be deposited with the state treasurer, who shall place the same to the credit of the medical examiners fund.

C. All payments out of the fund shall be made on vouchers issued and signed by the secretary-treasurer of the board or his designee upon warrants drawn by the

department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the board of medical examiners fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act and the Impaired Physician Act and the duties and powers imposed thereby; and

(2) the promotion of medical education and standards in this state within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the medical examiners fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act and the Impaired Physician Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the medical examiners fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act and the Impaired Physician Act.

F. The secretary-treasurer and any employee of the board who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978] conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

**History:** 1978 Comp., § 61-6-31, enacted by Laws 1989, ch. 269, § 27.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Recompilations.** - Laws 1989, ch. 269, § 28 recompiles former 61-6-31 NMSA 1978, relating to termination of suspension and restoration of suspended license, as 61-6-32 NMSA 1978, effective July 1, 1989.

### **61-6-32. Termination of suspension of license for mental illness; restoration; terms and conditions. (Effective until July 1, 1998.)**

A. A suspension under Paragraph (25) of Subsection D of Section 61-6-15 NMSA 1978 may, in the discretion of the board, be terminated, but the suspension shall continue and the board shall not restore to the former practitioner the privilege to practice medicine and surgery in this state until:

(1) the board receives competent evidence that the former practitioner is not mentally ill; and

(2) the board is satisfied, in the exercise of its discretion and with due regard for the public interest, that the practitioner's former privilege to practice medicine and surgery may be safely restored.

B. If the board, in the exercise of its discretion, determines that the practitioner's former privilege to practice medicine may be safely restored, it may restore such privilege upon whatever terms and conditions it deems advisable. If the practitioner fails, refuses or neglects to abide by the terms and conditions, his license to practice medicine may, in the discretion of the board, be again suspended indefinitely.

**History:** 1953 Comp., § 67-5-26, enacted by Laws 1961, ch. 130, § 3; 1978 Comp., § 61-6-31, recompiled as § 61-6-32 by Laws 1989, ch. 269, § 28.

### ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective July 1, 1989, renumbered this section, which formerly was 61-6-31 NMSA 1978; added the catchline; designated the formerly undesignated introductory paragraph as Subsection A, substituting therein "under Paragraph (25) of Subsection D of Section 61-6-15 NMSA 1978" for "under Section 1 of this act"; redesignated former Subsections A and B as present Subsections A(1) and A(2), respectively, and former Subsection C as present Subsection B, deleting "and surgery" following "medicine" in both sentences therein; and made minor stylistic changes.

**Recompilations.** - Laws 1989, ch. 269, § 31 recompiles former 61-6-32 NMSA 1978, relating to termination of agency life, as 61-6-35 NMSA 1978, effective July 1, 1989.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

### **61-6-33. Licensure status. (Effective until July 1, 1998.)**

Upon a verified written request, any practitioner licensed under the Medical Practice Act [this article] may request his license be put in retirement or voluntary lapsed status. Upon request for reinstatement of active status, the board may impose conditions as provided in Section 61-6-29 NMSA 1978.

**History:** 1978 Comp., § 61-6-33, enacted by Laws 1989, ch. 269, § 29.

### ANNOTATIONS

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**61-6-34. Protected actions; communication. (Effective until July 1, 1998.)**

A. No member of the board shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board.

B. All written and oral communications made by any person to the board relating to actual and potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.

C. No person or legal entity providing information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**History:** 1978 Comp., § 61-6-34, enacted by Laws 1989, ch. 269, § 30.

**ANNOTATIONS**

**Delayed repeals.** - See 61-6-35 NMSA 1978 and notes thereto.

**Inspection of Public Records Act.** - The reference to the Inspection of Public Records Act in the first sentence in Subsection B is apparently to Article 2 of Chapter 14 NMSA 1978.

**61-6-35. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The New Mexico board of medical examiners is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 6 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 6 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-6-32, enacted by Laws 1979, ch. 40, § 2; 1981, ch. 241, § 20; 1985, ch. 87, § 5; 1978 Comp., § 61-6-32, recompiled as § 61-6-35 by Laws 1989, ch. 269, § 31; 1991, ch. 189, § 10.

**ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 10 amends this section to repeal Chapter 61, Article 6 NMSA 1978, effective July 1, 1998.

**The 1989 amendment**, effective July 1, 1989, recompiled former 61-6-32 NMSA 1978 as the above section.

**The 1991 amendment**, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 7 IMPAIRED PHYSICIANS**

### **61-7-1. Short title.**

This act [61-7-1 to 61-7-11 NMSA 1978] may be cited as the "Impaired Physician Act".

**History:** 1953 Comp., § 67-42-1, enacted by Laws 1976, ch. 3, § 1; recompiled as 1953 Comp., § 67-8A-1.

### **ANNOTATIONS**

**Law reviews.** - For article, "Medical Malpractice Legislation in New Mexico," see 7 N.M.L. Rev. 5 (1976-77).

### **61-7-2. Definition.**

As used in the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978] "board" means the board of medical examiners or the board of osteopathic medical examiners.

**History:** 1953 Comp., § 67-42-2, enacted by Laws 1976, ch. 3, § 2; recompiled as 1953 Comp., § 67-8A-2.

### **61-7-3. Grounds for restriction, suspension or revocation of license.**

The license of any physician to practice medicine in this state shall be subject to restriction, suspension or revocation, in case of inability of the licensee to practice medicine with reasonable skill or safety to patients by reason of one or more of the following:

A. mental illness;

B. physical illness including, but not limited to deterioration through the aging process or loss of motor skill; or

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [30-31-1 to 30-31-40 NMSA 1978], or alcohol.

**History:** 1953 Comp., § 67-42-3, enacted by Laws 1976, ch. 3, § 3; recompiled as 1953 Comp., 67-8A-3.

## ANNOTATIONS

**Cross-references.** - As to refusal, revocation or suspension of license generally, see 61-6-15 NMSA 1978.

As to suspension of license for mental illness, see 61-6-32 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 80, 90, 100.

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 39.

### **61-7-4. New Mexico board of medical examiners; board of osteopathic medical examiners; additional powers and duties.**

A. If the board has reasonable cause to believe that a physician licensed to practice medicine in this state is unable to practice medicine with reasonable skill and safety to patients because of a condition described in Section 61-7-3 NMSA 1978, the board shall appoint an examining committee as described in Subsection B of this section to examine the physician and shall, following such examination, take appropriate action within the provisions of the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978].

B. The board shall designate three licensed physicians to be members of an examining committee. The examining committee shall include at least one psychiatrist if a question of mental illness is involved.

**History:** 1953 Comp., § 67-42-4, enacted by Laws 1976, ch. 3, § 4; recompiled as 1953 Comp., § 67-8A-4; 1991, ch. 148, § 5; 1993, ch. 326, § 1.

## ANNOTATIONS

**The 1991 amendment,** effective June 14, 1991, added "New Mexico" at the beginning of the catchline; in Subsection A, substituted "Section 61-7-3 NMSA 1978" for "Section 3 of the Impaired Physician Act", substituted "the Impaired Physician Act" for "the Act" at the end of the Subsection and made minor stylistic changes, and rewrote Subsection B.

**The 1993 amendment,** effective June 18, 1993, made stylistic changes near the middle of Subsection A and rewrote the first sentence of Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 C.J.S. Public Administrative Law and Procedure §§ 49 to 86.

### **61-7-5. Examination by committee.**

A. The examining committee assigned to examine a physician pursuant to referral by the board under Section 61-7-4 NMSA 1978 shall conduct an examination of the physician for the purpose of determining the physician's fitness to practice medicine with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and shall report its findings and recommendations to the board. The findings and recommendations shall be based on findings by the examining committee that the physician examined possesses one or more of the impairments set forth in Section 61-7-3 NMSA 1978 and such impairment does, in fact, affect the ability of the physician to skillfully or safely practice medicine. The examining committee shall order the physician to appear before it for examination and give the physician ten days' notice of time and place of the examination, together with a statement of the cause for examination. Notice shall be served upon the physician either personally or by registered or certified mail with return receipt requested.

B. If the examining committee, in its discretion, deems a mental or physical examination of the physician necessary to its determination of the fitness of the physician to practice, the committee shall order the physician to submit to such examination. Any person licensed to practice medicine in this state shall, by so practicing or by making or filing of registration to practice medicine in this state, be deemed to have:

(1) given his consent to submit to mental or physical examination when so directed by the examining committee; and

(2) waived all objections to the admissibility of the examining committee's report to the board on the grounds of privileged communication.

C. Any physician ordered to an examination before the committee under the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any physician who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate another physician to be present at the examination and make an independent report to the board.

E. Failure of a physician to comply with a committee order under Subsection B of this section to appear before it for examination by the committee or to submit to mental or physical examination under this section shall be reported by the committee to the board and, unless due to circumstances beyond the control of the physician, shall be grounds for the immediate and summary suspension by the board of the physician's license to practice medicine in this state until the further order of the board.

**History:** 1953 Comp., § 67-42-5, enacted by Laws 1976, ch. 3, § 5; recompiled as 1953 Comp., § 67-8A-5; 1993, ch. 326, § 2.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, in Subsection A, substituted "examination" for "hearing" in two places in the third sentence and made stylistic changes throughout; in Subsection B, deleted "annual" before "registration" in the introductory language of the second sentence; designated the former last sentence of Subsection B as Subsection C and rewrote the sentence; redesignated former Subsections C and D as Subsections D and E; and substituted "examination by the committee" for "hearing" in Subsection E.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 C.J.S. Public Administrative Law and Procedure § 60.

#### **61-7-6. Voluntary restriction of licensure.**

A physician may request in writing to the board a restriction of the physician's license to practice medicine. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the licensure of the physician to practice medicine within specified limitations and waive the commencement of any proceeding under Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice medicine shall be subject to the procedure for reinstatement of license in Section 61-7-9 NMSA 1978.

**History:** 1953 Comp., § 67-42-6, enacted by Laws 1976, ch. 3, § 6; recompiled as 1953 Comp., § 67-8A-6; 1993, ch. 326, § 3.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 32.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 27.

### **61-7-7. Report to the board; action.**

A. The examining committee shall report to the board its findings on the examination of the physician under Section 61-7-5 NMSA 1978, the determination of the committee as to the fitness of the physician to engage in the practice of medicine with reasonable skill or safety to patients, either on a restricted or unrestricted basis, and any management that the committee may recommend. Recommendation by the committee shall be advisory only and shall not be binding on the board.

B. The board may accept or reject any finding, determination or recommendation of the examining committee regarding the physician's ability to continue to practice medicine with or without any restriction on the physician's license. The board may refer the matter back to an examining committee for further examination and report thereon.

C. In the absence of a voluntary agreement by a physician under Section 61-7-6 NMSA 1978 for restriction of the licensure of the physician to practice medicine, any physician shall be entitled to a hearing under and in accordance with the procedure contained in the Uniform Licensing Act before the board and a determination on the evidence as to whether restriction, suspension or revocation of licensure shall be imposed.

**History:** 1953 Comp., § 67-42-7, enacted by Laws 1976, ch. 3, § 7; recompiled as 1953 Comp., § 67-8A-7; 1993, ch. 326, § 4.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, made stylistic changes in Subsections A and C, and rewrote Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 C.J.S. Public Administrative Law and Procedure § 60.

### **61-7-8. Proceedings.**

A. The board may formally proceed against a physician under the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978] in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

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

(1) whether the physician is impaired by one of the grounds for restriction, suspension or revocation listed in Section 61-7-3 NMSA 1978;

(2) whether the impairment, if found in Paragraph (1) of this subsection, does in fact limit the physician's ability to practice medicine skillfully or safely;

(3) to what extent the impairment limits the physician's ability to practice medicine skillfully or safely and whether the board finds that the impairment is such that the physician should be suspended, revoked or restricted in the physician's practice of medicine; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the physician's ability to practice medicine, the board shall make specific recommendations as to the length and nature of the suspension or restriction and shall recommend how the suspension or restriction shall be carried out and supervised.

C. At the conclusion of the hearing, the board shall make a determination of the merits and may order one or more of the following:

(1) placement of the physician 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 physician to practice medicine for the duration of the physician's impairment;

(3) revocation of the license of the physician to practice medicine; or

(4) reinstatement of the physician's license to practice medicine without restriction.

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

E. Neither the record of the proceeding nor any order entered against a physician may be used against him in any other legal proceeding except upon judicial review as provided in Section 61-7-10 NMSA 1978.

**History:** 1953 Comp., § 67-42-8, enacted by Laws 1976, ch. 3, § 8; recompiled as 1953 Comp., § 67-8A-8; 1993, ch. 326, § 5.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, made stylistic changes throughout the section.

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 102 to 116.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 A.L.R.4th 969.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 50; 73A Public Administrative Law and Procedure §§ 115 to 171.

### **61-7-9. Reinstatement of license.**

A physician whose licensure has been restricted, suspended or revoked under the Impaired Physician Act [61-7-1 to 61-7-11 NMSA 1978], voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement of the physician's license and to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients. Petition shall be made in writing and on a form prescribed by the board. Action of the board on the petition shall be initiated by referral to and examination by an examining committee pursuant to the provisions of Sections 61-7-4 and 61-7-5 NMSA 1978. The board may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the physician on a general or limited basis.

**History:** 1953 Comp., § 67-42-9, enacted by Laws 1976, ch. 3, § 9; recompiled as 1953 Comp., § 67-8A-9; 1993, ch. 326, § 6.

### **ANNOTATIONS**

**The 1993 amendment,** effective June 18, 1993, made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

### **61-7-10. Judicial review.**

All orders of the board under Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. The decision of the board shall not be stayed or enjoined pending

review by a district court but may be stayed or enjoined pending review by the court of appeals or the New Mexico supreme court.

**History:** 1953 Comp., § 67-42-10, enacted by Laws 1976, ch. 3, § 10; recompiled as 1953 Comp., § 67-8A-10; 1993, ch. 326, § 7.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, made stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 117, 118.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 25, 51.

### **61-7-11. Protected action and communication.**

There shall be no liability on the part of and no action for damages against any person providing information to the committee or to the board in good faith in the reasonable belief that the information is accurate.

**History:** 1953 Comp., § 67-42-11, enacted by Laws 1976, ch. 3, § 11; recompiled as 1953 Comp., § 67-8A-11; 1993, ch. 326, § 8.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, deleted former Subsection A, which read: "any member of the examining committee or the board for any action undertaken or performed by such member within the scope of the functions of such committee or board under the Impaired Physician Act when acting without malice and in the reasonable belief that the action taken by him is warranted; or"; deleted the Subsection B designation from the beginning of the present provisions; and substituted "in good faith" for "without malice" and "the" for "such" before "information".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 358 to 370.

Malice as ground of attack on or relief from acts or regulations of public officers in exercise of discretionary powers, 57 A.L.R. 208.

73 C.J.S. Public Administrative Law and Procedure § 15.

### **61-7-12. Impaired physician treatment program.**

A. The board has the authority to enter into an agreement with a nonprofit corporation to implement an impaired physician treatment program.

B. For the purposes of section, "impaired physician treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detection, intervention and monitoring of impaired physicians.

**History:** 1978 Comp., § 61-7-12, enacted by Laws 1987, ch. 204, § 2.

## **ARTICLE 7A NUTRITION AND DIETETICS PRACTICES**

### **61-7A-1. Short title. (Effective until July 1, 1996.)**

Sections 1 through 15 [61-7A-1 to 61-7A-15 NMSA 1978] of this act may be cited as the "Nutrition and Dietetics Practice Act".

**History:** Laws 1989, ch. 387, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-2. Legislative findings; purpose of act. (Effective until July 1, 1996.)**

A. The legislature finds that the application of scientific knowledge relating to food plays an important part in the treatment of disease and in the attainment and maintenance of health. The legislature further finds that the rendering of dietetics services in institutions and other settings requires trained and competent professionals.

B. The purpose of the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978] is to safeguard life and health and to promote the public welfare by providing for the licensure and regulation of the persons engaged in the practice of nutrition and dietetics in the state and by providing the consumer a means of identifying those qualified to practice nutrition or dietetics.

**History:** Laws 1989, ch. 387, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-3. Definitions. (Effective until July 1, 1996.)**

As used in the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978]:

- A. "association" means the American dietetic association;
- B. "board" means the nutrition and dietetics practice board;
- C. "commission" means the commission on dietetic registration that is a member of the national commission on health certifying agencies, which national commission establishes national standards of competence for individuals participating in the health care delivery system;
- D. "dietitian" means a health care professional who engages in nutrition or dietetics practice and uses the title dietitian;
- E. "nutrition or dietetics practice" means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food management and behavioral and social sciences to achieve and maintain human health through the provision of nutrition care services;
- F. "nutrition care services" means:
  - (1) assessment of the nutritional needs of individuals and groups and determining resources and constraints in the practice setting;
  - (2) establishment of priorities, goals and objectives that meet nutritional needs in a manner consistent with available resources and constraints;
  - (3) provision of nutrition counseling in health and disease;
  - (4) development, implementation and management of nutrition care systems; and
  - (5) evaluation, adjustment and maintenance of appropriate standards of quality in food and nutrition care;
- G. "nutritional assessment" means the evaluation of the nutritional needs of individuals and groups based upon appropriate biochemical, anthropometric, physical and dietary data to determine nutrient needs and recommend appropriate nutritional intake, including enteral and parenteral nutrition;
- H. "nutrition counseling" means advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status;

I. "nutrition associate" means a health care professional who engages in nutrition or dietetics practice under the supervision of a dietitian or nutritionist; and

J. "nutritionist" means a health care professional who engages in nutrition or dietetics practice and uses the title nutritionist.

**History:** Laws 1989, ch. 387, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-4. License required; exemptions. (Effective until July 1, 1996.)**

A. After April 1, 1990, no person shall engage in nutrition or dietetics practice, or use or include the titles or represent himself to be a dietitian, nutritionist or nutrition associate unless he is licensed under the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978].

B. Nothing in the Nutrition and Dietetics Practice Act is intended to:

(1) limit, interfere with or prevent any other licensed health care professional from engaging in nutrition and dietetics practice within the limits of his licensure, except that he shall not hold himself out as a dietitian, nutritionist or nutrition associate;

(2) limit, interfere with or prevent employees of state or federal agencies from using the term "dietitian" or "nutritionist" as defined in state or federal personnel qualifications where these terms are used in their job titles, except that the use of these terms shall be limited to the period and practice of their employment with the state or federal agency establishing those qualifications;

(3) prevent an individual who does not hold himself out as a dietitian, nutritionist or nutrition associate from furnishing oral or written nutritional information on food, food materials or dietary supplements or from engaging in the explanation to customers about foods or food products in connection with the marketing and distribution of those products;

(4) prevent any person from providing weight control services provided the program has been reviewed by, consultation is available from and no program change can be initiated without prior approval by a licensed dietitian or licensed nutritionist, a dietitian or nutritionist licensed in another state which has licensure requirements at least as stringent as the requirements for licensure under the Nutrition and Dietetics Practice Act, or a dietitian registered by the commission;

(5) prevent a dietetic technician registered (DTR) from engaging in nutrition or dietetics practice under the supervision of a licensed dietitian or licensed nutritionist;

(6) apply to or affect students of approved or accredited dietetics or nutrition training or education programs who engage in nutrition or dietetics practice under the supervision of a licensed dietitian or licensed nutritionist as a part of their approved or accredited training or education program for the duration of that program; or

(7) interfere with or prevent persons recognized in their communities as curanderos or medicine men from advising or ministering to people according to traditional practices, as long as they do not hold themselves out to be dietitians, nutritionists or nutrition associates.

**History:** Laws 1989, ch. 387, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 4, 14, 45 to 46; 39 Am. Jur. 2d Health § 25.

39A C.J.S. Health and Environment §§ 37, 47; 53 C.J.S. Licenses §§ 5, 7, 30, 37 to 40.

#### **61-7A-5. Board created. (Effective until July 1, 1996.)**

A. There is created the "nutrition and dietetics practice board", administratively attached to the regulation and licensing department. The board shall consist of seven members who are New Mexico residents and who are appointed by the governor for staggered three-year terms. Three members shall be dietitians and nutritionists with at least three years of nutrition or dietetics practice in New Mexico and four members shall represent the public. The initial three professional members appointed shall meet the requirements for licensure and be licensed by the deadline specified for licensure in the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978]. The public members shall not have been licensed as a dietitian or nutritionist or have any financial interest, direct or indirect, in the professions regulated.

B. Initial appointments to the board shall be made in such a manner that two members shall be appointed to a one-year term expiring June 30, 1990; three members shall be appointed for one-year terms expiring June 30, 1991; and two members shall be appointed for three-year terms expiring June 30, 1992. Thereafter, the members of the board shall be appointed for three-year terms.

C. Each member shall hold office until the expiration of the term for which appointed or until a successor has been appointed. Vacancies shall be filled for the balance of the unexpired term within ninety days of the vacancy by appointment of the governor.

D. No board member shall serve more than two full terms consecutively.

E. The board shall elect annually a chairman and such other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of three or more members of the board. Four members, at least two of whom are professional members and at least two of whom are public members, shall constitute a quorum.

F. The members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1989, ch. 387, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-6. Board; duties. (Effective until July 1, 1996.)**

A. The board shall:

(1) evaluate the qualifications of applicants for licensure under the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978];

(2) issue licenses to applicants who meet the requirements of the Nutrition and Dietetics Practice Act;

(3) investigate persons engaging in practices that may violate the provisions of the Nutrition and Dietetics Practice Act;

(4) revoke, suspend or deny a license in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

(5) adopt an annual budget;

(6) adopt a code of ethics; and

(7) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] rules and regulations necessary to carry out the provisions of the Nutrition and Dietetics Practice Act; provided, no rule or regulation may be adopted, amended or repealed except by a vote of two-thirds of the board members.

B. The board may contract with the regulation and licensing department for office space and administrative support.

**History:** Laws 1989, ch. 387, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

#### **61-7A-7. Licensure; requirements. (Effective until July 1, 1996.)**

A. The board shall issue a license as a dietitian to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant has a valid current registration with the commission which gives the applicant the right to use the term "registered dietitian" or "R.D.".

B. The board shall issue a license as a nutritionist to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant:

(1) has received a master's degree or doctorate in human nutrition, nutrition education, foods and nutrition or public health nutrition from a college or university accredited by a member of the council on post-secondary accreditation; or

(2) maintains membership in one of the following organizations:

(a) the American institute of nutrition;

(b) the American society for clinical nutrition; or

(c) the American board of nutrition; and

(3) has successfully completed any training or educational programs and other requirements set out in the rules and regulations adopted pursuant to the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978].

C. Notwithstanding the provisions of Subsection B of this section, the board may establish separate criteria for licensure as a nutritionist for persons who have completed coursework in the field of nutrition and dietetics beyond a baccalaureate degree in nutrition and dietetics or a related field from a college or university accredited by a member of the council on post-secondary education and who have been engaged in nutrition and dietetics practice for a minimum of three years of the five years immediately preceding June 30, 1990 and who apply for licensure no later than December 31, 1990.

D. The board shall issue a license as a nutrition associate to any person who files a completed application, pays all required fees and certifies and furnishes evidence satisfactory to the board that the applicant:

(1) has received a baccalaureate or higher degree from a college or university accredited by a member of the council on post-secondary accreditation and fulfilled minimum academic requirements in the field of dietetics and related disciplines as approved by the association; and

(2) works under the supervision of a dietitian or nutritionist. Such supervision shall include a minimum of four hours onsite supervision per month plus phone consultation as needed.

E. A valid license issued pursuant to the Nutrition and Dietetics Practice Act shall be displayed at the licensee's place of employment.

F. Licenses, including initial licenses, shall be issued for a period of one year.

**History:** Laws 1989, ch. 387, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

#### **61-7A-8. Licensure by credentials. (Effective until July 1, 1996.)**

The board may license an applicant who is licensed as a dietitian, nutritionist or nutrition associate in another state, provided that in the judgment of the board the standards for licensure in that state are not less stringent than those provided for licensure in the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978].

**History:** Laws 1989, ch. 387, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

#### **61-7A-9. Provisional permit. (Effective until July 1, 1996.)**

A provisional permit to practice as a dietitian or nutritionist may be issued by the board upon the filing of an application and submission of evidence of successful completion of the education requirements. No fee in addition to the application and license fees shall be charged for the issuance of a provisional permit. The permit shall be valid only until the last day of the period for which it is issued or until the provisional permittee's [permittee's] application has been approved and a license issued, whichever is first.

**History:** Laws 1989, ch. 387, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

#### **61-7A-10. License renewal; continuing education requirements. (Effective until July 1, 1996.)**

A. Every person licensed under the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978] shall renew his license annually on or before the expiration date of the initial or renewal license.

B. The board shall issue a renewal license to the licensee upon receipt of the renewal application, the renewal fee and proof satisfactory to the board of compliance with continuing education requirements.

C. Continuing education requirements for licensees shall be established by the board, provided that:

(1) for dietitians, the requirements shall be those established by the commission; and

(2) for nutritionists and nutrition associates, at least seventy-five clock hours, or the equivalent, during a five-year period shall be required to be obtained in increments of fifteen clock hours annually or as otherwise permitted by the board.

D. Any person who allows his license to lapse by failing to renew his license within thirty days of expiration may be reinstated by the board and issued a renewal license upon submission of a renewal application with proof satisfactory to the board of compliance with the continuing education and other requirements of the Nutrition and Dietetics Practice Act and payment of the annual renewal fee and an additional reinstatement fee.

**History:** Laws 1989, ch. 387, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 47.

#### **61-7A-11. Fees. (Effective until July 1, 1996.)**

A. The board shall establish a schedule of reasonable fees for applications, licenses and renewal of licenses. Fees shall be established based on processing requirements for each category.

B. The initial application fee shall be set in an amount not to exceed fifty dollars (\$50.00).

C. The initial license fee shall be set in an amount not to exceed one hundred fifty dollars (\$150).

D. A license renewal fee shall be established in an amount not to exceed seventy-five dollars (\$75.00) per year.

E. A license reinstatement fee shall be established in an amount not to exceed fifty dollars (\$50.00).

**History:** Laws 1989, ch. 387, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-12. Nutrition and dietetics fund created; disposition; method of payment. (Effective until July 1, 1996.)**

A. There is created in the state treasury the "nutrition and dietetics fund", to be administered by the department under the supervision of the board.

B. All funds received or collected by the board or the department under the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978] shall be deposited with the state treasurer, who shall place the money to the credit of the nutrition and dietetics fund. No balance in the fund at the end of any fiscal year shall revert to the general fund.

C. Money in the nutrition and dietetics fund is appropriated to the board for the purpose of implementing and administering the provisions of the Nutrition and Dietetics Practice Act.

**History:** Laws 1989, ch. 387, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-13. Denial, suspension, revocation and reinstatement of licenses. (Effective until July 1, 1996.)**

A. The board may refuse to issue or renew or may deny, suspend or revoke any license held or applied for under the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15

NMSA 1978] in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] upon grounds that the licensee or applicant:

(1) is guilty of fraud or misrepresentation in the procurement of any license under the Nutrition and Dietetics Practice Act;

(2) is subject to the imposition of any disciplinary action by an agency of another state which regulates dietitians, nutritionists or nutrition associates but not to exceed the period or extent of that action;

(3) is convicted of a crime other than a misdemeanor. The record of conviction or a certified copy of it shall be conclusive evidence of the conviction;

(4) is grossly negligent or incompetent in his practice as a dietitian, nutritionist or nutrition associate;

(5) has failed to fulfill continuing education requirements;

(6) has violated or aided or abetted any person to violate any of the provisions of the Nutrition and Dietetics Practice Act or any rules or regulations duly adopted under that act; or

(7) has engaged in unethical or unprofessional conduct as defined in the code of ethics adopted by the board.

B. One year from the date of revocation of a license under the Nutrition and Dietetics Practice Act, application may be made to the board for restoration of the license. The board shall provide by regulation for the criteria governing application and examination for restoration of a revoked license.

**History:** Laws 1989, ch. 387, § 13.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

53 C.J.S. Licenses §§ 50 to 63.

### **61-7A-14. Penalty; enforcement. (Effective until July 1, 1996.)**

A. Violation of any provision of the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978] is a misdemeanor.

B. The department or the board may bring civil action in any district court to enforce any of the provisions of the Nutrition and Dietetics Practice Act.

**History:** Laws 1989, ch. 387, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-7A-15 NMSA 1978.

### **61-7A-15. Termination of agency life; delayed repeal. (Effective until July 1, 1996.)**

The board is terminated on July 1, 1995 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Nutrition and Dietetics Practice Act [61-7A-1 to 61-7A-15 NMSA 1978] until July 1, 1996. Effective July 1, 1996, the Nutrition and Dietetics Practice Act is repealed.

**History:** Laws 1989, ch. 387, § 15.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1989, ch. 387, § 17, provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 8 PODIATRY**

### **61-8-1. Short title. (Effective until July 1, 1998.)**

This act [61-8-1 to 61-8-16 NMSA 1978] may be cited as the "Podiatry Act".

**History:** 1953 Comp., § 67-6-1, enacted by Laws 1977, ch. 221, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Law reviews.** - For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

### **61-8-2. Definitions. (Effective until July 1, 1998.)**

As used in the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978]:

A. "board" means the board of podiatry;

B. "practice of podiatry" means engaging in that primary health care profession, the members of which examine, diagnose, treat and prevent by medical, surgical and mechanical means ailments affecting the human foot and ankle, and the structures governing their functions, but does not include amputation of the foot or the personal administration of a general anesthetic. A podiatrist, under the laws of this state, is defined as a foot or podiatric physician; and

C. "podiatry" and "podiatrist" are synonymous with the words "chiroprody" and "chiropridist."

**History:** 1953 Comp., § 67-6-2, enacted by Laws 1977, ch. 221, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 4.

70 C.J.S. Physicians, and Surgeons, and Other Health-Care Providers § 5.

### **61-8-3. License required. (Effective until July 1, 1998.)**

Unless licensed as a podiatrist under the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978], no person shall practice podiatry.

**History:** 1953 Comp., § 67-6-3, enacted by Laws 1977, ch. 221, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Cross-references.** - For Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

For prohibition against diagnosis or treatment of the foot by physician's assistant, see 61-6-9 NMSA 1978.

For prohibition against use of fluoroscopic or X-ray machine for shoe-fitting, see 74-3-14 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Regulation of chiropody, 45 A.L.R.4th 888.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 12.

#### **61-8-4. Persons exempted. (Effective until July 1, 1998.)**

The Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] shall not apply to:

- A. gratuitous services rendered in cases of emergency;
- B. the domestic administration of family remedies not involving remuneration;
- C. medical officers of the United States service in the actual performance of their official duties, nor shall the provisions of the Podiatry Act be so construed as to be in conflict with existing laws regulating the practice of the healing arts in this state;
- D. visiting podiatrists called into this state for consultation from another state, provided that such person is duly licensed and qualified in the state of his residence; such visitations, however, shall be limited in duration if in the opinion of the board, such person is actually engaging in the practice of podiatry in this state; and
- E. the fitting, recommending or sale of corrective shoes, arch supports or similar mechanical devices by retail dealers or manufacturers, provided that the representatives, agents or employees of such dealers or manufacturers do not diagnose, treat or prescribe mechanically or otherwise for any ailment, disease or deformity of the foot or leg.

**History:** 1953 Comp., § 67-6-4, enacted by Laws 1977, ch. 221, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

#### **61-8-4.1. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted under the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978].

**History:** 1978 Comp., § 61-8-4.1, enacted by Laws 1986, ch. 90, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Applicability.** - Laws 1986, ch. 90, § 2 makes the provisions of § 1 applicable to applications for licensure pending or submitted after January 1, 1986.

### **61-8-5. Board created; members; qualifications; terms; vacancies; removal. (Effective until July 1, 1998.)**

A. There is created a "board of podiatry". The board shall consist of five members, three of whom shall be podiatrists licensed to practice in New Mexico who have been members of the New Mexico podiatry society and actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments and two members who shall represent the public and who shall not have been licensed as podiatrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Members of the board required to be licensed podiatrists shall be appointed by the governor from a list of not more than five names for each vacancy submitted to him by the New Mexico podiatry society. Board members shall be appointed for staggered terms of five years each, made in such a manner that the terms of not more than two board members end on December 31 of each year commencing with 1978. Board members shall serve until their successors have been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor. All members of the state board of podiatry in office on the effective date of the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] shall serve out their unexpired terms.

C. The governor may remove any member from the board for neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for any reason which would justify the suspension or revocation of his license to practice podiatry.

D. No board member shall serve more than two consecutive full terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the secretary of the board shall immediately notify the governor, the board members and the New Mexico podiatry society of the

vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

**History:** 1953 Comp., § 67-6-5, enacted by Laws 1977, ch. 221, § 5; 1979, ch. 385, § 1; 1991, ch. 189, § 11.

## ANNOTATIONS

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, substituted "five members" for "four members" and "appointments and two members" for "appointment and one" and made related stylistic changes in the second sentence and made a minor stylistic change in Subsection B.

**"Effective date of the Podiatry Act".** - The phrase "effective date of the Podiatry Act", referred to in Subsection B, means July 1, 1977, the effective date of Laws 1977, ch. 221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 27 to 30, 36 to 44, 135 to 146, 154 to 169, 219 to 255.

73 C.J.S. Public Administrative Law and Procedure §§ 9, 13 to 14.

### **61-8-6. Board organization; meetings; compensation; powers and duties. (Effective until July 1, 1998.)**

A. The board shall meet annually in the month of June or July and shall elect a chairman, vice chairman and a secretary-treasurer from their membership, each of whom shall serve until his successor is selected and qualified.

B. The board shall hold a minimum of one examination for licensure each year in the month of June or July at such a place and at such a time as the board may designate. Notice of such examination shall be given to all applicants at least thirty days prior to the date of such examination. The board shall adopt and file in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] such regulations as it deems necessary to properly conduct its examinations and meetings.

C. Special meetings may be called by the chairman and shall be called upon the written request of any three board members. Notice of all regular meetings shall be made by regular mail at least ten days prior to such meeting and notification of special meetings shall be made by certified mail unless such notice is waived by the entire board and the action noted in the minutes.

D. Members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite

or allowance, except that the secretary-treasurer may receive an additional honorarium in an amount determined by the board.

E. The board shall:

- (1) administer and enforce the provisions of the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978];
- (2) adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act, all rules and regulations for the implementation and enforcement of the provisions of the Podiatry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on any matters within the board's jurisdiction;
- (5) keep an accurate record of all its meetings, receipts and disbursements;
- (6) keep a record of all examinations held, together with the names and addresses of all persons taking such examinations and the examination results; and within forty-five days after any examination the board shall give written notice, to each applicant examined, of the results of the examination as to the respective applicant;
- (7) certify as passing each applicant who obtains a grade of at least sixty percent on each subject upon which he is examined and an overall grade of seventy-five percent;
- (8) keep a book of registration in which the name, address and license number of all licensed podiatrists shall be recorded together with a record of all license renewals, suspensions and revocations;
- (9) grant, deny, renew, suspend or revoke licenses to practice podiatry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Podiatry Act;
- (10) adopt regulations setting standards of preliminary and professional qualifications for the practice of podiatry;
- (11) investigate, review and accredit any school or college of podiatric medicine requesting accreditation and meeting standards set by the board. Such standards shall provide that accreditation of a school or college of podiatric medicine by the council on podiatry education of the American podiatry association is a prerequisite to accreditation by the board;
- (12) adopt such regulations and prepare and administer such examinations for the licensure and regulation of podiatric hygienists as are necessary to protect the public. The regulations shall include definitions and limitations on the practice of podiatric hygienists, qualifications for applicants for licensure, a license fee in an amount not to

exceed ten dollars (\$10.00) per year, provisions for the regulation of podiatric hygienists and the suspension or revocation of licenses. The qualifications for an applicant for licensure shall require that the applicant has successfully completed at least one year of academic education in an institution accredited by the council on podiatry education of the American podiatry association or holds a current license as a registered nurse or a licensed practical nurse; and

(13) have the power to employ agents or attorneys.

**History:** 1953 Comp., § 67-6-6, enacted by Laws 1977, ch. 221, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 298 to 357, 431 to 435.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 114; 73A C.J.S. Public Administrative Law and Procedure §§ 114 to 171.

### **61-8-7. Disposition of funds; podiatry fund created; method of payments; bonds. (Effective until July 1, 1998.)**

A. There is created the "podiatry fund."

B. All funds received by the board and money collected under the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] shall be deposited with the state treasurer, who shall place the same to the credit of the podiatry fund.

C. All payments out of the podiatry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the podiatry fund shall be subject to the order of the board and shall be used only for the purpose of meeting the necessary expenses incurred in:

(1) the performance of the provisions of the Podiatry Act and the powers and duties imposed thereby; and

(2) the promotion of education and standards of practice in the field of podiatry in New Mexico within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the podiatry fund and shall continue to be available for use by the board in accordance with the provisions of the Podiatry Act. Balances at the end of

the fiscal year shall not revert, but shall remain in the podiatry fund for use in accordance with the provisions of the Podiatry Act.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

G. The secretary-treasurer shall make, at the end of each fiscal year, an itemized report to the governor of all receipts and disbursements of the board for that fiscal year, together with a report of the records and information required by the Podiatry Act. A copy of the annual report to the governor shall be presented to the board at its annual meeting in June or July.

**History:** 1953 Comp., § 67-6-7, enacted by Laws 1977, ch. 221, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

#### **61-8-8. Qualifications for licensure as a podiatrist. (Effective until July 1, 1998.)**

Each applicant for licensure as a podiatrist shall furnish evidence satisfactory to the board that the applicant:

A. has reached the age of majority;

B. is of good moral character and of temperate habits; and

C. has graduated and been awarded a doctor of podiatric medicine degree from a college of podiatric medicine approved and accredited by regulation of the board, and in the event the applicant applies for licensure under the provisions for reciprocity, he shall have been awarded a doctor of podiatric medicine degree from a school or college of podiatric medicine approved and accredited by the board which had a minimum course of study of four academic years of instruction or its equivalent leading to such degree.

**History:** 1953 Comp., § 67-6-8, enacted by Laws 1977, ch. 221, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to age of majority, see 28-6-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 43, 51 to 58, 61, 132.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

**61-8-9. Licensure by examination; licensure by reciprocity.  
(Effective until July 1, 1998.)**

A. An applicant for licensure by examination shall meet the qualifications set forth in Section 61-8-8 NMSA 1978; shall submit evidence to the board that he has successfully passed the examinations administered by the national board of podiatry examiners and furnish the board with an official transcript thereof; shall file his application under oath, on forms supplied by the board; and shall take such oral, clinical and written examinations as the board deems necessary. The examinations shall be in the English language, and the subjects covered by the examinations shall be determined by the board and taken from subjects taught in accredited colleges of podiatric medicine. The minimum requirements for licensing qualified applicants shall be an overall grade average of seventy-five percent and a grade of not less than sixty percent in any one subject.

B. An applicant for licensure by reciprocity shall meet the qualifications set forth in Section 61-8-8 NMSA 1978; shall file his application under oath on forms supplied by the board which conform to board regulations on reciprocity; shall furnish proof satisfactory to the board of his having been licensed by examination in another state which had qualifications equal to or exceeding those required in this state on the date of his original licensure; and shall satisfy the board that he holds the degree of doctor of podiatric medicine from a college of podiatric medicine approved by the board. In addition, each applicant for registration under the provisions for reciprocal licensure shall furnish the board an affidavit from his state board showing current registration and the fact that he has been licensed to practice podiatry and that he has practiced podiatry for at least five consecutive years immediately preceding the filing of his application for reciprocal privilege. The applicant shall further furnish an endorsement from his state podiatry association or society that the applicant has been a member in good standing of such state organization and also of the American podiatry association for at least three years immediately preceding the filing of his application, and the applicant shall also take and pass such oral and clinical examinations as the board deems necessary. The provisions of this paragraph shall be acceptable by the board in lieu of the written portion of the examination.

C. All applicants successfully passing the examinations shall be issued a license by the board upon the payment of the appropriate fee.

D. The board shall adopt such regulations as it deems necessary to conduct oral, clinical and written examinations and shall provide the necessary books, blanks and forms for the conduct of such examinations.

**History:** 1953 Comp., § 67-6-9, enacted by Laws 1977, ch. 221, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 60.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

### **61-8-10. License fees; licensure under prior law; renewal. (Effective until July 1, 1998.)**

A. Applicants for licensure as a podiatrist shall pay the following fees:

(1) for licensure by oral, clinical and such written examination as the board deems necessary, a fee set by the board in an amount not to exceed five hundred dollars (\$500);

(2) for licensure on the basis of reciprocity, a fee set by the board in an amount not to exceed five hundred dollars (\$500);

(3) for the issuance of a certificate of license, a fee set by the board in an amount not to exceed twenty-five dollars (\$25.00);

(4) for the annual renewal of license on or before January 1 of each year, a renewal fee set by the board in an amount not to exceed two hundred dollars (\$200);

(5) for the late renewal after January 1 of each year, a late charge not to exceed fifty dollars (\$50.00) per month or part thereof commencing on January 2;

(6) in addition to the renewal fees and late charges, the applicant for the renewal of a license shall pay a reinstatement fee not to exceed two hundred fifty dollars (\$250) for the first twelve months of delinquency and a reinstatement fee of five hundred dollars (\$500) for a license that has lapsed more than one year but not more than three years; and

(7) for the issuance of a temporary license, a fee not to exceed one hundred dollars (\$100).

B. If any licensee permits his license to lapse for a period of three full years, the license shall automatically be canceled and shall not be reinstated.

C. The provisions of Paragraphs (4), (5) and (6) of Subsection A of this section shall not apply to licensees who practice in the service of the United States whose licenses shall be renewed upon application for such renewal within three months after the termination of such service.

D. Current renewal certificates issued by the board shall be displayed in the office of the licensee, and, in the case of the suspension or revocation of a license, no portion of a fee or penalty shall be returned.

E. Any person licensed as a podiatrist under the provisions of any prior laws of New Mexico, whose license is valid on the effective date of the Podiatry Act, shall be held to be licensed under the provisions of the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] and shall be entitled to the biennial renewal of his current license as provided in that law.

**History:** 1953 Comp., § 67-6-10, enacted by Laws 1977, ch. 221, § 10; 1979, ch. 385, § 3; 1989, ch. 185, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective April 3, 1989, substituted "five hundred dollars (\$500)" for "one hundred twenty-five (\$125)" in Subsection A(1); substituted "five hundred dollars (\$500)" for "two hundred fifty dollars (\$250)" in Subsection A(2); substituted "twenty-five dollars (\$25.00)" for "fifteen dollars (\$15.00)" in Subsection A(3); in Subsection A(4) substituted "annual" for "biannual", deleted "even-numbered" preceding "year", and substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)", in Subsection A(5) substituted "January 1 of each year" for "December 31 of each odd-numbered year", substituted "charge not to exceed fifty dollars (\$50.00)" for "charge of five dollars (\$5.00)", and substituted "January 2" for "January 1 of the even-numbered year"; in Subsection A(6) substituted "fee not to exceed two hundred fifty dollars (\$250)" for "fee of twenty-five dollars (\$25.00)" and "fee of five hundred dollars (\$500)" for "fee of one hundred dollars (\$100)"; added Subsection A(7); substituted "current license" for "present license" in Subsection E; and deleted former Subsection F, relating to continuing education and post-graduate study requirements.

**"The effective date of the Podiatry Act".** - The phrase "effective date of the Podiatry Act", referred to in Subsection E, means July 1, 1977, the effective date of Laws 1977, ch. 221.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22, 26.

### **61-8-10.1. License renewal; continuing education; penalty for failure to renew. (Effective until July 1, 1998.)**

A. All licensees shall renew their licenses on or before January 1 of each year. Upon application for renewal, each licensee shall furnish evidence that he holds a registration number with the taxation and revenue department and has completed continuing education requirements as set forth in Subsection B of this section.

B. As a condition of renewal, all applicants must furnish the board with evidence of completion of post-graduate study as required by board regulation. Post-graduate study may be obtained from a college of podiatric medicine accredited by the American podiatry association, one of its constituent societies or affiliate organizations or other such courses approved by the board. This requirement may only be waived for reasons of prolonged illness or other incapacity.

C. The board may summarily suspend the license of any podiatrist who fails to renew his license or submit proof of completion of continuing education requirements within sixty days of January 1 as provided in Subsection A of this section. The board may reinstate licenses suspended upon payment of all applicable late fees, delinquent renewal fees and reinstatement fees.

**History:** 1978 Comp., § 61-8-10.1, enacted by Laws 1989, ch. 185, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

### **61-8-11. Suspension, revocation or refusal of license. (Effective until July 1, 1998.)**

The board may refuse to issue, or may suspend or revoke any license, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] for any one or more of the following reasons:

A. making a false statement in any affidavit required for an application for licensure, examination or registration under the provisions of the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978];

B. conviction of a crime involving moral turpitude, as shown by a certified copy of the record of the court of conviction;

C. the habitual indulgence in the use of narcotics, ardent spirits, stimulants or other substances which impair intellect and judgment to an extent as will, in the opinion of the board, incapacitate a podiatrist from the proper performance of his professional duties;

- D. lending the use of one's name to an unlicensed podiatrist;
- E. selling, giving or prescribing any compound or substance containing narcotic drugs or other controlled substances for illegal purposes;
- F. the willful betrayal of a professional confidence;
- G. soliciting the public in any manner prohibited by the Podiatry Act;
- H. use of advertising in any manner, except as permitted by Subsection B of Section 61-8-13 NMSA 1978;
- I. gross malpractice or incompetency as defined by board regulation; or
- J. any dishonest or unprofessional conduct defined by regulation of the board.

**History:** 1953 Comp., § 67-6-11, enacted by Laws 1977, ch. 221, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42, 53 to 57.

**61-8-12. Offenses; penalties. (Effective until July 1, 1998.)**

Each of the following acts committed by any person constitutes a misdemeanor, punishable upon conviction by a fine of not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or by imprisonment not to exceed one year or both:

A. practicing or attempting to practice podiatry without a current valid license issued by the board;

B. obtaining registration under the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] by false or untrue statements to the board or by presenting a fraudulent diploma or license to the board;

C. swearing falsely or giving a false affidavit in any proceeding before the board;

D. advertising or using any designation, diploma or certificate tending to imply that one is a practitioner of podiatry, including the use of the words "chiroprapist," "podiatrist," "M.Cp.," "D.S.C.," "D.P.M.," "foot specialist," "foot correctionist," "foot culturist," "foot practipedist," "foot treatments" or words of similar import, unless one holds a license or is exempted under the provisions of the Podiatry Act; or

E. practicing podiatry during any period of time in which one's license has been revoked or suspended as provided in the Podiatry Act.

**History:** 1953 Comp., § 67-6-12, enacted by Laws 1977, ch. 221, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 28, 33.

### **61-8-13. Unprofessional conduct; exceptions. (Effective until July 1, 1998.)**

A. It shall be considered unprofessional conduct under Subsection J of Section 61-8-11 NMSA 1978 for any podiatrist licensed under the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978] to:

(1) employ agents or procurers to secure patients or solicit patients from the public;

(2) advertise in newspapers, periodicals, telephone directories, streetcars or buses, motion picture theaters, circulars, booklets or on radio or television;

(3) contrive to obtain newspaper, magazine, radio or television comment in cases where the podiatrist is involved;

(4) boast of, claim or promise any radical or secret cures, treatments or remedies;

(5) advertise his professional capacity as a podiatrist or doctor in any shoe store or in or on any sign relating to footwear;

(6) use a fictitious name or designation to represent himself as a podiatrist or as a group or association of podiatrists, except that of a professional corporation organized under the laws of New Mexico or a registered partnership registered with the state of New Mexico. Any licensed podiatrist using a fictitious name for three years or more prior to the passage of the Podiatry Act may continue to conduct business under such name; or

(7) practice podiatry in conjunction with any barber shop, beauty parlor, bath house, shoe store, department store or any similar business.

B. Nothing in Subsection A of this section shall be construed to prohibit the following acts:

(1) publishing in type of ordinary size and style, as opposed to bold or display type, the name, location, office hours and telephone number of any licensed practicing podiatrist in any telephone directory;

(2) publishing for a period of not more than ten consecutive days an announcement that the practitioner is opening a new office or practice, providing that such announcement shall be published within thirty days after the opening and shall state only the practitioner's name, location, office hours, telephone number, his occupation and the fact of the opening and shall be of a size not to exceed two inches in length and four inches in width and of a type size not heavier nor larger than twelve point gothic, with a border not larger than four points;

(3) mailing one notice of the opening of a new practice or a notice of the assumption of an established practice consisting of a printed announcement which shall be in an envelope and shall state only the practitioner's name, location, telephone number, office hours and the designation "podiatrist," "foot specialist" or "practice limited to care of feet," and the usual language announcing the opening of an office;

(4) maintaining exterior signs about the office of the practitioner, in keeping with the medical and dental community, giving his name, address and occupation. The letters shall be no larger than six inches in height but neon lights, flashing lights or similar devices shall not be used; and

(5) conducting, in conjunction with a majority of the practicing podiatrists of the state or of a given city, a public educational program or informational campaign, provided that

such program or campaign is approved and endorsed by the state society and done in the name of the society.

**History:** 1953 Comp., § 67-6-13, enacted by Laws 1977, ch. 221, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to incorporation of podiatrists under the Professional Corporation Act, see 53-6-1 NMSA 1978.

**Listing of association.** - A listing in a telephone book of an association to practice podiatry was not advertising and did not violate former podiatry act. 1973 Op. Att'y Gen. No. 73-4.

**Podiatrist may not advertise in telephone book as a "foot clinic."** 1968 Op. Att'y Gen. No. 68-45.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 87, 89, 141 to 143.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 39, 53 to 57.

### **61-8-14. Limitation on licensure; temporary license. (Effective until July 1, 1998.)**

A. No license to practice podiatry shall be issued to a corporation, partnership or association, provided, however, that this subsection shall not prohibit licensed podiatrists from associating themselves in a professional corporation, partnership or association for the purpose of practicing podiatry.

B. In cases of emergency, the board may grant a temporary license to practice podiatry to persons meeting the requirements of Section 61-8-8 NMSA 1978, which license shall expire on the date of the next state board examination for licensure. No person may be issued more than one temporary license.

**History:** 1953 Comp., § 67-6-14, enacted by Laws 1977, ch. 221, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 53, 54, 150 to 152.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 26, 27.

**61-8-15. Privileged communications. (Effective until July 1, 1998.)**

A podiatric physician cannot be examined without the consent of his patient as to any communication made by his patient with reference to any actual or supposed physical disease or injury or as to any knowledge obtained by personal examination of such patient or of any advice given the patient in the course of his professional employment; nor shall a podiatric physician's secretary, assistant or clerk be examined without the consent of his employer concerning any fact, the knowledge of which such person has acquired in the capacity of secretary, assistant or clerk to a licensed podiatrist.

**History:** 1953 Comp., § 67-6-15, enacted by Laws 1977, ch. 221, § 15.

**ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170, 172.

**61-8-16. Power to enjoin violations. (Effective until July 1, 1998.)**

Upon conviction of any person for violation of any provision of the Podiatry Act [61-8-1 to 61-8-16 NMSA 1978], the board or any interested person may, in addition to the penalty herein provided, petition the district court for an order restraining and enjoining such person from further or continued violation of the Podiatry Act and the order may be enforced by contempt proceedings.

**History:** 1953 Comp., § 67-6-16, enacted by Laws 1977, ch. 221, § 16.

**ANNOTATIONS**

**Delayed repeals.** - See 61-8-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

**Severability clauses.** - Laws 1977, ch. 221, § 18, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123; 42 Am. Jur. 2d Injunctions § 127.

**61-8-17. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of podiatry is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 8 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 8 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-8-17, enacted by Laws 1979, ch. 385, § 2; 1981, ch. 241, § 21; 1985, ch. 87, § 6; 1991, ch. 189, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 12 amends this section to repeal Chapter 61, Article 8 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 9 PSYCHOLOGISTS**

### **61-9-1. Short title. (Effective until July 1, 1996.)**

This act may be cited as the "Professional Psychologist Act".

**History:** 1953 Comp., § 67-30-1, enacted by Laws 1963, ch. 92, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Professional Psychologist Act.** - The term "this act" refers to Laws 1963, ch. 92, which is compiled as 61-9-1, 61-9-3, 61-9-6 to 61-9-8, 61-9-10, 61-9-11, 61-9-12 to 61-9-18 NMSA 1978. Section 61-9-4.1 NMSA 1978, enacted in 1989, was enacted as part of the Professional Psychologist Act.

### **61-9-2. Legislative findings and purpose. (Effective until July 1, 1996.)**

A. The legislature finds that the practice of psychology affects the public health, safety and welfare and that appropriate regulation is necessary to protect the public.

B. It is the purpose of the Professional Psychologist Act to insure that the public is adequately protected from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

**History:** 1978 Comp., § 61-9-2, enacted by Laws 1989, ch. 41, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1989, ch. 41, § 2 repeals former 61-9-2 NMSA 1978, as enacted by Laws 1963, ch. 92, § 2, relating to declaration of purpose, and enacts the above section, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

Liability of hospital or clinic for sexual relationships with patients by staff physicians, psychologists, and other healers, 45 A.L.R.4th 289.

### **61-9-3. Definitions. (Effective until July 1, 1996.)**

As used in the Professional Psychologist Act:

A. "board" means the New Mexico state board of psychologist examiners;

B. "person" includes an individual, firm, partnership, association or corporation;

C. "psychologist" means any person who engages in the practice of psychology or holds himself out to the public by any title or description of services representing himself as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes himself as above and, under such title or description, offers to render or renders services involving the application of principles, methods and procedures of the science and profession of psychology to persons for compensation or other personal gain;

D. "practice of psychology" means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health, and further means the rendering of such psychological services to individuals, families or groups regardless of whether payment is received for services rendered. The practice of psychology includes, but is not limited to, psychological testing or neuropsychological testing and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis,

biofeedback, behavior analysis and therapy; diagnosis and treatment of any mental and emotional disorder or disability, alcoholism and substance abuse, disorders of habit or conduct and the psychological aspects of physical illness, accident, injury and disability; and psychoeducational evaluation, therapy, remediation and consultation; and

E. "school" or "college" means any university or other institution of higher learning offering a full-time graduate course of study in psychology, which is regionally accredited or whose accreditation as an institution of higher learning is recognized by the state department of public education or is satisfactory to the board.

**History:** 1953 Comp., § 67-30-3, enacted by Laws 1963, ch. 92, § 3; 1989, ch. 41, § 3; 1993, ch. 12, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, rewrote Subsection D, which formerly read "practice of psychology means the application of established methods or procedures of understanding, predicting or modifying behavior. The application of said principles includes counseling, guidance and behavior modification with individuals or groups with problems in the areas of work, family, school and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes skills; teaching or lecturing in psychology; and doing research on problems relating to human behavior; and in Subsection E inserted "which is regionally accredited or" and also inserted "public" preceding "education".

**The 1993 amendment,** effective July 1, 1993, inserted "engages in the practice of psychology or" in Subsection C and made a minor stylistic change.

**Effective dates.** - Laws 1993, ch. 12, § 5 provides that the effective date of the provisions of that act is contingent upon the enactment into law of house bill 234 of the forty-first legislature. House bill 234 was enacted as Laws 1993, ch. 119, and took effect July 1, 1993.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 11.

Physicians, Surgeons, and Other Health-Care Providers §§ 4, 5.

**61-9-4. Criminal offender's character evaluation. (Effective until July 1, 1996.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Professional Psychologist Act.

**History:** 1953 Comp., § 67-30-3.1, enacted by Laws 1974, ch. 78, § 31.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

#### **61-9-4.1. License required. (Effective until July 1, 1996.)**

A. Unless licensed to practice psychology under the Professional Psychologist Act, no person shall engage in the practice of psychology or use the title or represent himself as a psychologist or psychologist associate or use any other title, abbreviation, letters, signs or devices that indicate the person is a psychologist or psychologist associate.

B. Any person currently certified as a psychologist or psychologist associate on July 1, 1989 shall be deemed to be licensed as a psychologist or psychologist associate.

**History:** 1978 Comp., § 61-9-4.1, enacted by Laws 1989, ch. 41, § 4; 1993, ch. 12, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective July 1, 1993, inserted "engage in the practice of psychology or" in Subsection A.

**Effective dates.** - Laws 1993, ch. 12, § 5 provides that the effective date of the provisions of that act is contingent upon the enactment into law of house bill 234 of the forty-first legislature. House bill 234 was enacted as Laws 1993, ch. 119, and took effect July 1, 1993.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26 to 28, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12.

#### **61-9-5. State board of examiners; psychology fund. (Effective until July 1, 1996.)**

A. There is created a "New Mexico state board of psychologist examiners" consisting of eight members appointed by the governor who are residents of New Mexico and who shall serve for three-year staggered terms. The members shall be appointed as follows:

(1) four members shall be professional members who are licensed under the Professional Psychologist Act as psychologists. The governor shall appoint the professional members from a list of names nominated by the New Mexico psychological association, the state psychologist association and the New Mexico school psychologist association;

(2) one member shall be licensed under the Professional Psychologist Act as a psychologist or psychologist associate; and

(3) three members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

B. Each member shall hold office until the expiration of his appointed term or until a successor is duly appointed. When the term of each member ends, the governor shall appoint his successor for a term of three years. Any vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the unexpired term of the member. The governor may remove any board member for misconduct, incompetency or neglect of duty.

C. All money received by the board shall be credited to the "psychology fund", and a receipt for the same shall be kept by the secretary-treasurer of the board. The members of the board may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance. The secretary-treasurer may receive such salary as the board determines. The sums, together with all other incidental expenses of the board, shall be approved by the board and sent to the auditor for payment.

**History:** 1978 Comp., § 61-9-5, enacted by Laws 1989, ch. 41, § 5; 1993, ch. 251, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1989, ch. 41, § 5 repeals former 61-9-5 NMSA 1978, as amended by Laws 1981, ch. 239, § 1, relating to state board of examiners, and enacts the above section, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, increased the number of members from seven to eight in the introductory language; added "as psychologists" to the end of the first sentence and added "the state psychologist association and the New Mexico school psychologist association" to the end, in Paragraph (1); and added

present Paragraph (2), renumbering former Paragraph (2) as Paragraph (3) and making a related grammatical change, and in Subsection B, corrected a misspelling in the third sentence.

**Temporary provisions.** - Laws 1989, ch. 41, § 20, effective June 16, 1989, provides that the members of the state board of psychologist examiners appointed under 61-9-5 NMSA 1978 (Laws 1963, ch. 92, § 4, as amended) and who have terms remaining after the effective date of this act (June 16, 1989) shall remain as members of the board and serve out the balance of their terms, that the vacancies created by expiration of the terms of two members of the current board on June 30, 1989, seventh member of the board, added under the 1989 act, shall be a professional member appointed by the governor.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 27 to 30.

73 C.J.S. Public Administrative Law and Procedure § 9.

### **61-9-6. Board; meeting; powers. (Effective until July 1, 1996.)**

A. The board shall annually in the month of July, hold a meeting and elect from its membership a chairman and vice chairman. The board shall meet at such other times as it deems necessary or advisable or as deemed necessary and advisable by the chairman or a majority of its members or the governor. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board constitutes a quorum at any meeting or hearing.

B. The board is authorized to:

(1) adopt and from time to time revise such rules and regulations not inconsistent with the law as may be necessary to carry into effect the provisions of the Professional Psychologist Act. Such rules and regulations shall include but not be limited to a code of conduct for psychologists and psychologist associates in the state;

(2) employ, within the funds available, a secretary and other personnel necessary for the proper performance of its work under the Professional Psychologist Act;

(3) adopt a seal, and the secretary shall have the care and custody of the seal;

(4) examine for, approve, deny, revoke, suspend and renew the licensure of psychologist and psychologist associate applicants as provided in the Professional Psychologist Act;

(5) conduct hearings upon complaints concerning the disciplining of a psychologist or psychologist associate; and

(6) cause the prosecution and enjoinder of all persons violating the Professional Psychologist Act and incur necessary expenses therefor.

C. Within sixty days after the close of each fiscal year, the board shall submit a written or printed report, reviewed and signed by the board members, to the governor concerning the work of the board during the preceding fiscal year. The report shall include the names of all psychologists and psychologist associates to whom licenses have been granted; any cases heard and decisions rendered in relation to the work of the board; the recommendations of the board as to future policies; the names, remuneration and duties of any employees of the board; and an account of all money received and expended by the board.

**History:** 1953 Comp., § 67-30-5, enacted by Laws 1963, ch. 92, § 5; 1983, ch. 334, § 1; 1989, ch. 41, § 6.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "annually" for "within sixty days after the effective date of the Professional Psychologist Act and annually thereafter" in the first sentence; in Subsection B(1) inserted "and psychologist associates" in the second sentence; in Subsection B(4) substituted "licensure" for "certification"; and in Subsection C substituted "licenses" for "certificates" in the second sentence.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 298 to 357.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 171.

### **61-9-7. Fees; license renewal. (Effective until July 1, 1996.)**

A. All fees from applicants seeking licensure under the Professional Psychologist Act and all license renewal fees received under the Professional Psychologist Act shall be credited to the psychology fund. No fees shall be refunded.

B. The board shall set the charge for an application fee of up to three hundred dollars (\$300) to applicants for licensure under Sections 61-9-9 through 61-9-11.1 NMSA 1978.

C. Each licensee shall renew his license annually on or before July 1 by remitting to the board the renewal fee set by the board not exceeding three hundred dollars (\$300) and providing proof of continuing education as required by regulation of the board. Any license issued by the board may be suspended if the holder fails to renew his license by July 1 of any year. A license suspended for failure to renew may be renewed within a period of one year after the suspension upon payment of the renewal fee plus a late fee of one hundred dollars (\$100), together with proof of continuing education satisfactory to the board. The license shall be revoked if the license has not been renewed within one year of the suspension for failure to renew. Prior to issuing a new license, the board may in its discretion require full or partial examination of a former licensee whose license was revoked because of failure to renew.

**History:** 1953 Comp., § 67-30-6, enacted by Laws 1963, ch. 92, § 6; 1969, ch. 34, § 2; 1978, ch. 188, § 1; 1981, ch. 239, § 2; 1983, ch. 334, § 2; 1987, ch. 65, § 1; 1989, ch. 41, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, added "license renewal" at the end of the catchline; substituted "license" for "certificate" in the first sentence of Subsection A; substituted "licensure" for "certification" in Subsections A and B; and rewrote Subsection C.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 73 C.J.S. Public Administrative Law and Procedure § 8.

### **61-9-8. Records. (Effective until July 1, 1996.)**

A. The board shall keep a record of its proceedings and a register of all applications for licensure which shall show:

- (1) the name, age and residence of each applicant;
- (2) the date of the application;
- (3) the place of business of the applicant;
- (4) a summary of the educational and other qualifications of the applicant;
- (5) whether an examination was required;
- (6) whether a license was granted;

(7) the date of the action of the board; and

(8) such other information as may be deemed necessary or advisable by the board in aid of the requirements of this subsection.

B. The records of the board shall be public records, and evidence of the proceedings of the board set forth therein, duly certified by the secretary of the board and bearing the seal of the board, shall be admissible in evidence with the same force and effect as if the original were produced.

**History:** 1953 Comp., § 67-30-7, enacted by Laws 1963, ch. 92, § 7; 1989, ch. 41, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Cross-references.** - As to proof of official records, see Rule 1-044.

As to self-authentication of certified copies of public records, see Rule 11-902D.

**The 1989 amendment**, effective June 16, 1989, substituted "licensure" for "certifications" in the introductory paragraph of Subsection A; substituted "a license" for "certification" in Subsection A(6); and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees § 353.

73 C.J.S. Public Administrative Law and Procedure § 22.

### **61-9-9. Licensure of psychologists without examination. (Effective until July 1, 1996.)**

The board at its discretion may license without written examination any person who has been certified by the American board of examiners in professional psychology and who passes an oral examination as provided in Subparagraph (b) of Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978.

**History:** 1978 Comp., § 61-9-9, enacted by Laws 1989, ch. 41, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Repeals and reenactments.** - Laws 1989, ch. 41, § 9, repeals former 6-9-9 NMSA 1978, as amended by Laws 1973, ch. 54, § 1, relating to certification of psychologists

without examination, and enacts the above section, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 63; 63A Am. Jur. 2d Public Officers and Employees § 301.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23; 73 C.J.S. Public Administrative Law and Procedure § 60.

### **61-9-10. Licensure of psychologists from other areas. (Effective until July 1, 1996.)**

Upon application accompanied by such fee as is required by the Professional Psychologist Act, the board may, without written or oral examination, issue a license to any person who furnishes, upon a form and in such manner as the board prescribes, evidence satisfactory to the board that he is licensed or certified as a psychologist by another state, territorial possession of the United States, District of Columbia or Commonwealth of Puerto Rico if the requirements for such license or certification are deemed by the board equivalent to those contained in the Professional Psychologist Act.

**History:** 1953 Comp., § 67-30-9, enacted by Laws 1963, ch. 92, § 9; 1989, ch. 41, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted "Licensure" for "certification" in the catchline, substituted "license" for "certificate" near the beginning of the section, deleted "and where the state or territory has like reciprocal privileges for the state of New Mexico" at the end of the section, and made minor stylistic changes throughout the section.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Reciprocal licensing.** - If an applicant establishes under the board's uniform requirements for proving equivalence, that he has been duly licensed or certified as a psychologist by another state, and the other state has similar procedures for certifying a New Mexico psychologist, the state board of psychologist examiners may issue its certificate to that individual. 1969 Op. Att'y Gen. No. 69-136.

**Section does not require mutual reciprocity agreement** between New Mexico and another state before New Mexico may issue a certificate to a psychologist duly licensed under the laws of that other state. 1969 Op. Att'y Gen. No. 69-136.

All that this section requires is that the other state also provide in a similar manner for certification of an individual psychologist previously licensed in New Mexico. 1969 Op. Att'y Gen. No. 69-136.

### **61-9-11. Licensure; examination. (Effective until July 1, 1996.)**

A. The board shall issue a license as a psychologist to each applicant who files an application upon a form and in such manner as the board prescribes, accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that he:

(1) has reached the age of majority;

(2) is of good moral character;

(3) is not in violation of any of the provisions of the Professional Psychologist Act and the rules and regulations adopted pursuant to that act;

(4) holds a doctoral degree based in part on a psychological dissertation from a school or college as defined in the Professional Psychologist Act;

(5) has had an internship approved by the American psychological association and one year of experience after receiving the doctoral degree or has had, after receiving the doctoral degree, at least two years of experience in psychological work of a type satisfactory to the board; and

(6) demonstrates professional competence by passing:

(a) the examination for professional practice in psychology promulgated by the American association of state psychology boards with a minimum score equivalent to or greater than the statistical mean as reported by the American association of state psychology boards for all doctoral level candidates taking the examination on that occasion; and

(b) an oral examination administered and graded by the board, investigating the applicant's training, experience and knowledge of his area of practice. The oral examination shall be evaluated on a pass-fail basis.

B. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given annually at such time and place and under such

supervision as the board may determine and specifically at such other times as, in the opinion of the board, the number of applicants warrants.

D. In the event an applicant fails to receive a passing grade on the examination, he may apply for re-examination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act. An applicant who has failed two successive examinations may not reapply until after two years from the date of the last examination failed.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination.

**History:** 1953 Comp., § 67-30-10, enacted by Laws 1963, ch. 92, § 10; 1983, ch. 334, § 3; 1989, ch. 41, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, substituted "Licensure" for "Certification" in the catchline and "license" for "certification" in the introductory paragraph of Subsection A; substituted the present language of Subsection A(1) for "complies with the requirements of Subsections A, B and C of Section 61-9-9 NMSA 1978"; added present Subsections A(2) and A(3), redesignated former Subsection A(2) as present Subsection A(4); substituted Subsection A(5) for former Subsection A(3) which read "has had, after receiving the doctoral degree, at least two years of experience in psychological work of a type satisfactory to the board"; redesignated former Subsection A(4) as present Subsection A(6), while substituting all of present language of subparagraph (a) thereof beginning with "equivalent" for "of seventy-five percent correct"; and in Subsection B substituted "licensure" for "certification" in the first sentence.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 61.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

**61-9-11.1. Psychologist associates; licensure; examination.  
(Effective until July 1, 1996.)**

A. The board shall issue a license as a psychologist associate to each applicant who files an application upon a form and in such manner as the board prescribed, accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that he:

(1) has reached the age of majority, is of good moral character and is not in violation of any of the provisions of the Professional Psychologist Act and the rules and regulations adopted thereunder;

(2) holds a master's degree in psychology from a department of psychology of a school or college as defined in the Professional Psychologist Act;

(3) has had, after receiving the master's degree, at least five years of experience in psychological work of a type satisfactory to the board; and

(4) demonstrates professional competence by passing:

(a) the examination for professional practice in psychology promulgated by the American association of state psychology boards with a score equivalent to or greater than the statistical mean as reported by the American association of state psychology boards for all master's-level candidates taking the examination on that occasion; and

(b) an oral examination administered and graded by the board, investigating the applicant's training, experience and knowledge of his area of practice. The oral examination shall be evaluated on a pass-fail basis.

B. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure is satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given annually at such time and place and under such supervision as the board may determine and specifically at such other times as, in the opinion of the board, the number of applicants warrants.

D. In the event an applicant fails to receive a passing grade on the examination, he may apply for re-examination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act. An applicant who has failed two successive examinations may not reapply until after two years from the date of the last examination failed.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination.

F. The board may adopt reasonable rules and regulations classifying areas and conditions of practice permissible for psychologist associates.

**History:** 1978 Comp., § 61-9-11.1, enacted by Laws 1983, ch. 334, § 4; 1989, ch. 41, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted "licensure" for "certification" in the catchline; substituted "license" for "certification" in the introductory paragraph of Subsection A; substituted all of the present language of Subparagraph (a) of Subsection A(4) beginning with "score" for "minimum score of sixty percent correct"; and substituted "licensure" for "certification" in the first sentence of Subsection B.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

### **61-9-12. License. (Effective until July 1, 1996.)**

The board shall issue a license signed by the chairman and vice chairman of the board whenever an applicant for licensure successfully qualifies as provided for in the Professional Psychologist Act.

**History:** 1953 Comp., § 67-30-11, enacted by Laws 1963, ch. 92, § 11; 1989, ch. 41, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted "License" for "Certificate" in the catchline, substituted "license" for "certificate" and "licensure" for "certification", and deleted "therefor" following "qualifies".

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

### **61-9-13. Denial, revocation or suspension of license. (Effective until July 1, 1996.)**

A. The board, by an affirmative vote of at least four of its six members, shall withhold, deny, revoke or suspend any psychologist or psychologist associate license issued or applied for in accordance with the provisions of the Professional Psychologist Act or otherwise discipline a licensed psychologist or psychologist associate upon proof that the applicant, licensed psychologist or psychologist associate:

(1) has been convicted of a felony or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof;

(2) is using any drug, substance or alcoholic beverage to an extent or in a manner dangerous to himself, any other person or the public or to an extent that the use impairs his ability to perform the work of a professional psychologist or psychologist associate with safety to the public;

(3) has impersonated another person holding a psychologist or psychologist associate license or allowed another person to use his license;

(4) has used fraud or deception in applying for a license or in taking an examination provided for in the Professional Psychologist Act;

(5) has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(6) has allowed his name or license issued under the Professional Psychologist Act to be used in connection with any person who performs psychological services outside of the area of that person's training, experience or competence;

(7) is legally adjudicated insane or mentally incompetent, the record of such adjudication being conclusive evidence thereof;

(8) has willfully or negligently violated any of the provisions of the Professional Psychologist Act; or

(9) has violated any code of conduct adopted by the board.

B. Suspension by the board of the license of a psychologist or psychologist associate shall be for a period not exceeding one year.

C. A person who has been refused a license or whose license has been revoked under the provisions of this section may reapply for licensure after more than two years have elapsed from the date denial or revocation is legally effective.

**History:** 1953 Comp., § 67-30-12, enacted by Laws 1963, ch. 92, § 12; 1983, ch. 334, § 5; 1989, ch. 41, § 14.

## ANNOTATIONS

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted "license" for "certificate" in the catchline and throughout the section; in the introductory paragraph of Subsection A substituted "six members" for "five members" and "licensed psychologist" for "certified

psychologist"; substituted "drug, substance or" for "narcotic or any" in Subsection A(2); substituted "psychologist or psychologist associate license" for "psychology certificate" in Subsection A(3); made minor stylistic changes in Subsection A(6); and substituted "licensure" for "certification" in Subsection C.

**Scope of board's authority.** - Although a psychologist was merely an applicant for certification at the time he engaged in sex with his clients, under the supervision of a certified psychologist, the board had jurisdiction to revoke his certification. *Gares v. New Mexico Bd. of Psychologist Exmrs.*, 110 N.M. 589, 798 P.2d 190 (1990).

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Sexual relations: civil liability of doctor or psychologist for having sexual relationship with patient, 33 A.L.R.3d 1393.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42, 52.

### **61-9-14. Violation and penalties. (Effective until July 1, 1996.)**

A. It is a misdemeanor:

(1) for any person not licensed under the Professional Psychologist Act to practice psychology or to represent himself as a psychologist or a psychologist associate;

(2) for any person to practice psychology during the time that his license as a psychologist or psychologist associate is suspended, revoked or lapsed; or

(3) for any person otherwise to violate the provisions of the Professional Psychologist Act.

B. Such misdemeanor shall be punishable upon conviction by imprisonment for not more than three months or by a fine of not more than one thousand dollars (\$1,000) or

by both such fine and imprisonment. Each violation shall be deemed a separate offense.

C. Such misdemeanor shall be prosecuted by the attorney general of the state or any district attorney he designates.

**History:** 1953 Comp., § 67-30-13, enacted by Laws 1963, ch. 92, § 13; 1983, ch. 334, § 6; 1989, ch. 41, § 15; 1993, ch. 12, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, deleted "after eighteen months from the effective date of the Professional Psychologist Act" at the end of the introductory paragraph of Subsection A; substituted "licensed" for "certified" in Subsection A(1); in Subsection A(2) substituted "practice psychology during the time that his license" for "represent himself as a psychologist or psychologist associate during the time that his certification"; and in Subsection B substituted "one thousand dollars (\$1,000)" for "two hundred dollars (\$200)" in the first sentence.

**The 1993 amendment,** effective July 1, 1993, inserted "practice psychology or to" in Paragraph (1) of Subsection A.

**Effective dates.** - Laws 1993, ch. 12, § 5 provides that the effective date of the provisions of that act is contingent upon the enactment into law of house bill 234 of the forty-first legislature. House bill 234 was enacted as Laws 1993, ch. 119, and took effect July 1, 1993.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

### **61-9-15. Injunctive proceedings. (Effective until July 1, 1996.)**

A. The board may, in the name of the people of the state of New Mexico, through the attorney general of the state of New Mexico, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by the Professional Psychologist Act.

B. If it be established that the defendant has been or is committing an act declared to be a misdemeanor by the Professional Psychologist Act, the court, or any judge thereof, shall enter a decree perpetually enjoining said defendant from further committing such act.

C. In case of violation of any injunction issued under the provisions of this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court.

D. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in the Professional Psychologist Act provided.

**History:** 1953 Comp., § 67-30-14, enacted by Laws 1963, ch. 92, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient, 44 A.L.R.3d 24.

### **61-9-16. Scope of act. (Effective until July 1, 1996.)**

A. Nothing in the Professional Psychologist Act shall be construed to limit:

(1) the activities, services and use of an official title on the part of a person in the employ of a federal, state, county or municipal agency or of other political subdivisions or any educational institution chartered by the state insofar as such activities, services and use of any official title are a part of the duties of his office or position with the agency or institution; or

(2) the activities and services of a student, intern or resident in psychology pursuing a course of study in psychology at a school or college if these activities and services constitute a part of his supervised course of study and no fee is charged directly by the student, intern or resident.

B. Nothing in the Professional Psychologist Act shall in any way restrict the use of the term "social psychologist" by any person who has received a doctoral degree in sociology or social psychology from an institution whose credits in sociology or social

psychology are acceptable by a school or college and who has passed comprehensive examinations in the field of social psychology as a part of the requirements for the doctoral degree or has had equivalent specialized training in social psychology and who has notified the board of his intention to use the term "social psychologist" and filed a statement of the fact demonstrating his compliance with this subsection. A social psychologist shall not practice in any psychological specialty outside that of social psychology without complying with the provisions of the Professional Psychologist Act.

C. Lecturers in psychology from any school or college may utilize their academic or research titles when invited to present lectures to institutions or organizations.

D. Nothing in the Professional Psychologist Act prohibits qualified members of other professional groups who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes, but they shall not hold themselves out to the public by any title or description of services that would lead the public to believe that they are psychologists, and they shall not state or imply that they are licensed to practice psychology.

E.

(1) Nothing in the Professional Psychologist Act shall be construed to prevent an alternative, metaphysical or holistic practitioner from engaging in non-clinical activities consistent with the standards and codes of ethics of that practice.

(2) Specifically exempted from this act are:

(a) alcohol or drug abuse counselors working under appropriate supervision for a nonprofit corporation, association or similar entity;

(b) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(c) duly ordained, commissioned or licensed ministers of a church; lay pastoral-care assistants; science of mind practitioners providing uncompensated counselor or therapist services on behalf of a church; and Christian science practitioners;

(d) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(e) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing nonclinical services from July 1, 1994 to June 30, 1998;

(f) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors, from July 1, 1994 to June 30, 1998; and

(g) practitioners of Native American healing arts.

**History:** 1953 Comp., § 67-30-15, enacted by Laws 1963, ch. 92, § 15; 1989, ch. 41, § 16; 1993, ch. 12, § 4.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection A(1) substituted "the agency or institution" for "such agency or institution or a private agency or business in which the psychological services performed are the requirements of a salaried position, provided that such private agency or business does not charge a fee for such services"; deleted former Subsection B, relating to employment of psychologists by corporations, partnerships or business associations; redesignated former Subsection C as present Subsection B and made a minor stylistic change therein; redesignated former Subsection D as present Subsection C; and added present Subsection D.

**The 1993 amendment**, effective July 1, 1993, deleted "as defined in the Professional Psychologist Act" following "college" in Paragraph (2) of Subsection A, in the first sentence of Subsection B, and in Subsection C; in Subsection D, substituted "who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes" for "from engaging in activities consistent with the standards and ethics of their respective professions"; and added Subsection E.

**Effective dates.** - Laws 1993, ch. 12, § 5 provides that the effective date of the provisions of that act is contingent upon the enactment into law of house bill 234 of the forty-first legislature. House bill 234 was enacted as Laws 1993, ch. 119, and took effect July 1, 1993.

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 63, 132.

Validity of legislation regulating licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

### **61-9-17. Drugs; medicines. (Effective until July 1, 1996.)**

Nothing in the Professional Psychologist Act shall be construed as permitting psychologists or psychologist associates licensed under the Professional Psychologist Act to administer or prescribe drugs or medicine or in any manner engage in the practice of medicine as defined by the laws of this state.

**History:** 1953 Comp., § 67-30-16, enacted by Laws 1963, ch. 92, § 16; 1983, ch. 334, § 7; 1989, ch. 41, § 17.

## ANNOTATIONS

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**Cross-references.** - For definition of "practice of medicine," see 61-6-15, 61-6-16 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, substituted "licensed" for "certified".

**Professional Psychologist Act.** - See 61-9-1 NMSA 1978 and notes thereto.

**Law reviews.** - For case note, "WORKERS' COMPENSATION LAW: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 36, 50.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 15, 26, 27.

### **61-9-18. Privileged communications. (Effective until July 1, 1996.)**

A licensed psychologist or psychologist associate shall not be examined without the consent of his client as to any communication made by the client to him or his advice given in the course of professional employment; nor shall a licensed psychologist's or psychologist associate's secretary, stenographer, clerk or any person supervised by the psychologist or psychologist associate be examined without the consent of his employer concerning any fact the knowledge of which he has acquired in such capacity.

**History:** 1953 Comp., § 67-30-17, enacted by Laws 1963, ch. 92, § 17; 1983, ch. 334, § 8; 1989, ch. 41, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-9-19 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, twice substituted "licensed psychologist" for "certified psychologist", and substituted "clerk or any person supervised by the psychologist or psychologist associate" for "or clerk".

**Law reviews.** - For case note, "WORKERS' COMPENSATION LAW: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation:

Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170.

Privilege, judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

### **61-9-19. Termination of agency life; delayed repeal. (Effective until July 1, 1996.)**

The New Mexico state board of psychologist examiners is terminated on July 1, 1995 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 9 NMSA 1978 until July 1, 1996. Effective July 1, 1996, Article 9 of Chapter 61 NMSA 1978 is repealed.

**History:** 1953 Comp., § 67-30-18, enacted by Laws 1978, ch. 188, § 2; 1981, ch. 241, § 22; 1985, ch. 87, § 7; 1989, ch. 41, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 41, § 19 amends this section to repeal Chapter 61, Article 9 NMSA 1978, effective July 1, 1996.

**The 1989 amendment,** effective June 16, 1989, substituted "1995" for "1991" in the first sentence, and substituted "1996" for "1992" in the second and third sentences.

## **ARTICLE 9A COUNSELING AND THERAPY**

### **61-9A-1. Short title. (Effective until July 1, 2000.)**

Sections 1 through 30 [61-9A-1 through 61-9A-30 NMSA 1978] of this act may be cited as the "Counseling and Therapy Practice Act".

**History:** Laws 1993, ch. 49, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

## **61-9A-2. Purpose. (Effective until July 1, 2000.)**

In the interest of public health, safety and welfare and to protect the public from unprofessional, improper, incompetent and unlawful counseling and therapy practice, it is necessary to provide laws and regulations to govern the practice of counseling and therapy. The primary responsibility and obligation of the counseling and therapy practice board is to protect the public.

**History:** Laws 1993, ch. 49, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

## **61-9A-3. Definitions. (Effective until July 1, 2000.)**

As used in the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978]:

A. "accredited institution" means a university or college, accredited by a nationally recognized accrediting agency of institutions of higher education, or an approved institution or program as determined by the board;

B. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievements, interests, personal characteristics and current emotional or mental state by appropriately educated, trained and experienced clinicians and the use of nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to or changing life situations of a physical, mental or emotional nature;

C. "appropriate supervision" means supervision by a professional clinical mental health counselor, professional mental health counselor, marriage and family therapist, professional art therapist, psychiatrist, psychologist, social worker, psychiatric nurse or other similar supervision approved by the board;

D. "board" means the counseling and therapy practice board;

E. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, group dynamics and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of treating psychopathology and promoting optimal mental health;

F. "consulting" means the application of scientific principles and procedures in psychotherapeutic counseling, guidance and human development to provide assistance in understanding and solving a problem that the consultee may have in relation to a third party;

G. "counseling" means the application of scientific principles and procedures in therapeutic counseling, guidance and human development to provide assistance in understanding and solving a mental, emotional, physical, social, moral, educational, spiritual or career development and adjustment problem that a client may have;

H. "counselor and therapist practice" means the practice of professional art therapy, professional clinical mental health counseling, professional mental health counseling and marriage and family therapy;

I. "counselor and therapist practitioners" means professional art therapists, professional clinical mental health counselors, professional mental health counselors and marriage and family therapists, as a group;

J. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

K. "marital and family therapy" means the diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marital and family systems;

L. "marriage and family therapist" means an individual who engages in the practice of marriage and family therapy;

M. "mental disorder" means any of several conditions or disorders that meet the diagnostic criteria contained in the diagnostic and statistical manual of the American psychiatric association or the world health organization's international classification of diseases manual;

N. "practice of art therapy" means the rendering to individuals, families or groups, services that use art media as a means of expression and communication to promote perceptive, intuitive, affective and expressive experiences that alleviate distress, reduce physical, emotional, behavioral and social impairment and lead to growth or reintegration of one's personality. Art therapy services include, but are not limited to, diagnostic evaluation, development of patient treatment plans, goals and objectives, case management services and therapeutic treatment;

O. "practice of marriage and family therapy" means the rendering of marital and family therapy services to individuals, family groups and marital couples, singly or in groups. The "practice of marriage and family therapy" involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, marital couples and families and involves the presence of a

diagnosed mental or physical disorder in at least one member of the couple or family being treated;

P. "practice of professional clinical mental health counseling" means the rendering of mental health counseling to individuals, couples, families or groups and the diagnosis and treatment of mental and emotional disorders, including psychopathology as defined by the American psychiatric association or the world health organization. "Practice of professional clinical mental health counseling" includes, but is not limited to, development of patient treatment plans, goals and objectives, case management services, therapeutic treatment, research and clinical mental health appraisal, consulting, counseling and referral as defined by regulation of the board;

Q. "practice of professional mental health counseling" means the rendering of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including, but not limited to, consulting, counseling and referral as defined by regulation of the board;

R. "practice of registered mental health counseling" means the rendering, under appropriate supervision, of a therapeutic counseling service that integrates a wellness and multicultural model of human behavior involving certain methods and techniques of appraisal, including, but not limited to, consulting, counseling and referral as defined by regulation of the board;

S. "professional art therapist" means an individual who engages in the practice of art therapy;

T. "professional clinical mental health counselor" means an individual who engages in the independent practice of professional clinical mental health counseling without supervision;

U. "professional mental health counselor" means an individual who engages in the practice of professional mental health counseling without supervision;

V. "referral" means the evaluation of information to identify needs of the person being counseled to determine the advisability of sending the person being counseled to other specialists, informing the person being counseled of such judgment and communicating the information to other counseling services as deemed appropriate; and

W. "registered mental health counselor" means an individual who is certified by the board and is authorized by the board to engage in the practice of mental health counseling under appropriate supervision.

**History:** Laws 1993, ch. 49, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-4. License or certificate required. (Effective until July 1, 2000.)**

After July 1, 1994, unless licensed or certified to practice under the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], no person shall engage in the practice of:

- A. professional mental health counseling;
- B. professional clinical mental health counseling;
- C. marriage and family therapy;
- D. professional art therapy; or
- E. counseling as a registered mental health counselor.

**History:** Laws 1993, ch. 49, § 4.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-5. Scope of practice. (Effective until July 1, 2000.)**

For the purpose of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor if he advertises; offers himself to practice; is employed in a position described as professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor; or holds out to the public or represents in any manner that he is licensed or certified to practice as such in this state.

**History:** Laws 1993, ch. 49, § 5.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-6. Exemptions. (Effective until July 1, 2000.)**

A. Nothing in the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] shall be construed to prevent:

(1) any individual who is licensed, certified, or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of his profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in non-clinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from this act are:

(1) elementary and secondary school counselors acting on behalf of their employer, who are otherwise regulated;

(2) alcohol or drug abuse counselors working under appropriate supervision for a nonprofit corporation, association or similar entity;

(3) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(4) duly ordained, commissioned or licensed ministers of a church, or lay pastoral-care assistants providing pastoral services on behalf of a church;

(5) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(6) hypnotherapists certified by the American council of hypnotist examiners or the southwest hypnotherapists examining board, providing non-clinical services from July 1, 1994 to June 30, 1998;

(7) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors, from July 1, 1994 to June 30, 1998;

(8) practitioners of Native American healing arts; and

(9) state employees at the discretion of the department secretary.

**History:** Laws 1993, ch. 49, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-7. Board created; members; appointment; terms; compensation. (Effective until July 1, 2000.)**

A. There is created the "counseling and therapy practice board", which is administratively attached to the department.

B. The board shall consist of eight members who are United States citizens and have been New Mexico residents for at least five years prior to their appointment. Of the eight members:

(1) four members shall be professional members who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist and a professional art therapist licensed under the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], and shall have engaged in a counselor and therapist practice for at least five years. These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the board nor shall they be school owners. The initial four professional members shall meet requirements for licensure and be licensed within one year after the effective date of the Counseling and Therapy Practice Act. The professional mental health counselor shall also represent the registered mental health counselors; and

(2) four members shall represent the public. The public members shall not have been licensed or have practiced as counselor or therapist practitioners or in any other regulated mental health profession, nor have any significant financial interest, either direct or indirect, in the professions regulated.

C. All members of the board shall be appointed by the governor for staggered terms of four years, except that the initial board shall be appointed so that the terms of one professional and one public member expire June 30, 1994, one professional and one public member expire June 30, 1995, one professional and one public member expire on June 30, 1996 and one professional and one public member expire June 30, 1997. Each member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms.

D. The governor may appoint professional board members from a list of nominees submitted by qualified individuals and organizations, including the New Mexico

counseling association, the New Mexico association for marriage and family therapy and the New Mexico art therapy association.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. The board shall elect annually from its membership a chairman and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet at least twice a year and at other times deemed necessary. Other meetings may be called by the chairman upon the written request of three members of the board. A simple majority of the board members shall constitute a quorum of the board.

**History:** Laws 1993, ch. 49, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**Temporary provisions.** - Laws 1993, ch. 49, § 32, effective July 1, 1993, provides that the initial counseling and therapy practice board members shall be appointed by the governor no later than July 1, 1993.

### **61-9A-8. Department duties. (Effective until July 1, 2000.)**

The department, with the consultation of the board, shall:

A. process applications and conduct and review the required examinations;

B. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978];

C. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices which may violate the provisions of that act;

D. hire staff as necessary to carry out the provisions of the Counseling and Therapy Practice Act;

E. maintain records, including financial records; and

F. maintain a current register of licensees and registrants as a matter of public record.

**History:** Laws 1993, ch. 49, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-9. Board; powers and duties. (Effective until July 1, 2000.)**

A. The board shall have the power to:

(1) adopt in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] and file in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] rules and regulations necessary to carry out the provisions of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978];

(2) select and provide for the administration of at least semiannually, examinations for licensure;

(3) establish by rule the passing scores for examinations;

(4) deny, suspend or revoke a license or certificate of registration in accordance with the Uniform Licensing Act;

(5) censure, reprimand or place a licensee or registrant on probation for a period not to exceed one year;

(6) require and establish criteria for continuing education;

(7) establish by rule procedures for receiving, investigating and resolving complaints;

(8) approve appropriate supervision and postgraduate experience for persons seeking licensure or certification;

(9) provide for the issuance of licenses and certificates of registration;

(10) determine eligibility of individuals for licensure or certification;

(11) set fees for administrative services, licenses and certificates of registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(12) establish criteria for supervision of registered mental health counselors and professional mental health counselors in training to become professional clinical mental health counselors;

(13) adopt rules implementing an "impaired counselor and therapist practitioner treatment program";

(14) approve supervisors for registered mental health counselors and professional mental health counselors in training to become clinical mental health counselors; and

(15) establish professional codes of ethics, except for registered mental health counselors, who shall adhere to the professional mental health counselor code of ethics.

B. The board may establish a standards committee for each licensed profession. The members of each standards committee shall be appointed by the board with the consent of the department and shall include at least one board member from the licensed profession and at least one public board member. The board member representing each respective profession shall chair its standards committee and the committee shall:

(1) recommend a professional code of ethics;

(2) review license applications and recommend approval or disapproval;

(3) develop criteria for supervision;

(4) recommend rules and regulations;

(5) create long-term professional development goals; and

(6) periodically review the professional code of ethics.

C. Members of the standards committees may be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance. These members shall not hold any elected office in any professional organization of counseling, psychology or closely related field during their tenure on the standards committees.

**History:** Laws 1993, ch. 49, § 9.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-10. Professional mental health counselor; requirements for licensure. (Effective until July 1, 2000.)**

The board shall issue a license as a professional mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution. The board may approve, on a case-by-case basis, applicants who have a master's degree or doctoral degree from non-accredited institutions;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate supervision consisting of at least one hundred supervision hours.

**History:** Laws 1993, ch. 49, § 10.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-11. Professional clinical mental health counselor; requirements for licensure. (Effective until July 1, 2000.)**

The board shall issue a license as a professional clinical mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree in counseling or an allied mental health field from an accredited institution. Effective July 1, 1998, the applicant must have a master's degree and a total of sixty graduate hours or more. The board may approve applicants

who have a master's degree or doctoral degree from nonaccredited or foreign institutions on a case-by-case basis;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has a minimum of two years of postgraduate professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of face-to-face supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum.

**History:** Laws 1993, ch. 49, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-12. Marriage and family therapist; requirements for licensure. (Effective until July 1, 2000.)**

The board shall issue a license as a marriage and family therapist to any person who files a completed application accompanied by the required fees, and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a master's or doctoral degree with a focus in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board; and

D. has a minimum of two years of postgraduate marriage and family therapy experience consisting of one thousand client contact hours and two hundred hours of appropriate supervision, of which one hundred hours of such supervision was on an individual basis.

**History:** Laws 1993, ch. 49, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-13. Professional art therapist; requirements for licensure. (Effective until July 1, 2000.)**

The board shall issue a license as a professional art therapist to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. demonstrates professional competency by satisfactorily passing an examination as prescribed by the board;

C. holds either:

(1) a master's or doctoral degree in art therapy, that includes seven hundred hours of supervised internship experience from an accredited institution. The board may on a case-by-case basis approve applicants who hold a master's degree or a doctoral degree from non-accredited institutions; or

(2) a master's degree in a counseling related field and has a minimum of twenty-one semester hours of sequential course work in the history, theory and practice of art therapy, and has completed seven hundred hours of supervised internship experience from an accredited institution. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and

D. has completed one thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (1) of Subsection C of this section, or two thousand client contact hours of postgraduate experience under appropriate supervision beyond the requirements in Paragraph (2) of Subsection C of this section. Supervision must be under a nationally registered art therapist for at least fifty percent of the working hours.

**History:** Laws 1993, ch. 49, § 13.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-14. Requirements for registered mental health counselor. (Effective until July 1, 2000.)**

The board shall issue a certificate of registration as a mental health counselor to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. has obtained a master's or doctoral degree in counseling or an allied mental health field. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and

C. has arranged for a board-approved supervisor and a postgraduate experience plan for working under the appropriate supervision to meet marriage and family therapist, professional art therapist or professional mental health counselor requirements for licensure.

**History:** Laws 1993, ch. 49, § 14.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-15. Examinations. (Effective until July 1, 2000.)**

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examination following the approval of the application. The board shall establish by rule the examination application deadline and the requirements for re-examination if the applicant has failed the examination.

B. The examination shall cover subjects appropriate to the scope of practice as a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist or a professional art therapist.

**History:** Laws 1993, ch. 49, § 15.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

## **61-9A-16. Temporary licensure. (Effective until July 1, 2000.)**

Prior to examination, an applicant for licensure may obtain a temporary license to engage in any counselor and therapist practice if the person meets all of the requirements, except examination, provided for in Section 10, 11, 12, 13 or 14 of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978]. The temporary license shall be valid no more than thirty days after the results of the next examination become available. At that time, should the individual fail to take or pass that examination, the temporary license shall automatically expire.

**History:** Laws 1993, ch. 49, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

## **61-9A-17. Licensure without examination; professional mental health counselor. (Effective until July 1, 2000.)**

An applicant for licensure as a professional mental health counselor may be licensed as a professional mental health counselor without examination, if the applicant files an application within one year from the effective date of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] accompanied by the required fees and if:

- A. the board determines that the applicant meets all other requirements for licensure as a professional mental health counselor;
- B. at least two years immediately preceding the effective date of licensure, the applicant has a master's degree and has been employed in a public or private agency, or self-employed under the title of counselor or held a similar title in a position primarily involving the practice of professional counseling; or
- C. the board determines that the applicant:
  - (1) meets the education requirements of either a baccalaureate degree in:
    - (a) counseling or a related mental health field from a university or college that was accredited at the time the degree was awarded and provides proof satisfactory to the board of an additional sixty contact hours of professional training deemed appropriate by the board; or

(b) any other field from a university or college that was accredited at the time the degree was awarded and provides proof satisfactory to the board of an additional one hundred eighty contact hours of professional training deemed appropriate by the board;

(2) meets experience and appropriate supervision requirements as follows:

(a) has been engaged in a full-time counseling practice of at least twenty hours per week for at least six consecutive years prior to application to the board; or

(b) has acquired six thousand client contact hours primarily in the provision of counseling; and

(3) has completed at least two hundred hours under appropriate supervision by June 30, 1994.

**History:** Laws 1993, ch. 49, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-18. Licensure without examination; professional clinical mental health counselor. (Effective until July 1, 2000.)**

An applicant for licensure as a professional clinical mental health counselor may be licensed without examination if the applicant files an application within one year of the effective date of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], accompanied by the required fees and if the board determines that the applicant meets all other requirements for licensure as a professional clinical mental health counselor.

**History:** Laws 1993, ch. 49, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-19. Licensure without examination; marriage and family therapist. (Effective until July 1, 2000.)**

An applicant for licensure as a marriage and family therapist may be licensed without examination if the applicant files a completed application within one year of the effective date of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], accompanied by the required fees, and if the board determines the applicant meets all other requirements for licensure as a marriage and family therapist.

**History:** Laws 1993, ch. 49, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-20. Licensure without examination; professional art therapist. (Effective until July 1, 2000.)**

An applicant for licensure as a professional art therapist may be licensed without examination if the applicant files a completed application within one year of the effective date of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], accompanied by the required fees, and if the board determines that the applicant meets all other requirements for licensure as a professional art therapist.

**History:** Laws 1993, ch. 49, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-21. Certification without examination; registered mental health counselor. (Effective until July 1, 2000.)**

An applicant for certification as a registered mental health counselor may be certified as a registered mental health counselor if the applicant files an application within one year from the effective date of the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978], accompanied by the required fees and if:

A. the board determines the applicant meets all other requirements for certification as a registered mental health counselor; or

B. the board determines that the applicant:

(1) meets the education requirements of a baccalaureate degree in either:

(a) counseling, psychology or a closely related field from an accredited institution and provides proof satisfactory to the board of an additional sixty contact hours of professional training deemed appropriate by the board; or

(b) any other field from an accredited institution and provides proof satisfactory to the board of an additional one hundred eighty contact hours of professional training deemed appropriate by the board;

(2) is certified as competent to the board by at least three persons who qualify to provide appropriate supervision, and has:

(a) been engaged in a full-time counseling practice of at least twenty hours per week for at least four consecutive years prior to application to the board; or

(b) acquired four thousand client contact hours primarily in the profession of counseling; and

(3) has completed at least two hundred hours under appropriate supervision by July 1, 1994.

Applicants certified under the provisions of this section are exempted from the supervision requirements set forth in Section 14 of the Counseling and Therapy Practice Act.

**History:** Laws 1993, ch. 49, § 21.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-22. Licensure by credentials. (Effective until July 1, 2000.)**

The board may license an applicant without examination if the person possesses a valid regulatory document issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation that in the judgment of the board has requirements substantially equivalent to or exceeding those in the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978].

**History:** Laws 1993, ch. 49, § 22.

## ANNOTATIONS

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-23. License and certificate renewal. (Effective until July 1, 2000.)**

A. Each licensee or registrant shall renew his license or certificate of registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. Licensees with even numbered licenses shall renew in even numbered years. Licensees with odd numbered licenses shall renew in odd numbered years. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. A ninety-day grace period shall be allowed each licensee or registrant after the license or registration period, during which time licenses and certificates may be renewed upon payment of the renewal fee, the late fee, and compliance with all renewal requirements.

C. Any license or certificate granted by the board shall be automatically suspended if the holder fails to apply for the renewal license or certificate provided for in this section within a period of three months after the renewal deadline; provided that any license so suspended may be restored by the board upon payment of a reinstatement fee not to exceed one hundred dollars (\$100) in addition to any unpaid renewal or late fees. Failure to renew a license or certificate within three months from the date of suspension as provided in this section shall cause the license or certificate to be automatically revoked. Reinstatement of a revoked license or certificate will require the licensee to reapply and meet all current standards for licensure or certification.

D. A person licensed or certified under the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] who wishes to retire from practice shall notify the board in writing before the expiration of his current license or certificate. If, within a period of five years from the year of retirement, the licensee wishes to resume practice, he shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by regulation of the board and the payment of an amount equivalent to all lapsed renewal fees, his license or certificate shall be restored to him in full effect.

**History:** Laws 1993, ch. 49, § 23.

## ANNOTATIONS

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-24. License and certification fees. (Effective until July 1, 2000.)**

Applicants for licensure or certification shall pay biennial fees set by the board in an amount not to exceed:

A. for application for initial licensure or certification, seventy-five dollars (\$75.00) which is not refundable;

B. for licensure or renewal as a professional mental health counselor, three hundred dollars (\$300);

C. for licensure or renewal as a clinical mental health counselor, marriage and family therapist or art therapist, four hundred twenty dollars (\$420);

D. for certification or renewal as a registered mental health counselor, two hundred forty dollars (\$240);

E. for all examinations, seventy-five dollars (\$75.00), or, if a national examination is used, an amount that shall not exceed the national examination costs by more than twenty-five percent;

F. for a duplicate or replacement license or certificate, twenty-five dollars (\$25.00);

G. for failure to renew a license or certificate within the allotted grace period, a late penalty fee not to exceed one hundred dollars (\$100); and

H. reasonable administrative fees.

**History:** Laws 1993, ch. 49, § 24.

**ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**61-9A-25. Fund created. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "counseling and therapy practice board fund".

B. All money received by the board under the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] shall be deposited with the state treasurer for credit to the counseling and therapy practice board fund. The state treasurer shall invest the fund as all other state funds are invested and income from investment of the fund shall be credited to the fund. Balances in the fund remaining at the end of any fiscal year shall not revert to the general fund.

C. Money in the counseling and therapy practice board fund is appropriated to the board and shall be used for the purpose of carrying out the provisions of the Counseling and Therapy Practice Act.

**History:** Laws 1993, ch. 49, § 25.

### ANNOTATIONS

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

### **61-9A-26. License and registration; denial, suspension and revocation. (Effective until July 1, 2000.)**

A. In accordance with the procedures established by the Uniform Licensing Act, the board may deny, suspend or revoke any license or certificate held or applied for under the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] upon grounds that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certificate provided for in the Counseling and Therapy Practice Act;

(2) is adjudicated mentally incompetent by regularly constituted authorities;

(3) is found guilty of a felony or misdemeanor involving moral turpitude;

(4) is found guilty of unprofessional or unethical conduct;

(5) has been using any controlled substances, as defined in the Controlled Substances Act, or alcoholic beverage to an extent or in a manner dangerous to himself or any other person or the public or to an extent that the use impairs his ability to perform the work of a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor safely to the public;

(6) has violated any provision of the Counseling and Therapy Practice Act or regulations;

(7) is grossly negligent in practice as a professional counselor or therapist practitioner;

(8) willfully or negligently divulges a professional confidence;

(9) demonstrates marked incompetence in practice as a professional counselor or therapist practitioner; or

(10) has had a license or certificate to practice as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, art therapist or registered mental health counselor revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this subsection.

B. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

C. Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board, and shall conform to the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

D. A person who violates any provision of the Counseling and Therapy Practice Act is guilty of a misdemeanor, and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

**History:** Laws 1993, ch. 49, § 26.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**Controlled Substances Act.** - See 30-31-1 NMSA 1978 and notes thereto.

### **61-9A-27. Privileged communications. (Effective until July 1, 2000.)**

A. No counselor and therapist practitioner, or person providing appropriate supervision for licensure or certification requirements or supervisee participating in obtaining supervision and practice experience requirements, shall be examined in nonjudicial proceedings without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a counselor and therapist practitioner or supervisor be examined without the consent of the counselor and therapist practitioner concerning any fact, the knowledge of which he acquired in that

capacity; nor shall any person who has participated in any counseling practice conducted under the supervision of a person authorized by law to conduct such practice, including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No counselor and therapist practitioner shall disclose any information acquired from a person who has consulted him in his professional capacity, unless:

(1) he has the written consent of the client or in the case of death or disability the client's personal representative or any other person authorized to sue for the beneficiary of any insurance policy on the client's life, health or physical condition;

(2) such communication reveals the contemplation of a crime or act harmful to the person's self or others;

(3) the information acquired indicates the person was the victim or subject of a crime required to be reported by law; or

(4) the person, family or legal guardian waives the privilege by bringing charges against a counselor and therapist practitioner as defined in the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978].

C. Nothing in this section shall be construed to prohibit a counselor and therapist practitioner from disclosing information in a court hearing concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code or to those matters pertaining to citizens as protected under the Adult Protective Services Act [27-7-14 through 27-7-31 NMSA 1978].

**History:** Laws 1993, ch. 49, § 27.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**Children's Code.** - See 32A-1-1 NMSA 1978 and notes thereto.

**61-9A-28. Criminal offender's character evaluation. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978].

**History:** Laws 1993, ch. 49, § 28.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-29. Injunctive proceedings. (Effective until July 1, 2000.)**

The board may apply for an injunction in a district court to enjoin any person from committing any act prohibited by the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978].

**History:** Laws 1993, ch. 49, § 29.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-9A-30 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

#### **61-9A-30. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The counseling and therapy practice board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Counseling and Therapy Practice Act until July 1, 2000. Effective July 1, 2000, the Counseling and Therapy Practice Act [61-9A-1 through 61-9A-30 NMSA 1978] is repealed.

**History:** Laws 1993, ch. 49, § 30.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 49, § 34 makes the "Counseling and Therapy Practice Act" effective July 1, 1993.

**Severability clauses.** - Laws 1993, ch. 49, § 33 provides for the severability of the act if any part or application thereof is held invalid.

# ARTICLE 10

## OSTEOPATHIC MEDICINE AND SURGERY

### **61-10-1. Definition. (Effective until July 1, 1998.)**

Osteopathic medicine and surgery as used in Sections 61-10-1 through 61-10-21 NMSA 1978 is the name of that complete system or school of medicine and surgery governed by this act.

**History:** Laws 1933, ch. 117, § 1; 1941 Comp., § 51-801; 1953 Comp., § 67-8-1; Laws 1955, ch. 42, § 1; 1975, ch. 296, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Cross-references.** - For Family Planning Act, see 24-8-1 NMSA 1978 et seq.

**Meaning of "this act".** - The term "this act," at the end of this section, which first appeared in Laws 1955, ch. 42, § 1, strictly construed, probably had reference to the original act relating to osteopathic medicine, Laws 1933, ch. 117, the provisions of which are presently compiled as 61-10-1, 61-10-3 to 61-10-6, 61-10-8 to 61-10-18. However, by Laws 1975, ch. 296, § 1, which amended this section by, inter alia, substituting the specific statutory reference for "this act (67-8-1 to 67-8-16)", the legislature probably intended to include the entire article within the term "this act."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 9.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 3.

### **61-10-2. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-10-1 through 61-10-21 NMSA 1978.

**History:** 1953 Comp., § 67-8-1.1, enacted by Laws 1974, ch. 78, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

### **61-10-3. License. (Effective until July 1, 1998.)**

It shall be unlawful for any person to practice as an osteopathic physician in this state without a license so to do, issued by the board of osteopathic medical examiners; provided that any license or certificate heretofore issued under the laws of this state, authorizing its holder to practice osteopathic medicine, shall in no wise be affected by the provisions of this act.

**History:** Laws 1933, ch. 117, § 2; 1941 Comp., § 51-802; 1953 Comp., § 67-8-2; Laws 1975, ch. 296, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 27, 29, 31, 48.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against a particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12.

### **61-10-4. Other schools not affected. (Effective until July 1, 1998.)**

This act shall in no way affect the practice of allopathy, homeopathy, eclectic and chiropractic by those duly licensed to practice allopathy, homeopathy, eclectic or chiropractic under the laws of this state.

**History:** Laws 1933, ch. 117, § 3; 1941 Comp., § 51-803; 1953 Comp., § 67-8-3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

### **61-10-5. Board of examiners; appointment; terms; meetings; membership; examinations. (Effective until July 1, 1998.)**

A. There is created the "board of osteopathic medical examiners". The board consists of five members appointed by the governor; three members shall be regularly licensed

osteopathic physicians in good standing in New Mexico, who have been so engaged for a period of at least two years immediately prior to their appointment and who are possessed of all the qualifications for applicants for licensure specified in Section 61-10-8 NMSA 1978, and two members shall represent the public. The public members of the board shall not have been licensed as osteopathic physicians, nor shall the public members have any significant financial interest, direct or indirect, in the occupation regulated.

B. Board members' terms shall be for five years. The vacancy of the term of any member shall be filled by appointment by the governor to the unexpired portion of the five-year term. A board member whose term has expired shall serve until his successor is appointed.

C. The board shall meet during the first quarter of the fiscal year and shall elect officers for the ensuing fiscal year. The board may hold other meetings as it deems necessary. A majority of the board constitutes a quorum.

D. The board shall have and use a common seal and is authorized to make and adopt all necessary rules and regulations relating to the enforcement of the provisions of Chapter 61, Article 10 NMSA 1978.

E. Examinations shall be made at least twice a year at the time and place fixed by the board. All applicants shall be given written notice of examinations at a reasonable prior date.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance, for each day necessarily spent in the discharge of their duties.

G. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

**History:** Laws 1933, ch. 117, § 4; C.S. 1929, § 99-104; 1941 Comp., § 51-804; 1953 Comp., § 67-8-4; Laws 1963, ch. 43, § 12; 1975, ch. 296, § 3; 1979, ch. 36, § 1; 1989, ch. 371, § 1; 1991, ch. 189, § 13.

## ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "Section 61-10-8" for "Sections 61-10-8 and 61-10-9" in the second sentence; in Subsection B rewrote the first sentence, which formerly read " The five professional members of the board shall continue in their staggered five-year terms of office and, on the effective date of this act the governor shall appoint the public member to a term expiring July 1, 1984", and added the last sentence; and in Subsection C substituted all of the present

language of the first sentence following "meet" for "annually at a date fixed by the board, between August 20 and September 10 and shall elect officers for the ensuing year", added the present second sentence, and made a minor stylistic change in the last sentence.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "five members" for "six members", "three members" for "five members", and "two members" for "one member" in the second sentence and made related stylistic changes in the third sentence, and made a minor stylistic change in Subsection G.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees §§ 27 to 30.

73 C.J.S. Public Administrative Law and Procedure § 9.

### **61-10-6. Applicants; requirements. (Effective until July 1, 1998.)**

Each applicant for a license to practice as provided in Chapter 61, Article 10 NMSA 1978 shall comply with the following requirements:

A. make application for examination on blank forms prepared and furnished by the board;

B. submit evidence verified on oath and satisfactory to the board that the applicant has reached the age of majority, is of good moral character and is a graduate of a college of osteopathic medicine and surgery accredited by the American osteopathic association; and

C. pay appropriate fees as provided in Section 61-10-6.1 NMSA 1978.

**History:** Laws 1933, ch. 117, § 5; 1941 Comp., § 51-805; Laws 1953, ch. 101, § 1; 1953 Comp., § 67-8-5; Laws 1968, ch. 45, § 1; 1973, ch. 33, § 1; 1975, ch. 296, § 4; 1980, ch. 92, § 1; 1989, ch. 371, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Cross-references.** - For the Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

As to the age of majority, see 28-6-1 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, substituted all of the present language of Subsection B beginning with "college" for "legally incorporated college of osteopathic medicine and surgery of standard acceptable to the board"; substituted the present provisions of Subsection C for "pay in advance to the board fees as follows: (1) for

examination of an osteopathic physician and surgeon . . . . . \$250; (2) for issuance of license . . . . . 5.00; (3) for license of one applying therefor under the provisions of Section 61-10-12 NMSA 1978"; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 29, 51 to 58, 61.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against a particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 19.

### **61-10-6.1. Fees. (Effective until July 1, 1998.)**

The board may charge the following fees:

- A. an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of the examination fee;
- B. an application fee not to exceed five hundred dollars (\$500) for licensure by examination;
- C. an application fee not to exceed five hundred dollars (\$500) for licensure pursuant to Section 61-10-12 NMSA 1978;
- D. an annual renewal fee not to exceed two hundred dollars (\$200);
- E. an interim license fee not to exceed two hundred dollars (\$200);
- F. a late fee not to exceed two hundred dollars (\$200) for applicants who fail to register their licenses on or before July 1 of each year;
- G. a reinstatement fee not to exceed five hundred dollars (\$500) for reinstatement of a revoked, suspended or inactive license;
- H. a reasonable administrative fee for verification of license, publications and copying charges; and
- I. an impaired physician fee not to exceed one hundred dollars (\$100).

All fees are nonrefundable and shall be used by the board to carry out its duties.

**History:** 1978 Comp., § 61-10-6.1, enacted by Laws 1989, ch. 371, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

### **61-10-7. Temporary licenses; qualifications. (Effective until July 1, 1998.)**

Whenever an eligible applicant shall have filed his application and met the requirements of Section 61-10-6 NMSA 1978 and complied with all other requirements of Sections 61-10-1 through 61-10-21 NMSA 1978, in the interim between regular board meetings, the secretary-treasurer of the board is empowered to issue such applicant a temporary license to hold good until the next regular meeting of the board.

**History:** 1953 Comp., § 67-8-5.1, enacted by Laws 1977, ch. 155, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

### **61-10-8. Professional education. (Effective until July 1, 1998.)**

To be considered for licensure to practice as an osteopathic physician and surgeon the applicant shall:

A. be a graduate of a college of osteopathic medicine and surgery accredited by the American osteopathic association; and

B. have completed an American osteopathic association or American medical association approved post-graduate one-year residency program or rotating internship program.

**History:** Laws 1933, ch. 117, § 6; 1941 Comp., § 51-806; Laws 1945, ch. 79, § 1; 1953 Comp., § 67-8-6; Laws 1955, ch. 42, § 1; 1975, ch. 296, § 5; 1985, ch. 112, § 1; 1989, ch. 371, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted the present undesignated introductory paragraph for "Standards of professional education to practice as an osteopathic physician and surgeon are fixed as follows:"; deleted former Subsection A, which provided specific preliminary education requirements; and rewrote former Subsections B and C, while redesignating them as present Subsections A and B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 29, 56 to 58.

## **61-10-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1989, ch. 371, § 9 repeals 61-10-9 NMSA 1978, as amended by Laws 1975, ch. 296, § 6, relating to standards for colleges of osteopathic medicine and surgery, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

## **61-10-10. Examination. (Effective until July 1, 1998.)**

The examination of those who desire to practice under this act shall embrace those general subjects and topics including:

- |                        |   |
|------------------------|---|
| 1. anatomy             | 8. therapeutics                           |
| 2. chemistry           | 9. surgery                                |
| 3. physiology          | 10. gynecology                            |
| 4. pathology           | 11. obstetrics                            |
| 5. preventive medicine | 12. medical jurisprudence                 |
| 6. diagnosis           | 13. practice of osteopathic medicine; and |
| 7. toxicology          |   |

a knowledge of which is commonly and generally required of candidates for the degree of doctor of osteopathic medicine by a standard osteopathic college in the United States.

**History:** Laws 1933, ch. 117, § 8; 1941 Comp., § 51-808; 1953 Comp., § 67-8-8; Laws 1975, ch. 296, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

**Nature of requirements.** - Requirements are substantially the same as those in which applicants for license to practice medicine must be examined. 1933-34 Op. Att'y Gen. 155.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 29, 59, 60.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against a particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

### **61-10-11. License issued. (Effective until July 1, 1998.)**

Each applicant who successfully passes the examination shall be entitled to a license which carries with it the title doctor and physician with right to practice as taught and practiced in the standard colleges of osteopathic medicine and surgery.

**History:** Laws 1933, ch. 117, § 9; 1941 Comp., § 51-809; 1953 Comp., § 67-8-9; Laws 1975, ch. 296, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

### **61-10-12. License without examination. (Effective until July 1, 1998.)**

The board may in its discretion issue a license without examination to an osteopathic physician who has been licensed in any country, state, territory or province and who is a graduate of a standard college of osteopathic medicine upon the following conditions:

A. that the applicant is of good moral character;

B. that the requirements to practice in the country, state, territory or province in which the applicant is already licensed be equal to those of this state; and

C. that the applicant shall be required to pay the fee designated for such license in Section 61-10-6 NMSA 1978.

The board may also in its discretion issue a license without examination to an osteopathic physician who is a graduate of a standard college of osteopathic medicine and who has passed an examination for admission into the medical corps of the United States army, United States navy or United States public health service.

**History:** Laws 1933, ch. 117, § 10; 1941 Comp., § 51-810; 1953 Comp., § 67-8-10; Laws 1975, ch. 296, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 67, 68.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13; 73 C.J.S. Public Administrative Law and Procedure § 69.

**61-10-13. Display of licenses and renewal thereof. (Effective until July 1, 1998.)**

Every person holding a license authorizing him to practice osteopathic medicine in this state shall display the license and certificate of annual renewal in his principal office practice location.

**History:** Laws 1933, ch. 117, § 11; 1941 Comp., § 51-811; Laws 1945, ch. 79, § 3; 1953 Comp., § 67-8-11; Laws 1975, ch. 296, § 10; 1989, ch. 371, § 5.

**ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted all of the present language following "state" for "must have the same recorded in the office of the county clerk of the county of his residence", and deleted the former second and third sentences, relating to recordation of certificate upon change of residence and penalty for failure to record.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 11.

**61-10-14. Privileges and obligations; presence on hospital staffs; intent of act. (Effective until July 1, 1998.)**

Osteopathic physicians and surgeons licensed hereunder shall have equal rights, privileges and obligations in the handling of cases and rendering of medical services in all branches and phases of the healing arts as are accorded or permitted physicians and surgeons of other schools of practice; that such general rights shall extend to the rendering of medical services under the provisions of public health, welfare, assistance laws and other fields of public medicine, and no regulations shall be made with respect thereto limiting, excluding or discriminating against osteopathic physicians and surgeons.

Osteopathic physicians and surgeons shall also have the right to register under the laws of the United States governing narcotics. Osteopathic physicians shall observe and be subject to all state and municipal regulations relative to the reporting of births and deaths and all matters pertaining to the public health with equal rights and obligations

as physicians and surgeons of other schools of medicine, and such reports shall be accepted by the officers of the departments to which they are made.

A. That the rights, benefits and obligations conferred by this act upon licensed osteopathic physicians and surgeons shall not be construed as taking from the governing authorities of all state, county and municipal hospitals, or from any publicly supported hospital either in whole or in part the complete control and management of such hospitals with power to make rules and regulations for the operations of such hospitals and to determine who will be on the staff of such hospitals; nor shall this act be construed as taking from the governing authorities of any hospital or other institution owned, operated or maintained [maintained] by any religious, industrial or fraternal group or organization the absolute right of complete control and management of such hospitals and institutions.

**History:** Laws 1933, ch. 117, § 12; 1941 Comp., § 51-812; Laws 1945, ch. 79, § 4; 1947, ch. 117, § 1; 1953 Comp., § 67-8-12; Laws 1955, ch. 42, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Cross-references.** - As to incorporation of osteopaths under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

**Compiler's note.** - Laws 1955, ch. 42, § 1, contains no Subsection B.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

**Osteopaths have same right to extract teeth or treat diseases** which come within the field of practicing medicine as do physicians and surgeons. 1943-44 Op. Att'y Gen. No. 4328.

**Practice of optometry.** - Inasmuch as physicians and surgeons are specifically given the right to practice optometry and osteopaths are given the same general rights as physicians and surgeons, they too have been granted the right to practice optometry. 1945-46 Op. Att'y Gen. No. 4740.

**No absolute right to practice in public hospital.** - Duly licensed physician has no absolute or constitutional right to practice in a public hospital, and governing authorities of public hospitals may regulate and control their hospitals and prescribe reasonable rules and regulations to be followed by physicians using the facilities. 1965 Op. Att'y Gen. No. 65-81.

It was not the legislative intent to authorize osteopathic physicians and surgeons to practice in or to have all the rights and facilities of a public hospital extended to them as a matter of law. *Munroe v. Wall*, 66 N.M. 15, 340 P.2d 1069 (1959).

**Hospital rule can provide for exclusion** of those who follow certain systems of medicine. 1965 Op. Att'y Gen. No. 65-81.

**Control of staff in hospital board.** - Subsection A reserves to the governing boards of public hospitals full control over the making of regulations to determine who should be on the staff, irrespective of the so-called equal rights given to osteopaths. *Munroe v. Wall*, 66 N.M. 15, 340 P.2d 1069 (1959).

**Bond issue.** - A hospital bond issue election may be called where the hospital bylaws provide that only medical doctors may be staff members. 1961-62 Op. Att'y Gen. No. 62-122.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Osteopath as a physician or surgeon within statute in relation to vital statistics, 8 A.L.R. 1070.

Kind or character of treatment, restrictive medical or surgical license, 86 A.L.R. 626.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

### **61-10-15. Refusal and revocation of license. (Effective until July 1, 1998.)**

The board of osteopathic medical examiners may either refuse to issue or may suspend or revoke any license for any one or any combination of the following causes:

A. conviction of a felony, as shown by a certified copy of the record of the court of conviction;

B. the obtaining of, or an attempt to obtain a license, or practice in the profession for money, or any other thing of value, by fraudulent misrepresentation;

C. gross malpractice;

D. advertising, practicing or attempting to practice under a name other than one's own;

E. advertising by means of knowingly false or deceptive statements;

F. habitual drunkenness, or habitual addiction to the use of morphine, cocaine or other habit-forming drugs; or

G. immoral, dishonorable or unprofessional conduct.

The board may neither refuse to issue nor to renew nor suspend nor revoke any license, however, for any of these causes, unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing by the board of osteopathic medical examiners, with right of review of the board's decision by the district court of the first judicial district by certiorari, on petition of the party against whom the board's decision is rendered.

The board of osteopathic medical examiners shall have the power to compel the attendance of witnesses and the production of relevant books and papers for the investigation of matters that may come before them and the presiding officer of said board may administer the requisite oaths and said board shall have the same authority to compel the giving of testimony as is conferred on courts of justice.

**History:** Laws 1933, ch. 117, § 13; 1941 Comp., § 51-813; Laws 1945, ch. 79, § 5; 1953 Comp., § 67-8-13; Laws 1975, ch. 296, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Cross-references.** - For Impaired Physician Act, see 61-7-1 to 61-7-11 NMSA 1978.

As to incorporation of osteopaths under the Professional Corporation Act, see 53-6-1 NMSA 1978.

As to subpoenas in district court, see Rule 1-045.

**Equal protection.** - Since foreign-trained physicians who have not earned an M.D. degree may be licensed by the board of medical examiners and list themselves under the heading "Physicians and Surgeons, M.D." in the telephone directory, the board of osteopathic examiners would be violating the equal protection rights of osteopathic physicians by prohibiting them from listing themselves under that heading; insofar as Subsection E of this section would do so, it is unconstitutional. 1974 Op. Att'y Gen. No. 74-21.

**Deceptive phone listing.** - Osteopathic physicians who were listed in the telephone directory yellow pages under the heading "Physicians and Surgeons, M.D." without using a degree designation and without giving an indication that they were osteopathic physicians were violating Subsection E of this section. 1974 Op. Att'y Gen. No. 74-21.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51, 52, 74 to 120.

Refusal of license because of suspicion of intended violation of its conditions, 27 A.L.R. 325.

Disqualification for bias or interest of member of occupation or profession sitting in license revocation proceeding, 97 A.L.R.2d 1210.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 A.L.R.4th 248.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 50, 53 to 57.

### **61-10-16. Penalties. (Effective until July 1, 1998.)**

Each of the following acts constitutes a misdemeanor punishable upon conviction by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200):

A. the practice of osteopathic medicine or an attempt to practice osteopathic medicine without a license;

B. the obtaining of, or attempting to obtain a license, or practice in the profession, for money or any other things of value by fraudulent misrepresentation;

C. the making of any wilfully false oath, or affirmation, when an oath or affirmation is required by this act; or

D. advertising, practicing or attempting to practice under a name other than one's own.

**History:** Laws 1933, ch. 117, § 14; 1941 Comp., § 51-814; 1953 Comp., § 67-8-14; Laws 1975, ch. 296, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Cross-references.** - As to incorporation of osteopaths under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978 et seq.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

**61-10-17. Records. (Effective until July 1, 1998.)**

The board of osteopathic medical examiners shall keep a record which shall be open to all proper parties for inspection at all reasonable times, of its proceedings relating to the issuance, refusal, renewal, suspension or revocation of licenses to practice in accordance with this act. This record shall also contain the name, place of business and residence, the date and number of the license of every osteopathic physician licensed under this act.

**History:** Laws 1933, ch. 117, § 15; 1941 Comp., § 51-815; 1953 Comp., § 67-8-15; Laws 1975, ch. 296, § 13.

**ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Am. Jur. 2d Public Officers and Employees § 353.

73 C.J.S. Public Administrative Law and Procedure § 22.

**61-10-18. [No additional powers conferred on prior licensees.] (Effective until July 1, 1998.)**

Nothing herein contained shall be construed as conferring any powers or authority not heretofore vested in osteopathic physicians who hold licenses to practice osteopathy under any pre-existing law or regulation, unless such licenses [licensees] be likewise licensed under the provisions of this act.

**History:** Laws 1933, ch. 117, § 16; 1941 Comp., § 51-816; 1953 Comp., § 67-8-16.

**ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See same catchline in notes to 61-10-1 NMSA 1978.

## **61-10-19. Annual renewal of license; certificate; fee. (Effective until July 1, 1998.)**

A. All persons legally licensed to practice osteopathic medicine and surgery in this state shall, on or before July 1 of each year, submit proof of completion of continuing education requirements as required by the board and pay to the secretary of the board an annual renewal fee as provided in Section 61-10-6.1 NMSA 1978 for the renewal of his license to practice osteopathic medicine and surgery. Upon payment of fees and proof of completion of continuing education requirements, the board shall issue a certificate of annual renewal of license.

B. The secretary of the board shall send a written notice to every person holding a legal certificate to practice osteopathic medicine in this state at least thirty days prior to July 1 of each year, directed to the last known address of licensee, and notify him that it will be necessary for him to pay the annual renewal fee. Proper forms shall accompany the notice, and the licensee shall make application for the renewal of his certificate on these forms. The fact that a practitioner has not received his blank form from the board shall not, however, relieve him of the duty to register on or before July 1 nor shall the board's failure to mail the forms operate to exempt him from the penalties provided in Chapter 61, Article 10 NMSA 1978.

**History:** 1953 Comp., § 67-8-17.1, enacted by Laws 1971, ch. 140, § 1; 1975, ch. 296, § 14; 1977, ch. 108, § 1; 1980, ch. 92, § 2; 1989, ch. 371, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted the present catchline for "Annual renewal of certificate; fee"; added the subsection designations; in Subsection A substituted all of the present language of the first sentence following "annual" for "license fee of fifty-five dollars (\$55.00) for a renewal of his certificate to practice osteopathic medicine and surgery", and added the second sentence; in Subsection B substituted "annual renewal fee" for "renewal license fee" at the end of the first sentence, and added the last sentence; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 22.

## **61-10-20. Postgraduate educational requirements. (Effective until July 1, 1998.)**

For the purpose of protecting the health and well-being of the citizens of this state and for maintaining and continuing informed professional knowledge and awareness, the

board shall establish mandatory continuing educational requirements for osteopathic physicians licensed in this state. In establishing such requirements, the board shall recognize and give weight to existing educational methods, procedures, devices and programs in use among the various medical specialties and other recognized medical groups and the consensus of the members of the medical community. This section does not abrogate or affect the status, force or operation of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. The board shall not establish and enforce such requirements if they will reduce the availability of physicians in a community to an extent that adequate medical care is jeopardized.

**History:** 1953 Comp., § 67-8-17.2, enacted by Laws 1971, ch. 140, § 2; 1977, ch. 108, § 2.

### ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 213.

### **61-10-21. Failure to comply; cancellation of license; reinstatement; temporary cancellation at licensee's request. (Effective until July 1, 1998.)**

A. In the event any licensee fails to comply with the requirements of Section 61-10-19 NMSA 1978, he shall, upon order of the board of osteopathic medical examiners, forfeit his right to practice osteopathic medicine in this state and his license and certificate shall be canceled; provided, however, that the secretary of the board may reinstate him upon the payment of all fees due and upon the presentation of satisfactory evidence of the attendance at an educational program as provided for in Chapter 61, Article 10 NMSA 1978.

B. It is further provided that any person licensed to practice osteopathic medicine in New Mexico desiring to withdraw from the active practice of his profession in this state shall have the right to apply to the secretary of the board of osteopathic medical examiners for a temporary suspension of his certificate to practice osteopathic medicine in this state, with the right to renew and reinstate his certificate if he so desires, upon a showing that he has paid the appropriate fees on or before July 1 of each year.

**History:** 1941 Comp., § 51-818, enacted by Laws 1945, ch. 79, § 7; 1953, ch. 101, § 3; 1953 Comp., § 67-8-18; Laws 1971, ch. 140, § 3; 1975, ch. 296, § 15; 1989, ch. 371, § 7.

### ANNOTATIONS

**Delayed repeals.** - See 61-10-22 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, added the subsection designations; in Subsection A substituted "61-10-19 NMSA 1978" for "67-8-17.1 NMSA 1953" near the beginning of the subsection, and substituted "Chapter 61, Article 10 NMSA 1978" for "this act" at the end of the subsection; substituted all of the present language of Subsection B following "paid" for "his license fee of twenty-five dollars (\$25.00) on or before the first day of July of each year, and during the temporary suspension of such certificate, such licensee shall not be required to comply with the provisions of Sections 67-8-17.1 and 67-8-17.2 NMSA 1953 concerning attendance at educational meetings, providing the temporary suspension shall not be granted for a lesser period of time than one year"; and made minor stylistic changes throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 42, 52.

### **61-10-22. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of osteopathic medical examiners is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 10 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 10 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-10-22, enacted by Laws 1979, ch. 36, § 2; 1981, ch. 241, § 23; 1985, ch. 87, § 8; 1991, ch. 189, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 14 amends this section to repeal Chapter 61, Article 10 NMSA 1978 effective July 1, 1998.

**The 1991 amendment**, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 10A OSTEOPATHIC PHYSICIANS' ASSISTANTS**

### **61-10A-1. Short title.**

This act [61-10A-1 to 61-10A-7 NMSA 1978] may be cited as the "Osteopathic Physicians' Assistants Act".

**History:** Laws 1979, ch. 26, § 1.

## **61-10A-2. Definitions.**

As used in the Osteopathic Physicians' Assistants Act [61-10A-1 to 61-10A-7 NMSA 1978]:

- A. "administer" means to apply a prepackaged drug to the body of a patient by any means;
- B. "board" means the board of osteopathic medical examiners;
- C. "dispense" means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container;
- D. "distribute" means to administer or supply directly to a patient under the direct care of the distributing osteopathic physician's assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container;
- E. "osteopathic physician" means a physician licensed to practice osteopathic medicine in New Mexico;
- F. "osteopathic physician's assistant" means a skilled person certified by the board as being qualified by academic and practical training to provide patient services under the supervision and direction of the osteopathic physician who is responsible for the performance of that assistant; and
- G. "prescribe" means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name of the drug prescribed, directions for use and the date of issue.

**History:** Laws 1979, ch. 26, § 2; 1989, ch. 9, § 6.

### **ANNOTATIONS**

**The 1989 amendment**, effective March 4, 1989, redesignated former Subsections A, B and C as present Subsections B, E and F, added present Subsections A, C, D and G, and deleted "licensed" preceding "osteopathic physician" in present Subsections E and F.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 5.

## **61-10A-3. Administration of act.**

The board shall enforce and administer the provisions of the Osteopathic Physicians' Assistants Act [61-10A-1 to 61-10A-7 NMSA 1978].

**History:** Laws 1979, ch. 26, § 3.

**61-10A-4. Certification as osteopathic physician's assistant; scope of authority; annual registration of employment; employment change.**

A. No person shall perform or attempt to perform as an osteopathic physician's assistant without first applying for and obtaining a certificate of qualification from the board as an osteopathic physician's assistant and having his employment registered in accordance with board regulations.

B. Osteopathic physician's assistants may prescribe, administer and distribute dangerous drugs other than controlled substances provided that the prescribing, administering and distributing are done under the direction of a supervising physician and within the parameters of a board approved formulary and guidelines established under Subsection C of Section 61-10A-6 NMSA 1978. The distribution process shall comply with state laws concerning prescription packaging, labeling and record keeping requirements. Osteopathic physicians' assistants shall not otherwise dispense dangerous drugs.

C. An osteopathic physician's assistant shall perform only those acts and duties assigned him by a supervising osteopathic physician that are within the scope of practice of the supervising osteopathic physician.

D. An applicant for a certificate of qualification as an osteopathic physician's assistant shall complete such application forms as supplied by the board and pay a fee as provided in Section 61-10A-4.1 NMSA 1978 to defray the cost of processing the application, which fee is not returnable. Upon being certified by the board, the applicant shall have his name and address and other pertinent information enrolled by the board on a roster of osteopathic physicians' assistants.

E. Each certified osteopathic physician's assistant shall annually submit proof of completion of continuing education as required by the board and register his employment with the board, stating his name and current address, the name and office address of both his employer and the supervising osteopathic physician and such additional information as the board deems necessary. Upon any change of employment as an osteopathic physician's assistant, such registration shall automatically be void. Each annual registration or registration of new employment shall be accompanied by a fee as provided in Section 61-10A-4.1 NMSA 1978 for use by the board in defraying the cost of administering the Osteopathic Physicians' Assistants Act [61-10A-1 to 61-10A-7 NMSA 1978].

**History:** Laws 1979, ch. 26, § 4; 1989, ch. 9, § 7.

## ANNOTATIONS

**The 1989 amendment**, effective March 4, 1989, inserted "scope of authority" in the catchline and deleted "fees" therefrom, added present Subsection A, redesignated Subsections A through D as present Subsections B through E, made a minor stylistic change in present Subsection C, in present Subsection D substituted "as provided in Section 61-10A-4.1 NMSA 1978" for "of fifty dollars (\$50.00)" in the first sentence, in present Subsection E deleted "licensed" following "supervising" in the first sentence, made a minor stylistic change in the second sentence, and substituted "a fee as provided in Section 61-10A-4.1 NMSA 1978" for "fees set by the board in amounts not to exceed ten dollars (\$10.00)" in the last sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 27, 31 to 32.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12, 26, 27.

### **61-10A-4.1. Fees.**

Applicants shall pay the following fees:

- A. an initial certification fee of not to exceed one hundred fifty dollars (\$150);
- B. an annual registration of certification fee of not to exceed fifty dollars (\$50.00);
- C. a late fee not to exceed twenty five dollars (\$25.00) for applicants who fail to register their certificates on or before July 1 of each year; and
- D. a registration of new employment fee in an amount equal to the annual renewal fee.

**History:** 1978 Comp., § 61-10A-4.1, enacted by Laws 1989, ch. 9, § 8.

### **61-10A-5. Denial, suspension or revocation.**

In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny or suspend any registration or deny or revoke any certificate of qualification, upon the grounds that the applicant or osteopathic physician's assistant is guilty of:

- A. procuring, aiding or abetting a criminal abortion;
- B. soliciting patients for any practitioner of the healing arts;
- C. soliciting or receiving any form of compensation from any person other than his registered employer for performing as an osteopathic physician's assistant;

D. willfully or negligently divulging a professional secret or discussing a patient's condition or an osteopathic physician's diagnosis without the express permission of the osteopathic physician;

E. any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence;

F. the habitual or excessive use of intoxicants or drugs;

G. fraud or misrepresentation in applying for or procuring a certificate of qualification to perform as an osteopathic physician's assistant in this state, or in applying for or procuring an annual registration;

H. impersonating another person registered as an osteopathic physician's assistant or allowing any person to use his certificate of qualification or registration;

I. aiding or abetting the practice of osteopathic medicine by a person not licensed by the board;

J. gross negligence in the performance of duties, task or functions assigned to him by a licensed osteopathic physician;

K. manifest incapacity or incompetence to perform as an osteopathic physician's assistant;

L. conduct resulting in the suspension or revocation by another state of a registration, license or certification to perform as an osteopathic physician's assistant, based upon acts by the osteopathic physician's assistant similar to acts constituting grounds for suspension or revocation in New Mexico. A certified copy of the record of the suspension or revocation of the state imposing the penalty is conclusive evidence thereof; or

M. conduct unbecoming in a person registered as an osteopathic physician's assistant or detrimental to the best interests of the public.

**History:** Laws 1979, ch. 26, § 5.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 74 to 120.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 42.

**61-10A-6. Rules and regulations.**

The board may adopt and enforce reasonable rules and regulations:

A. setting qualifications of education, skill and experience for certification of a person as an osteopathic physician's assistant and providing forms and procedures for certificates of qualification and for annual registration of employment;

B. examining and evaluating applicants for certificates of qualification as an osteopathic physician's assistant as to their skill, knowledge and experience in the field of medical care;

C. establishing administrative guidelines under which an osteopathic physician's assistant shall prescribe, administer and distribute dangerous drugs other than controlled substances, but these guidelines shall restrict distribution privileges to distribution for immediate or acute medical need for patients unless the board determines that special circumstances exist, such as distribution in a family planning clinic or clinic services for poor persons who, because of their circumstances, could not purchase the needed drugs from a retail pharmacy; and

D. for the purpose of carrying out all other provisions of the Osteopathic Physicians' Assistants Act [61-10A-1 to 61-10A-7 NMSA 1978].

Provided, however, the board shall not adopt any rule or regulation allowing an osteopathic physician's assistant to dispense dangerous drugs, to measure the powers, range or accommodative status of human vision, diagnose vision problems, prescribe lenses, prisms, vision training or contact lenses or fit contact lenses. This section shall not preclude vision screening.

**History:** Laws 1979, ch. 26, § 6; 1989, ch. 9, § 9; 1989, ch. 371, § 8.

### ANNOTATIONS

**The 1989 amendments.** - Laws 1989, ch. 9, § 9, effective March 4, 1989, adding a new Subsection C, redesignating former Subsection C as present Subsection D, and substituting "section" for "paragraph" in the second sentence of the proviso, was approved March 4, 1989. However, Laws 1989, ch. 371, § 8, effective June 16, 1989, adding the same present Subsection C; redesignating former Subsection C as present Subsection D; and in the undesignated proviso, rewriting the second sentence, which formerly read "This paragraph shall not preclude vision screening; and provided further, the board shall not adopt any rule or regulation allowing an osteopathic physician's assistant to perform diagnosis or medical, surgical, mechanical, manipulative or orthopedic treatment of the human foot", was approved April 7, 1989. This section is set out as amended by Laws 1989, ch. 371, § 8. See 12-1-8 NMSA 1978.

**Assistants may not prescribe controlled substances.** - Nothing in Subsection A authorizes the board to permit physician's assistants to prescribe controlled substances

in violation of 30-31-18A NMSA 1978. *New Mexico Bd. of Pharmacy v. New Mexico Bd. of Osteopathic Medical Exmrs.*, 95 N.M. 780, 626 P.2d 854 (Ct. App. 1981).

### **61-10A-7. Responsibility.**

Every osteopathic physician using, supervising or employing a registered osteopathic physician's assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the osteopathic physician's assistant. Nothing herein shall be construed to relieve the osteopathic physician's assistant of any responsibility and liability for any of his own acts and omissions. No osteopathic physician may have under his supervision more than two currently registered osteopathic physicians' assistants, except where an osteopathic physician is working in a health facility providing health service to the public primarily on a free or reduced fee basis, which is funded in whole or in part out of public funds or the funds of private charitable institutions; the board may authorize a greater number upon a finding that the program provides adequate supervision of the osteopathic physicians' assistants.

**History:** Laws 1979, ch. 26, § 7.

#### **ANNOTATIONS**

**Cross-references.** - As to notice required upon employment of osteopathic physician's assistant, see 61-14C-1 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, § 286.

70 C.J.S. Physicians, Surgeons §§ 83, 85, 86.

## **ARTICLE 11 PHARMACY**

### **61-11-1. Short title. (Effective until July 1, 1998.)**

This act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] may be cited as the "Pharmacy Act".

**History:** 1953 Comp., § 67-9-33, enacted by Laws 1969, ch. 29, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-2. Definitions. (Effective until July 1, 1998.)**

As used in the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978]:

A. "administer" means giving a unit dose of medication to a patient as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compound" means taking two or more measured ingredients and fabricating them into a single preparation, usually referred to as a dosage form, except for preparations that involve repetitive tasks that do not require the professional judgment of a licensed pharmacist; provided that such preparations will be defined in regulations adopted by the board;

D. "consulting pharmacist" means a pharmacist whose services are engaged on a routine part-time basis by a hospital or other health facility:

(1) to assist in drawing up correct procedures, rules and regulations for the distribution of drugs;

(2) to assume the overall responsibility for the system of control and distribution of drugs;

(3) to see that a designated person has the responsibility of day-to-day operation of the hospital pharmacy or drug room; and

(4) to visit the hospital pharmacy or drug room on a regularly scheduled basis in the course of his duties;

E. "dangerous drug" means a drug that is determined by law to be unsafe for self-medication and that is enumerated in the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978];

F. "dispense" means issuing to a patient or a person acting on his behalf one or more unit doses of medication and may result from compounding or from repackaging from a bulk or original container;

G. "drug" means:

(1) articles recognized in the United States pharmacopoeia, homeopathic pharmacopoeia or national formulary or any supplement to any of them;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man or animal;

(3) articles, other than food, that affect the structure or any function of the body of man or animal; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include instruments, apparatus or contrivances, including their components, parts or accessories, known as devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man or animal or that affect the structure or any function of the body of man or animal;

H. "drug room" means that area provided only for the proper and safe storage, preservation and control of drugs;

I. "hospital" means an institution for the reception and care of the ill or infirm that is licensed as a hospital by the department of health;

J. "hospital pharmacy" means a pharmacy maintained in a hospital;

K. "licensed practitioner" means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

L. "nonprescription drugs" means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

M. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

N. "patient counseling" means communication with a patient or his agent regarding dispensing of a prescription drug or drugs;

O. "person" means an individual, corporation, partnership or association and, when the context requires, includes a hospital, nursing home or clinic;

P. "pharmacist" means a person who holds a current license as a pharmacist in this state;

Q. "pharmacy" means any store, laboratory or place of business where drugs are sold at retail or where physicians' prescriptions are compounded or dispensed, or both, but does not include the place used by a drug manufacturer or wholesale drug distributor or the place of business of a nonregistered person selling non-narcotic proprietary preparations or remedies;

R. "pharmacist intern" means a person registered by the board to train under a pharmacist in accordance with regulations of the board and who is entitled to compound and dispense drugs and poisons under the personal supervision of a pharmacist;

S. "practice of pharmacy" means engaging in the preparation, compounding and dispensing of drugs and includes the identification, preservation, proper and safe storage, selection, combination, analysis, standardization, labeling, manufacturing, repackaging and distribution of drugs, the reconstitution or preparation of intravenous admixtures, the proper maintenance of any records required by state or federal law and counseling with respect to pharmaceutical practices;

T. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner to the pharmacist or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

U. "supportive personnel" means persons who are not pharmacists or pharmacist interns, who, under the supervision of a licensed pharmacist, perform repetitive tasks not requiring the professional judgment of a pharmacist in accordance with rules and regulations adopted by the board; and

V. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution.

**History:** 1953 Comp., § 67-9-34, enacted by Laws 1969, ch. 29, § 2; 1977, ch. 253, § 68; 1988, ch. 6, § 1; 1992, ch. 19, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1992 amendment**, effective May 20, 1992, added all of the present language of Subsection C following "dosage form"; deleted "holding a current active certificate" following "a pharmacist" in Subsection D; substituted "department of health" for "health and environment department" in Subsection I; deleted "and includes doctors of medicine, osteopathy, dentistry, podiatry and veterinary medicine" at the end of Subsection K; added present Subsections L, M, and N; redesignated former Subsections L through P as present Subsections O through S; substituted "license" for "certificate of registration" in present Subsection P; deleted former Subsection Q defining "proprietary preparation" or "patent medicine"; substituted "distributor" for "dealer" near the end of present Subsection Q; redesignated former Subsection R as present Subsection T; inserted "manufacturing, repackaging" and "the reconstitution or preparation of intravenous admixtures" in present Subsection S; added Subsections U and V; and made minor stylistic changes throughout the section.

**The 1988 amendment**, effective May 18, 1988, inserted "Device" near the end of Section E; substituted "Paragraph (1), (2) or (3) of this subsection" for "Paragraphs (1), (2) or (3)" and corrected a misspelling in Subsection G(4); substituted "licensed by any state, territory or possession of the United States" for "licensed by the state" in Subsection K; and made minor stylistic changes.

**"Licensed practitioner"**. - In view of the specific exception from licensing requirements granted to students, interns and residents, Subsection K should be viewed as allowing prescriptions written by residents or interns to be filled by pharmacists outside the hospital in which the resident or intern is serving. 1971 Op. Att'y Gen. No. 71-93.

**Nature of outlet.** - Whether an outlet is wholesale or retail depends on the manner in which it does business. 1957-58 Op. Att'y Gen. No. 58-219.

**"Person"**. - The health and environment department (now department of health) is not a "person" within the meaning of Subsection L and is therefore not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 1 to 6.

28 C.J.S. Druggists § 1.

### **61-11-3. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978].

**History:** 1953 Comp., § 67-9-34.1, enacted by Laws 1974, ch. 78, § 17.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-4. Board created; members; qualifications; terms; vacancies; removal. (Effective until July 1, 1998.)**

A. There is created the "board of pharmacy". The board consists of nine members, each of whom shall be a citizen of the United States and a resident of New Mexico.

B. Five members shall be pharmacists appointed by the governor for staggered terms of five years each from lists submitted to the governor by the New Mexico pharmaceutical

association, which lists contain the names of two pharmacists residing in each of the five pharmacy districts. One of the pharmacist members shall be appointed for a term ending July 1, 1970, and one pharmacist member shall be appointed for a term ending on July 1 of each of the following four years. Thereafter, appointments of pharmacist members shall be made for five years or less each and made in such a manner that the term of one pharmacist member expires on July 1 of each year. Not more than one pharmacist member shall come from a pharmacy district. Each pharmacist member of the board shall have been actively engaged in the pharmaceutical profession in this state for at least three years immediately prior to his appointment and shall have had a minimum of eight years of practical experience as a pharmacist. A vacancy shall be filled by appointment by the governor for the unexpired term from lists submitted by the New Mexico pharmaceutical association to the governor. Pharmacist members shall reside in the district from which they are appointed.

C. Three members of the board shall represent the public. The public members of the board shall not have been licensed as pharmacists or have any significant financial interest, whether direct or indirect, in the occupation regulated. A vacancy in the public members' terms shall be filled by appointment by the governor for the unexpired term. Initial appointments of public members shall be made for staggered terms of five years or less each and made in such a manner that not more than two board members' terms shall expire on July 1 of each year.

D. One member of the board shall be a hospital pharmacist selected at large from a list submitted to the governor by the New Mexico society of hospital pharmacists. On July 1, 1985, the governor shall appoint a hospital pharmacist member to the board for a term expiring July 1, 1990, and successors to the hospital pharmacist member shall be appointed by the governor to terms of five years. A vacancy in the hospital pharmacist member term shall be filled by appointment by the governor for the unexpired term from a list submitted to the governor by the New Mexico society of hospital pharmacists.

E. There are created five pharmacy districts as follows:

(1) northeast district, which shall be composed of the counties of Colfax, Guadalupe, Harding, Los Alamos, Mora, Quay, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance and Union;

(2) northwest district, which shall be composed of the counties of McKinley, San Juan, Valencia and Cibola;

(3) central district, which shall be composed of the county of Bernalillo;

(4) southeast district, which shall be composed of the counties of Chaves, Curry, DeBaca, Eddy, Lea and Roosevelt; and

(5) southwest district, which shall be composed of the counties of Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra and Socorro.

F. No board member shall serve more than two full terms, consecutive or otherwise.

G. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove any member of the board for neglect of any duty required by law, for incompetency or for unprofessional conduct and shall remove any board member who violates any provision of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978].

I. If a vacancy occurs on the board for any reason, the secretary of the board shall immediately notify the governor, the board members and any generally recognized association or organization of pharmacists of the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

**History:** 1953 Comp., § 67-9-35, enacted by Laws 1969, ch. 29, § 3; 1979, ch. 266, § 1; 1985, ch. 126, § 1; 1991, ch. 189, § 15.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, substituted "nine members" for "seven members" in Subsection A; in Subsection C, substituted "Three members" for "One member" at the beginning of the first sentence, deleted the former third sentence which read "On July 1, 1979, the governor shall appoint a public member to the board for a term expiring July 1, 1984, and successors to the public member shall be appointed by the governor to terms of five years" and added the final sentence; and made related and minor stylistic changes in Subsections B and C.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Druggists § 4.

### **61-11-5. Board meetings; quorum; officers; bonds; expenses. (Effective until July 1, 1998.)**

A. The board shall annually elect a chairman, vice chairman and secretary-treasurer from its membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of two or more members of the board. Notification of special meetings shall be made by certified mail unless the notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within forty-five days after any meeting.

C. A majority of the board constitutes a quorum.

D. The executive officer and any member or employee of the board who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after appointment, execute a bond in a sum set by the board, conditioned on the faithful performance of the duties of the office and an accounting for all funds coming into his hands. The bonds shall be signed by a surety company authorized to do business in this state and be filed with and approved by the board.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 67-9-36, enacted by Laws 1969, ch. 29, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Board of pharmacy may select whomever it chooses as secretary,** as there is no compulsion that the secretary so chosen be required to have only that job; the state pharmaceutical association can appoint the same man or woman if it so chooses. 1953-54 Op. Att'y Gen. No. 5776.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Druggists § 4.

### **61-11-6. Powers and duties of board. (Effective until July 1, 1998.)**

The board shall:

A. adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] after hearings open to the public;

B. provide for at least two examinations a year of applicants for registration as pharmacists;

C. provide for the registration and the annual renewal of licenses for pharmacists;

D. require and establish criteria for continuing education as a condition of renewal of annual licensure;

E. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision and discipline;

F. provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies and the drug rooms of hospitals, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are dispensed or administered and provide for the inspection of their facilities and activities;

G. enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs, cosmetics or poisons and their standards of strength and purity;

H. conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a certificate of registration or a license in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

I. provide for the institution of proceedings concerning minor violations of the Pharmacy Act whenever the board believes that the public interest will be adequately served by a suitable written notice or warning, or by a suspension of registration or licensure for a period not to exceed thirty days;

J. cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] or the Controlled Substances Act;

K. keep a record of all proceedings of the board;

L. make an annual report to the governor;

M. appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive officer to the board and define his duties and responsibilities, except that the power to grant, deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

N. appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

O. provide for qualified employees necessary to carry out the provisions of the Pharmacy Act;

P. have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the funds of the board, including those provided for in Section 61-11-19 NMSA 1978;

Q. adopt, regularly review and revise rules and regulations regarding the use of supportive personnel, including pharmacists' supervision, duties and responsibilities in relation to supportive personnel and requirements for training of supportive personnel, including on-the-job training; and

R. adopt rules and regulations that define requirements for patient counseling in each practice setting.

**History:** 1953 Comp., § 67-9-37, enacted by Laws 1969, ch. 29, § 5; 1972, ch. 84, § 55; 1977, ch. 62, § 1; 1979, ch. 293, § 1; 1983, ch. 165, § 1; 1992, ch. 19, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1992 amendment,** effective May 20, 1992, substituted "nonresident pharmacies, wholesale drug distributors" for "wholesale drug dealers" near the beginning of Subsection F and inserted "or administered" near the end of that subsection; inserted "Device" in Subsection J; added Subsections Q and R; and made minor stylistic changes throughout the section.

**Controlled Substances Act.** - See 30-31-1 NMSA 1978 and notes thereto.

**Board constitutional.** - The board is well founded in the police power of the state and cannot be attacked as being unconstitutional. 1959-60 Op. Att'y Gen. No. 60-126.

**Constitutionality of regulating nonresident dealers.** - This provision gives the board power to license, regulate and impose a reasonable license fee on resident and nonresident wholesale drug dealers and manufacturers distributing their products in the state, and such action will not violate the United States constitution. 1971 Op. Att'y Gen. No. 71-49.

**Powers of board.** - The board of pharmacy has power to make bylaws, rules and regulations necessary for the protection of the public in the field of pharmacy and may employ chemists, inspectors, agents and clerical administrative help for the proper conduct of its business. 1953-54 Op. Att'y Gen. No. 5776.

**Jurisdiction over hospital pharmacies.** - The board of pharmacy exercises the same powers over pharmacies or drug dispensaries operated by a hospital as it does over any other drug store or pharmacy, etc., operated within the state. 1959-60 Op. Att'y Gen. No. 60-126.

**Presence of pharmacist.** - Under broad grant of authority given the board for the protection of public health and welfare, it may promulgate a regulation requiring that a registered pharmacist must be on duty in a drug store from the opening hour of the drug store until the closing hour. 1961-62 Op. Att'y Gen. No. 61-85.

**Sharing office space.** - The pharmaceutical association and the state board of pharmacy could maintain offices under the same roof and within the same office space, but they would be required to separate their expenditures for rent and clerical help. 1953-54 Op. Att'y Gen. No. 5776.

**Inspector.** - Inspector appointed under former law, in the performance of his duties, was empowered with all of the powers and duties of law enforcement officers of the state, within which powers was the right to carry such weapons as the occasion appeared to require. 1965 Op. Att'y Gen. No. 65-93.

An inspector has all of the authority granted to municipal, county and state law enforcement officers, including the power to obtain search warrants in all cases concerning the violation or violations of the pharmacy laws of the state of New Mexico. 1953-54 Op. Att'y Gen. No. 5865 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 28 C.J.S. Druggists § 4.

### **61-11-7. Drug dispensation; limitations. (Effective until July 1, 1998.)**

A. The Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] does not prohibit:

(1) any hospital or state or county institution or clinic, without the services of a staff pharmacist, from acquiring and having in its possession any dangerous drug for the purpose of dispensing, provided it is in a dosage form suitable for dispensing and provided that the hospital, institution or clinic employs a consulting pharmacist;

(2) if the consulting pharmacist is not available, the withdrawal of any drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of his patient;

(3) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been prepared previously by a pharmaceutical manufacturer or pharmacist and obtained by the hospital, institution or clinic in a form suitable for the preparation of the solution;

(4) the sale of nonnarcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(5) the sale of drugs intended for veterinary use; provided that if such drugs bear the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drug may be sold or distributed only as provided in Subsection A of

Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board under Subsection B of Section 61-11-14 NMSA 1978;

(6) the sale to or possession or administration of topical ocular diagnostic pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of such agents; or

(7) supportive personnel from providing assistance to pharmacists.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription necessitating compounding shall be either compounded or dispensed only by a pharmacist.

**History:** 1953 Comp., § 67-9-38, enacted by Laws 1969, ch. 29, § 6; 1973, ch. 173, § 1; 1977, ch. 30, § 4; 1992, ch. 19, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1992 amendment**, effective May 20, 1992, substituted "nonprescription medicines" for "patent or proprietary medicines" in Subsection A(4), made statutory reference substitutions in Subsection A(5), added Subsection A(7), and made minor stylistic changes throughout the section.

**Hospital or clinic pharmacy must be licensed and registered**, and except in limited situations prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

Hospital in which a pharmacy dispenses drugs must be licensed and registered. 1959-60 Op. Att'y Gen. No. 60-126.

**The health and environment department** (now department of health) is not a "person" within the meaning of 61-11-2 NMSA 1978 and is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 23.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

Original unbroken package, what constitutes, 113 A.L.R. 964.

### **61-11-8. Drug records to be kept. (Effective until July 1, 1998.)**

Records shall be kept by all hospitals, institutions or clinics of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents and both the pharmacist in charge and the hospital, institution or clinic shall be responsible for the maintenance of the records in proper form.

**History:** 1953 Comp., § 67-9-39, enacted by Laws 1969, ch. 29, § 7; 1972, ch. 84, § 56.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 7, 25, 52.

### **61-11-9. Qualifications for registration as a pharmacist by examination. (Effective until July 1, 1998.)**

A. An applicant for registration as a pharmacist by examination shall:

- (1) have reached the age of majority and not be addicted to the use of drugs or alcoholic liquors;
- (2) be a graduate of a college of pharmacy accredited by the American council on pharmaceutical education;
- (3) have not less than one year of experience under the direction of a pharmacist in accordance with the programs of supervised training established by regulation of the board;
- (4) pass an examination prepared and administered by the board, which examination shall be based on the subjects and minimum grading standards as set forth in the bylaws of the national association of boards of pharmacy; and
- (5) pass an examination prepared and administered by the board, which examination shall be based on federal and state drug laws and regulations.

B. Any person who is a graduate of a foreign school of pharmacy may be eligible for licensure as a pharmacist upon successful completion of an equivalency examination program and an examination on New Mexico laws and board regulations. The board shall adopt regulations that define the content of the examinations.

C. The board shall register an applicant and issue a license when his application has been filed with and approved by the board, he has paid the required fees and he has passed the required examinations.

**History:** 1953 Comp., § 67-9-40, enacted by Laws 1969, ch. 29, § 8; 1973, ch. 32, § 1; 1992, ch. 19, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Cross-references.** - As to the age of majority, see 28-6-1 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, substituted "be a graduate of" for "hold a degree in pharmacy from" in Subsection A(2), made minor stylistic changes in Subsection A(4), added Subsection A(5), added present Subsection B, redesignated former Subsection B as present Subsection C, and substituted "issue a license" for "issue him a certificate of registration" and "passed the required examinations" for "passed an examination" in Subsection C.

**No "right" exists in anyone to be licensed** by the board of pharmacy unless the applicant complies with applicable statutes and rules and regulations. 1957-58 Op. Att'y Gen. No. 58-219.

**Proof of qualifications.** - Since under former law the applicant was to "submit to the board of pharmacy proof of his qualifications," the board could set the type of proof required in order to determine whether there was compliance with the law, and it could investigate the proof submitted for that purpose. 1955-56 Op. Att'y Gen. No. 6188.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 10.

28 C.J.S. Druggists § 3.

### **61-11-10. Reciprocal registration. (Effective until July 1, 1998.)**

The board may issue a certificate of registration, with or without examination, to a person who:

A. is registered as a pharmacist by examination in another state which under equivalent conditions will grant reciprocal registration to persons registered as pharmacists by examination in this state; and

B. produces evidence satisfactory to the board that he has the age, education, experience and qualifications required of applicants for registration by examination under the provisions of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA

1978]. Any person who was registered by examination in another state prior to May 20, 1940, is required to satisfy only those requirements in existence in this state at the time he was registered in the other state.

**History:** 1953 Comp., § 67-9-41, enacted by Laws 1969, ch. 29, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-11. Pharmacist intern; qualifications for registration. (Effective until July 1, 1998.)**

There is established under the board the classification of pharmacist intern. An applicant for registration as a pharmacist intern shall:

- A. be not less than eighteen years of age;
- B. have satisfactorily completed not less than thirty semester hours or the equivalent hereof, in a college of pharmacy accredited by the American council on pharmaceutical education; and
- C. meet other requirements established by regulation of the board.

**History:** 1953 Comp., § 67-9-42, enacted by Laws 1969, ch. 29, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-12. Registration fees. (Effective until July 1, 1998.)**

A. An applicant for registration as a pharmacist or pharmacist intern shall pay the following fees, which fees shall not be returnable:

- (1) for registration as a pharmacist by examination, a fee set by the board not to exceed two hundred dollars (\$200). If the applicant fails a portion of the examination, reexamination is subject to the same fee as the first examination;
- (2) for registration as a pharmacist without examination, a fee set by the board not to exceed two hundred dollars (\$200); and
- (3) for registration as a pharmacist intern, a fee not to exceed twenty-five dollars (\$25.00).

B. The board shall issue an appropriate certificate of registration or license to each person registered as a pharmacist or pharmacist intern and enter his name and pertinent information in the registry maintained by the board.

C. Every certificate of registration or license of pharmacists or pharmacist interns shall have the seal of the board affixed and be signed by the board secretary-treasurer.

**History:** 1953 Comp., § 67-9-43, enacted by Laws 1969, ch. 29, § 11; 1972, ch. 43, § 1; 1983, ch. 165, § 2; 1989, ch. 103, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)" in Subsection A(1), and substituted "not to exceed twenty-five dollars (\$25.00)" for "of ten dollars (\$10.00)" in Subsection A(3).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 10.

28 C.J.S. Druggists § 3.

### **61-11-13. Registration renewal; revocation. (Effective until July 1, 1998.)**

A. All annual licenses for pharmacists shall expire on June 30, and commencing July 1, 1984, the annual renewal date for each registrant shall be the last day of the registrant's birth month. Any person who intends to continue practice shall file an application for renewal and pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars (\$150) prior to that date; provided, however, the board shall prorate any renewal fee charged for any period of less than one year. The license of any pharmacist failing to renew his license on or before that date will automatically expire, and it shall not be reinstated except upon payment of a twenty-five dollar (\$25.00) reinstatement fee and all delinquent renewal fees.

B. Any pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have his license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that he has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to his application for reinstatement. Pharmacists regularly engaged in teaching, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of pharmacists' licenses shall be made on forms prescribed and furnished by the board and shall indicate whether the renewal applied for will be an active or inactive registration. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of pharmacists' licenses shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. Applications for renewal of a certificate of registration as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars (\$25.00).

**History:** 1953 Comp., § 67-9-44, enacted by Laws 1969, ch. 29, § 12; 1977, ch. 62, § 2; 1983, ch. 165, § 3; 1989, ch. 103, § 2; 1992, ch. 19, § 5.

### ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, in Subsection A substituted "one hundred fifty dollars (\$150)" for "one hundred dollars (\$100)" in the second sentence; and substituted "not to exceed twenty-five dollars (\$25.00)" for "of five dollars (\$5.00)" in Subsection E.

**The 1992 amendment,** effective May 20, 1992, in Subsection A, substituted "last day of the registrant's birth month" for "registrant's birthdate" in the first sentence, substituted "than" for "then" near the end of the second sentence, and substituted all of the present language of the last sentence preceding "and it shall not be reinstated" for "Any pharmacist failing to renew his license on or before that date shall have his license revoked".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 14.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotics or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Druggists § 3.

**61-11-14. Pharmacy licensure; wholesale drug distribution business licensure; requirements; fees; revocation. (Effective until July 1, 1998.)**

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper permit or license and shall meet the requirements of the board and pay the annual fee for the permit or license and its renewal.

B. The board shall issue the following classes of permits or licenses that shall be defined and limited by regulation of the board:

- (1) retail pharmacy license;
- (2) nonresident pharmacy license;
- (3) wholesale drug distributor's license;
- (4) drug manufacturer's license;
- (5) hospital pharmacy license for both inpatient and outpatient dispensing;
- (6) drug room license;
- (7) drug custodial license for licensed nursing homes;
- (8) state license for the department of health;
- (9) drug permit for pharmaceutical sales representatives who possess dangerous drugs;
- (10) limited drug permit for industrial and public health clinics not under the department of health and businesses of a similar nature where dangerous drugs are dispensed, the permit being limited to specific dangerous drugs or other limitations as set forth in the application and shown on the permit;
- (11) limited drug permit for home care services not under the department of health in which dangerous drugs are stored and administered, the permit being limited to specific dangerous drugs or other limitations as set forth in the board's regulations and shown on the permit; and

(12) limited license for wholesalers, retailers or distributors of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring a limited license for veterinary drugs as provided in this paragraph.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, wholesale drug distributor, nonresident pharmacy, pharmaceutical sales representative, drug manufacturer or hospital pharmacy shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars (\$300);

(2) a license or permit for a drug room or a nursing home shall be accompanied by a fee set by the board in an amount not to exceed one hundred dollars (\$100);

(3) a license or a permit for an industrial or public health clinic or a business of a similar nature, a limited drug permit issued pursuant to the provisions of Paragraph (11) of Subsection B of this section or a limited license issued pursuant to Paragraph (12) of Subsection B of this section shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200); and

(4) the department of health license shall be accompanied by a fee set by the board in an aggregate amount based on a charge not to exceed two hundred dollars (\$200) for each facility where dangerous drugs are stored and dispensed or distributed; provided that the charge for each facility shall in no instance be more than the fee set for industrial or public health clinics.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license or permit shall be obtained for each location.

E. Each application for a permit or license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a new retail pharmacy, hospital pharmacy, wholesale drug business or drug manufacturing business in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

- (4) the type of business to be conducted at each location;
- (5) a rough drawing of the floor plan of each location to be licensed;
- (6) the proposed days and hours of operation of the business; and
- (7) other information the board may require.

After preliminary approval of the application for a license for a retail pharmacy, a hospital pharmacy, a drug manufacturing business or a drug distribution business, a request for an inspection, together with an inspection fee not to exceed two hundred dollars (\$200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

G. Licenses and permits issued by the board under this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license or permit on or before December 31 of each year shall not have his license or permit reinstated except upon payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars (\$100) and all delinquent renewal fees.

H. The board, after notice and a refusal or failure to comply, is authorized to suspend or revoke any license or permit issued under the provisions of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] at any time examination or inspection of the operation for which the license or permit was granted discloses that such place is not being conducted according to law or regulations of the board.

**History:** 1953 Comp., § 67-9-45, enacted by Laws 1969, ch. 29, § 13; 1973, ch. 173, § 2; 1977, ch. 253, § 69; 1983, ch. 165, § 4; 1989, ch. 103, § 3; 1992, ch. 19, § 6; 1993, ch. 219, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, substituted "three hundred dollars (\$300)" for "two hundred dollars (\$200)" in Subsection C(1); substituted "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in Subsection C(2); substituted "two hundred dollars (\$200)" for "one hundred dollars (\$100)" in Subsections C(3) and C(4); and substituted "an inspection fee not to exceed two hundred dollars (\$200)" for "a one hundred dollar (\$100) inspection fee" in Subsection F(7).

**The 1992 amendment**, effective May 20, 1992, inserted "wholesale" in the section catchline; inserted "who engages in a wholesale" in Subsection A; rewrote Subsection B(2), which formerly read: "wholesale drug dealer's license"; added present Subsection B(3); redesignated former Subsections B(3) to B(7) as present Subsections B(4) to B(8); added present Subsection B(9); redesignated former Subsections B(8) and B(9) as

present Subsections B(10) and B(11); substituted "distributor's" for "dealer's" in the second sentence of Subsection B(11); substituted "distributor, nonresident pharmacy, pharmaceutical sales representative" for "dealer" in Subsection C(1); added the second sentence of Subsection G; substituted "department of health" for "health and environment department" several times throughout the section; and made minor stylistic changes throughout the section.

**The 1993 amendment**, effective July 1, 1993, added present Paragraph (11) to Subsection B, renumbering former Paragraph (11) as Paragraph (12) and making a related grammatical change; and in Paragraph (3) of Subsection C, inserted "a limited drug permit issued pursuant to the provisions of Paragraph (11) of Subsection B of this section" and substituted "Paragraph (12)" for "Paragraph (11)".

**Drug manufacturer or wholesaler is required to have separate license** for that particular operation; license to operate a drugstore does not extend to manufacturing or wholesaling activities. 1955-56 Op. Att'y Gen. No. 6211.

**Hospital or clinic pharmacy must be licensed and registered**, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 14.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Druggists § 3.

### **61-11-14.1. Nonresident pharmacy licensure; toll-free telephone service. (Effective until July 1, 1998.)**

A. Any person making application to the board for a nonresident pharmacy license shall submit to the board an application for licensure that discloses the following information:

(1) the address of the principal office of the nonresident pharmacy and the names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs to residents of this state. A report containing this information shall be made on an annual basis and within thirty days after any change of office location, corporate officer or pharmacist in charge;

(2) that the nonresident pharmacy complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is a resident, as well as with requests for information made by the board pursuant to this section;

(3) that the nonresident pharmacy maintains, at all times, a valid license, permit or registration to operate the pharmacy in compliance with the laws of the state in which it is a resident;

(4) a copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the state in which it is a resident; and

(5) that the nonresident pharmacy maintains its records of controlled substances or dangerous drugs that are dispensed to patients in this state so that the records are readily retrievable.

B. A nonresident pharmacy licensed under this section shall provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of forty hours a week. The toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

C. Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacies.

**History:** 1978 Comp., § 61-11-14.1, enacted by Laws 1992, ch. 19, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Effective dates.** - Laws 1992, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-11-15. Pharmacies; sale of drugs; supervision requirements. (Effective until July 1, 1998.)**

No owner or proprietor of a pharmacy shall:

A. fail to place a pharmacist in charge of the pharmacy; provided, that this restriction shall not apply to any person possessing only a limited license issued under Subsection B of Section 61-11-14 NMSA 1978;

B. intentionally or fraudulently adulterate, or cause to be adulterated, misbrand or cause to be misbranded, any drugs compounded, sold or offered for sale in the pharmacy;

C. by himself, or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs or poisons, in his place of business, except by a pharmacist or a pharmacist intern;

D. sell, offer for sale, compound or dispense dangerous drugs or poisons without being a pharmacist; provided, that veterinary drugs bearing the legend: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" may be sold, offered for sale or distributed by persons holding a limited license issued under Subsection B of Section 61-11-14 NMSA 1978; or

E. operate a pharmacy without the appropriate license.

**History:** 1953 Comp., § 67-9-46, enacted by Laws 1969, ch. 29, § 14; 1973, ch. 173, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 11.

Constitutionality of statute regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

Mistake as to chemical or product furnished or misdescription thereof by label or otherwise as basis of liability for personal injury or death resulting from combination with other chemical, 123 A.L.R. 939.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Alteration of product after it leaves hands of manufacturer or seller as affecting liability for product-caused harm, 41 A.L.R.3d 1251.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528, 62 A.L.R.4th 16.

State and local administrative inspection of and administrative warrants to search pharmacies, 29 A.L.R.4th 264.

28 C.J.S. Druggists § 13.

### **61-11-16. Pharmacies; equipment required. (Effective until July 1, 1998.)**

There shall be kept in every pharmacy, subject to testing by the board or its authorized agents, modern prescription balances with weights, the necessary graduates, mortars and pestles, all in good condition, for compounding prescriptions and such books and other equipment the board may designate by regulation.

**History:** 1953 Comp., § 67-9-47, enacted by Laws 1969, ch. 29, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-17. Display of license, permit or certificate. (Effective until July 1, 1998.)**

The pharmacist in charge of a pharmacy, a pharmacist or a pharmacist intern, and the owner of a pharmacy or other pharmaceutical business shall cause their current certificate of registration or their current permit or license for the operation of the business to be conspicuously displayed in the pharmacy or place of business to which it applies or in which they are employed. Failure to display a certificate of registration or a license or permit shall cause the certificate, license or permit to be suspended until the provisions of Section 13 [61-11-14 NMSA 1978] of the Pharmacy Act are complied with and the certificate, license or permit is properly displayed.

**History:** 1953 Comp., § 67-9-48, enacted by Laws 1969, ch. 29, § 16.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**61-11-18. State license; actions authorized. (Effective until July 1, 1998.)**

The board shall issue one license to the health and environment department [department of health] of the state to cover all of its clinics and other health facilities where dangerous drugs are stored, distributed or dispensed. All such clinics or other health facilities of the department are subject to the provisions of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978], must keep records of all dangerous drugs and may be inspected by the board or its agents at any reasonable time. The license shall permit the health and environment department to:

- A. acquire, possess, store and repackage dangerous drugs for distribution to its clinics and other health facilities, provided it is done under procedures developed by a staff pharmacist of the department charged with the responsibility for the distribution and accountability of the drugs, and the procedures are approved by the board;
- B. receive, possess and store dangerous drugs in any clinic or other health facility of the health and environment department [department of health] for use in any public health program; and
- C. dispense dangerous drugs in furtherance of any public health program under the supervision of a pharmacist, a consulting pharmacist or a licensed practitioner.

**History:** 1953 Comp., § 67-9-49, enacted by Laws 1969, ch. 29, § 17; 1977, ch. 253, § 70.

**ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Bracketed material.** - The bracketed reference to the department of health was inserted by the compiler, as Laws 1991, ch. 25, § 16 repeals former 9-7-4 NMSA 1978, relating to the health and environment department, and enacts a new 9-7-4 NMSA 1978, creating the department of health. The bracketed material was not enacted by the legislature and is not part of the law.

**Employment of licensed pharmacists.** - The health and environment department (now department of health) is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

**61-11-19. Fund established; disposition; method of payment. (Effective until July 1, 1998.)**

- A. There is established in the state treasury the "pharmacy fund".

B. All funds received by the board and all money collected under the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] or any other act administered by the board shall be deposited with the state treasurer for credit to the pharmacy fund.

C. Payments from the pharmacy fund shall be made upon warrants of the secretary of finance and administration on vouchers issued in accordance with the budget approved by the department of finance and administration.

D. All amounts paid into the pharmacy fund shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Pharmacy Act and any other acts administered by the board, the duties imposed thereby and the promotion of pharmacy education and standards in this state. All money unused at the end of the fiscal year shall remain in the pharmacy fund for use in accordance with the provisions of the Pharmacy Act.

E. All funds which may have accumulated to the credit of the pharmacy fund shall be continued for use by the board in administration of the Pharmacy Act.

**History:** 1953 Comp., § 67-9-50, enacted by Laws 1969, ch. 29, § 18; 1976, ch. 12, § 1; 1977, ch. 247, § 171; 1987, ch. 167, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

#### **61-11-20. Disciplinary proceedings; Uniform Licensing Act. (Effective until July 1, 1998.)**

A. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, withhold, suspend or revoke any certificate of registration or license held or applied for under the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] upon grounds that the licensee or applicant:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(2) is convicted of a violation of any federal law relating to controlled substances, any federal food and drug law or any federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act, the Pharmacy Act or the New Mexico Drug and Cosmetic Act;

(4) is addicted to the use of dangerous drugs or narcotic drugs of any kind;

(5) is habitually intemperate;

(6) is guilty of knowingly or fraudulently adulterating or misbranding or causing to be adulterated or misbranded any drugs;

(7) is guilty of procuring or attempting to procure registration as a pharmacist or pharmacist intern or licensure for a pharmacy or pharmaceutical business in this state for himself or another by knowingly making or causing to be made false representations to the board;

(8) is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability as determined by the board and based on competent medical authority, during the period of such disability; or

(9) fails to maintain any drug records required by any federal law resulting in the condemnation of any drugs in his possession or control.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. The board may modify any prior order of revocation, suspension or refusal to issue a license or certificate of registration of a pharmacist or a pharmacist intern but only upon a finding by the board that there no longer exist any grounds for disciplinary action, provided that any cessation of the practice of pharmacy for twelve months or more shall require the pharmacist to undergo additional education, internship or examination as the board determines necessary.

D. Nothing in the Pharmacy Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of the Pharmacy Act whenever the board believes that the public interest will be adequately served by a suitable written notice or warning or by a suspension of a certificate of registration, license or permit, for a period not to exceed thirty days after an informal hearing.

**History:** 1953 Comp., § 67-9-51, enacted by Laws 1969, ch. 29, § 19; 1972, ch. 84, § 57; 1983, ch. 165, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**New Mexico Drug and Cosmetic Act.** - See 26-1-1 NMSA 1978 and notes thereto.

**Commission of crime.** - Board of pharmacy has authority to revoke license of a pharmacist involved in a crime. 1957-58 Op. Att'y Gen. No. 58-214.

**Moral turpitude.** - Board of pharmacy has jurisdiction to suspend or revoke a licensee's certificate when said board determines the fact of any undesirable conduct based on moral turpitude. 1957-58 Op. Att'y Gen. No. 58-214.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 14.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 A.L.R.5th 390.

28 C.J.S. Druggists § 3.

**61-11-21. Licensing of pharmacists and pharmacies required.  
(Effective until July 1, 1998.)**

A. Unless he is a pharmacist, or is exempted under the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978], no person shall sell at retail any dangerous drug or poison, compound any prescription or acquire and possess any dangerous drug without its being prescribed.

B. No person shall conduct or operate a place used for the retail sale, compounding or dispensing of drugs or prescriptions, or a place represented by a sign or by advertisement to have a business name or specialization that includes the words "pharmacist," "pharmacy," "apothecary," "apothecary shop," "chemist's shop," "drug store," "drugs," "druggist," "drug sundries," "prescriptions" or any combination thereof, or any other words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy, unless:

(1) the place is licensed by the board under the Pharmacy Act; and

(2) the business being conducted on the licensed premises constantly employs, on a regular basis, a pharmacist.

C. No person shall permit anyone in his employ or under his supervision, except a pharmacist or a pharmacist intern, to compound, dispense, label or otherwise prepare prescriptions.

D. The provisions of Subsections A, B and C of this section shall not apply to a person possessing a limited license issued under Subsection B of Section 61-11-14 NMSA 1978 for the sale or distribution of veterinary drugs bearing the legend: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian." Provided, that the possessors of such a license may only sell or distribute such drugs on the order of a licensed veterinarian; and may not represent their place of business by a sign or advertisement that includes the words "pharmacist," "pharmacy," "apothecary," "chemist's shop," "drug store," "drugs," "druggist," "drug sundries," "prescriptions" or any combination thereof, or any words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy.

**History:** 1953 Comp., § 67-9-52, enacted by Laws 1969, ch. 29, § 20; 1973, ch. 173, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Constitutionality of former law.** - Former law requiring employment of registered pharmacist in business using such terms as "pharmacist," "pharmacy" or "drugstore" was not monopolistic, discriminatory nor an illegal restraint of trade. *State v. Collins*, 61 N.M. 184, 297 P.2d 325 (1956).

**Miners' hospital of New Mexico may not sell or dispense medicine** and drugs while operating as a public institution which is not licensed as required. 1957-58 Op. Att'y Gen. No. 57-254.

**Hospital or clinic pharmacy must be licensed and registered**, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961-62 Op. Att'y Gen. No. 61-52.

**Drug dispensing clinic to be licensed.** - A drug dispensing clinic which orders dangerous drugs and controlled substances from state wholesale outlets, and which is operated by a private firm on contract to the federal government, must be licensed by the board of pharmacy and must obtain board registration if required. 1976 Op. Att'y Gen. No. 76-19.

**The health and environment department** is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d 290, Drugs, Narcotics and Poisons § 10.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

Constitutionality of statutes regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

28 C.J.S. Druggists § 3.

### **61-11-22. Exemptions from act. (Effective until July 1, 1998.)**

A. The Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] does not apply to licensed practitioners in this state in supplying to their patients any drug if the licensed practitioner is practicing his profession and does not keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs or poisons.

B. The Pharmacy Act does not prevent:

(1) the personal administration of drugs carried by a licensed practitioner in order to supply the immediate needs of his patients; or

(2) the sale of nonnarcotic proprietary preparations.

**History:** 1953 Comp., § 67-9-53, enacted by Laws 1969, ch. 29, § 21.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Physicians providing drugs to patients.** - A physician may keep a supply of drugs without obtaining a pharmacy license, but only to provide to his patients. The physician may provide drugs to his patients only in connection with his treatment of them. A physician may assess a reasonable charge for his services, including a charge for the drugs he supplies to his patients. 1988 Op. Att'y Gen. No. 88-49.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 11.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

## **61-11-23. Construction of laws relating to drugs. (Effective until July 1, 1998.)**

A. The Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] does not amend or repeal any of the laws which govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not prevent or apply to the sale or use of economic poisons as defined under the New Mexico Economic Poisons Act of 1951 [repealed].

C. The Pharmacy Act does not amend or repeal the New Mexico Drug and Cosmetic Act.

**History:** 1953 Comp., § 67-9-54, enacted by Laws 1969, ch. 29, § 22; 1972, ch. 84, § 58.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Cross-references.** - For Controlled Substances Act, see 30-31-1 NMSA 1978 et seq.

**Compiler's note.** - The Economic Poisons Act of 1951, referred to in Subsection B of this section, was repealed by Laws 1973, ch. 366, § 42.

**New Mexico Drug and Cosmetic Act.** - See 26-1-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 36.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

Construction of provision of Uniform Narcotic Drug Act requiring a physician's prescription as a prerequisite to a pharmacist's sale of narcotics, 10 A.L.R.3d 560.

28 C.J.S. Druggists § 13.

## **61-11-24. Violations; penalties. (Effective until July 1, 1998.)**

It is a petty misdemeanor for any person to:

A. practice or attempt to practice pharmacy without a certificate of registration and a current license from the board;

B. use the title of a registered pharmacist, unless he is licensed as such under the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978];

C. procure or attempt to procure registration as a pharmacist or to procure a license for a pharmacy for himself or another by making or causing to be made false representations to the board;

D. allow any other person in his employ or under his supervision to compound or dispense prescriptions or sell or compound poisons unless he is a pharmacist or registered as a pharmacist intern in accordance with the Pharmacy Act, or exempted under the provisions of the act;

E. own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so under the Pharmacy Act.

**History:** 1953 Comp., § 67-9-55, enacted by Laws 1969, ch. 29, § 23; 1972, ch. 84, § 59.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Criminal responsibility of druggist for injury in consequence of mistake, 55 A.L.R.2d 714.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

28 C.J.S. Druggists § 5.

### **61-11-25. Power to enjoin violations. (Effective until July 1, 1998.)**

In addition to the remedies provided in the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978], the board of pharmacy is hereby authorized to apply to the district court for, and such court shall have jurisdiction, upon hearing and for good cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of the Pharmacy Act; irrespective of whether or not there exists an adequate remedy at law.

**History:** 1953 Comp., § 67-9-56, enacted by Laws 1969, ch. 29, § 24.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 66.

### **61-11-26. Licensure under previous law. (Effective until July 1, 1998.)**

Any person or place of business licensed as a pharmacist, pharmacist intern or pharmacy under any prior laws of this state whose license is valid on the effective date of the Pharmacy Act shall be held to be licensed under the provisions of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] and entitled to renewal of this license as provided in the Pharmacy Act.

**History:** 1953 Comp., § 67-9-57, enacted by Laws 1969, ch. 29, § 25.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**"Effective date of the Pharmacy Act".** - The phrase "effective date of the Pharmacy Act" refers to the effective date of Laws 1969, ch. 29, which took effect July 1, 1969.

### **61-11-27. Transfer of funds. (Effective until July 1, 1998.)**

All funds which have accumulated to the credit of the board under any previous law shall be continued for use by the board in the administration of the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978] and any other laws being administered by the board.

**History:** 1953 Comp., § 67-9-58, enacted by Laws 1969, ch. 29, § 26.

## ANNOTATIONS

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

### **61-11-28. Uniform Licensing Act. (Effective until July 1, 1998.)**

The board of pharmacy shall be subject to all the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** 1953 Comp., § 67-9-59, enacted by Laws 1969, ch. 29, § 28.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-11-29 NMSA 1978 and notes thereto.

**Severability clauses.** - Laws 1969, ch. 29, § 27, provides for the severability of the Pharmacy Act if any part or application thereof is held invalid.

### **61-11-29. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of pharmacy is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 11 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 11 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-11-29, enacted by Laws 1979, ch. 266, § 2; 1981, ch. 241, § 24; 1985, ch. 87, § 9; 1991, ch. 189, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 16 amends this section to repeal Chapter 61, Article 11 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 11A IMPAIRED PHARMACISTS**

### **61-11A-1. Short title.**

This act [61-11A-1 to 61-11A-8 NMSA 1978] may be cited as the "Impaired Pharmacists Act".

**History:** Laws 1987, ch. 284, § 1.

### **61-11A-2. Definitions.**

As used in the Impaired Pharmacists Act [61-11A-1 to 61-11A-8 NMSA 1978]:

A. "board" means the New Mexico board of pharmacy;

B. "board-approved intervenors" means persons trained to intervention and designated by the board to implement the intervention process when necessary;

C. "committee" means a committee appointed by the board to formulate and administer the impaired pharmacists program;

D. "impaired pharmacist" means a pharmacist who is unable to practice pharmacy with reasonable skill, competency or safety to the public because of substance abuse, mental illness, the aging process or loss of motor skills;

E. "impaired pharmacist program" means a plan approved by the board for treatment and rehabilitation of an impaired pharmacist;

F. "intervention" means a process whereby an alleged impaired pharmacist is confronted by the board or board-approved intervenors who provide documentation that a problem exists and attempt to convince the pharmacist to seek evaluation and treatment;

G. "rehabilitation" means the process whereby an impaired pharmacist advances in an impaired pharmacists program to an optimal level of competence to practice pharmacy without endangering the public; and

H. "verification" means a process whereby alleged professional impairment is identified or established.

**History:** Laws 1987, ch. 284, § 2.

### **61-11A-3. Administration.**

The board may appoint a committee to organize and administer a program that will fulfill two functions. The program shall serve as a diversion program to which the board may refer licensees where appropriate in lieu of or in addition to other disciplinary action. The program shall also be a confidential source of treatment or referral for pharmacists who, on a strictly voluntary basis and without the knowledge of the board, desire to avail themselves of its services.

**History:** Laws 1987, ch. 284, § 3.

### **61-11A-4. Committee; functions.**

The functions of the committee shall include:

A. evaluation of pharmacists who request participation in the program;

B. review and designation of treatment facilities and services to which pharmacists in the program may be referred;

C. receipt and review of information relating to the participation of [a] pharmacists in the program;

D. assisting the pharmacists' professional association in publicizing the program; and

E. preparation of reports for the board.

**History:** Laws 1987, ch. 284, § 4.

### **61-11A-5. Board referral.**

A. The board shall inform each pharmacist referred to the program by board action of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program and of the possible consequences of noncompliance with the program.

B. Failure to comply with any treatment provision of a program may result in termination of the participation by the pharmacist in the program. The name and license number of a pharmacist who is terminated for failure to comply with the treatment provisions of a program shall be reported to the board.

C. Participation in a program under this section shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this section shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program pursuant to this section.

**History:** Laws 1987, ch. 284, § 5.

### **61-11A-6. Voluntary participation.**

A. The committee shall inform each pharmacist who voluntarily participates in the impairment program without referral by the board of the procedures followed in the program, of the rights and responsibilities of the pharmacist in the program and of the possible consequences of noncompliance with the program.

B. The board shall be informed of the failure of a pharmacist to comply with any treatment provision of a program if the committee determines that the resumption of his practice of pharmacy would pose a threat to the health and safety of the public.

C. Participation in a program under this section shall not be a defense to any disciplinary action which may be taken by the board. Further, no provision of this section shall preclude the board from commencing disciplinary action against a licensee who is terminated from a program pursuant to this section.

**History:** Laws 1987, ch. 284, § 6.

### **61-11A-7. Review activities.**

The board shall review the activities of the committee on a quarterly basis. As part of this evaluation, the board shall review files of all participants in the impairment program. Names of those pharmacists who entered the program voluntarily without the knowledge of the board shall remain confidential from the board except when monitoring by the board reveals misdiagnosis, case mismanagement or noncompliance by the participant.

**History:** Laws 1987, ch. 284, § 7.

### **61-11A-8. Civil liability.**

No member of the board or the committee or any board-approved intervenor shall be liable for any civil damages because of acts or omissions which may occur while acting in good faith pursuant to the Impaired Pharmacists Act [61-11A-1 to 61-11A-8 NMSA 1978].

**History:** Laws 1987, ch. 284, § 8.

## **ARTICLE 11B PHARMACIST PRESCRIPTION AUTHORITY**

### **61-11B-1. Short title.**

This act [61-11B-1 to 61-11B-3 NMSA 1978] may be cited as the "Pharmacist Prescriptive Authority Act".

**History:** Laws 1993, ch. 191, § 1.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 191 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Pharmacist Prescriptive Authority Act is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-11B-2. Definitions.**

As used in the Pharmacist Prescriptive Authority Act [61-11B-1 to 61-11B-3 NMSA 1978]:

A. "board" means the board of pharmacy;

B. "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription";

C. "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority;

D. "monitor dangerous drug therapy" means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

(1) collecting and reviewing patient dangerous drug histories;

(2) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration; and

(3) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting;

E. "pharmacist" means a person duly licensed by the board of pharmacy to engage in the practice of pharmacy pursuant to the Pharmacy Act [61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978];

F. "pharmacist clinician" means a pharmacist with additional training, at least equivalent to the training received by a physician assistant, required by regulations adopted by the board in consultation with the New Mexico board of medical examiners and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;

G. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and

H. "prescriptive authority" means the authority to prescribe or modify dangerous drug therapy.

**History:** Laws 1993, ch. 191, § 2.

## **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 191 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Pharmacist Prescriptive Authority Act is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-11B-3. Pharmacist clinician prescriptive authority.**

A. A pharmacist clinician planning to exercise prescriptive authority in his practice shall have on file at his place of practice written guidelines or protocol. The guidelines or protocol shall authorize a pharmacist clinician to exercise prescriptive authority and shall be established and approved by a practitioner in accordance with regulations adopted by the board. A copy of the written guidelines or protocol shall be on file with the board. The practitioner who is a party to the guidelines or protocol shall be in active practice and the prescriptive authority that he grants to a pharmacist clinician shall be within the scope of the practitioner's current practice.

B. The guidelines or protocol required by Subsection A of this section shall include:

(1) a statement identifying the practitioner authorized to prescribe dangerous drugs and the pharmacist clinician who is a party to the guidelines or protocol;

(2) a statement of the types of prescriptive authority decisions that the pharmacist clinician is authorized to make which may include:

(a) a statement of the types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case; and

(b) a general statement of the procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(3) a statement of the activities the pharmacist clinician is to follow in the course of exercising prescriptive authority, including documentation of decisions made and a plan for communication or feedback to the authorizing practitioner concerning specific decisions made. Documentation may occur on the prescriptive record, patient profile, patient medical chart or in a separate log book; and

(4) a statement that describes appropriate mechanisms for reporting to the practitioner monitoring activities and results.

C. The written guidelines or protocol shall be reviewed and shall be revised every two years if necessary.

D. A pharmacist clinician planning to exercise prescriptive authority in his practice shall be authorized to monitor dangerous drug therapy.

E. The board shall adopt regulations to carry out the provisions of the Pharmacist Prescriptive Authority Act [61-11B-1 to 61-11B-3 NMSA 1978].

F. For the purpose of the Pharmacist Prescriptive Authority Act the board of medical examiners shall adopt regulations concerning the guidelines and protocol for practitioners defined in Subsection C of Section 2 of that act.

**History:** Laws 1993, ch. 191, § 3.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 191 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Pharmacist Prescriptive Authority Act is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

## **ARTICLE 12 PHYSICAL THERAPY**

### **61-12-1. License required to practice. (Effective until July 1, 1998.)**

A. It is unlawful for any person to practice as, or to offer his services in the capacity of or to purport to be a physical therapist, physiotherapist or a physical therapist assistant without having a license therefor and without being registered or exempted from registration under the provisions of the Physical Therapist Act [this article].

B. A person shall be deemed to be engaged in the practice of physical therapy or physiotherapy within the meaning of the Physical Therapist Act when such person holds himself out to be a physical therapist, physiotherapist or physical therapist assistant.

**History:** 1941 Comp., § 51-556, enacted by Laws 1953, ch. 136, § 1; 1953 Comp., § 67-10-1; Laws 1979, ch. 369, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - For exemptions from licensing requirements, see 61-12-3, 61-12-20 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 50.

Licensing and regulation of practice of physical therapy, 8 A.L.R.5th 825.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12.

**61-12-1.1. Short title. (Effective until July 1, 1998.)**

Article 12 of Chapter 61 may be cited as the "Physical Therapist Act".

**History:** 1978 Comp., § 61-12-1.1, enacted by Laws 1979, ch. 369, § 2.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**61-12-2. Definitions. (Effective until July 1, 1998.)**

As used in the Physical Therapist Act [this article]:

A. "board" means the physical therapists' licensing board;

B. "physical therapy" means treatment of a physical or mental condition by the use of:

(1) physical or chemical properties of heat, cold, light, sound, water or air;

(2) electrical or electromagnetic energy or mechanical application and their physical measures, activities and devices;

(3) passive, active or resistive exercise;

(4) massage;

(5) administering and interpreting tests and measurements within the scope of practice of physical therapy;

(6) administering, evaluating and modifying treatment within the scope of practice of physical therapy; and

(7) providing consultation, education and other advisory services within the scope of practice of physical therapy.

"Physical therapy" shall not include radiology, electrosurgery or laboratory tests requiring the collection of body fluids;

C. "physical therapist" means a person who is licensed to practice physical therapy and who can delegate patient care activities to supportive personnel; and

D. "physical therapist assistant" means a person who is licensed that assists, under the direction of a licensed physical therapist, in the practice of physical therapy and whose

activities require an understanding of physical therapy and advanced training, as required by the provisions of Section 61-12-10 NMSA 1978, in the anatomical, biological and physical sciences involved in the practice of physical therapy.

**History:** Laws 1953, ch. 136, § 2; 1941 Comp. Supp., § 51-557; 1953 Comp., § 67-10-2; Laws 1979, ch. 369, § 3; 1989, ch. 180, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, rewrote Subsection B, which formerly read "'physical therapy' means treatment by the use of exercise, traction, massage, heat, cold, water, radiant energy, electricity or sound for the purpose of correcting or alleviating any physical or mental disability or the performance of neuro-musculoskeletal, respiratory and circulatory tests and measurements to determine the existence of body malfunction; provided, however, that physical therapy shall not include radiology or electrosurgery"; substituted "is licensed to practice" for "practices" in Subsection C; and inserted "is licensed that" near the beginning of Subsection D.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d, Physicians, Surgeons and Other Healers §§ 10, 50.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 3.

### **61-12-3. Exemptions. (Effective until July 1, 1998.)**

The Physical Therapist Act [this article] shall have no application to:

A. physical therapists employed by agencies of the United States government who practice as physical therapists only in connection with that employment; or

B. physical therapy students from board-approved physical therapy educational programs, provided that the students are supervised by a licensed physical therapist.

**History:** 1941 Comp., § 51-558, enacted by Laws 1953, ch. 136, § 3; 1953 Comp., § 67-10-3; 1989, ch. 180, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - For other exemptions from provisions of this act, see 61-12-20 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, restructured the formerly undesignated single sentence as the present undesignated introductory paragraph and Subsection A, while making minor stylistic changes therein, and added Subsection B.

#### **61-12-4. Physical therapists' licensing board; appointment; powers. (Effective until July 1, 1998.)**

The governor shall appoint a board consisting of five members, all of whom shall be residents of the state, three of whom shall be licensed physical therapists and two of whom shall be chosen from the public. The public members of the board shall not have been licensed as physical therapists or have any significant financial interest, whether direct or indirect, in physical therapy. The board shall be known as the "physical therapists' licensing board" and shall possess all of the powers and duties prescribed by the Physical Therapist Act [this article] and shall be charged with the administration of that act. The terms of the members of the board shall be for three years each and shall be made by the governor in such a manner that the terms of not more than two members expire on June 30 of each year. The board shall meet annually for the transaction of the business of the board. The meeting date shall be set by resolution of the board. The board members shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. The board shall have a seal that shall be in the form of a circle in the center of which shall appear the word "SEAL" and around the outer edge of which shall appear the words "PHYSICAL THERAPISTS' LICENSING BOARD, STATE OF NEW MEXICO".

**History:** 1941 Comp., § 51-559, enacted by Laws 1953, ch. 136, § 4; 1953 Comp., § 67-10-4; Laws 1963, ch. 43, § 14; 1979, ch. 369, § 4; 1989, ch. 180, § 3; 1991, ch. 189, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - For Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**The 1989 amendment**, effective June 16, 1989, made minor stylistic changes in the second and third sentences, restructured the former fifth sentence as the present fifth and sixth sentences while making minor stylistic changes therein, and deleted "in Santa Fe" following "annually" in the present fifth sentence.

**The 1991 amendment**, effective June 14, 1991, substituted "three of whom" for "four of whom" and "two of whom" for "one of whom" in the first sentence, made related stylistic changes in the second sentence, and made a minor stylistic change in the final sentence.

**61-12-5. [Board organization; appointment of registrar; compensation.] (Effective until July 1, 1998.)**

The board shall within sixty (60) days after their appointment, meet and organize, designating one member as president, one as vice-president and one as secretary-treasurer. The board shall appoint a registrar who shall be either a member of the board designated as secretary-treasurer or such other person as the board may designate qualified by law to be an employee of the state. The registrar of the board may receive payment for such services in an amount to be determined by the board and may be reimbursed for their [his] necessary expenses incurred in carrying out the duties prescribed by this act.

**History:** 1941 Comp., § 51-560, enacted by Laws 1953, ch. 136, § 5; 1953 Comp., § 67-10-5.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Meaning of "this act".** - The term "this act" appeared in this section as enacted by Laws 1953, ch. 136, which now appears as 61-12-1, 61-12-3 to 61-12-11, 61-12-12 to 61-12-14, 61-12-16, 61-12-17, 61-12-19, 61-12-20 NMSA 1978. The intended reference, however, appears to be the Physical Therapy Act, which is this article.

**61-12-6. Duties of registrar; records. (Effective until July 1, 1998.)**

The registrar of said board shall keep a record book in which shall be registered the name, number of licensee, date of issue, current address, record of annual license fee payments and any other data regarding persons licensed under Section [Sections] 61-12-1 to 61-12-20 NMSA 1978 deemed necessary by the board. The registrar shall also maintain a minute book wherein all of the transactions of the board shall be kept and such financial records of the disbursement and receipt of funds as shall be required by the department of finance and administration. The records of the board shall be maintained in Santa Fe.

**History:** 1941 Comp., § 51-561, enacted by Laws 1953, ch. 136, § 6; 1953 Comp., § 67-10-6; 1977, ch. 247, § 172.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**61-12-7. [Applications for registration and licensing.] (Effective until July 1, 1998.)**

Persons seeking registration and licensing under this act shall make written application upon forms obtained from the registrar of the physical therapists' licensing board in Santa Fe. Application forms shall be designed and prescribed by said board so as to elicit all information necessary to determine whether applicants are qualified as required for licensing under this act and to obtain from applicants such other information as the board may deem necessary.

**History:** 1941 Comp., § 51-562, enacted by Laws 1953, ch. 136, § 7; 1953 Comp., § 67-10-7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See the same catchline in the notes following 61-12-5 NMSA 1978.

### **61-12-8. License issuance. (Effective until July 1, 1998.)**

The registrar is empowered to register temporarily and to issue a temporary nonrenewable license to practice to any applicant whose application and filing fee are submitted, when the application shows the applicant to be ostensibly qualified under the provisions of the Physical Therapist Act [this article]. Such temporary licensing and registration shall continue in force only until the results of the examination are available at which time the application shall be reviewed and passed upon by the board, and the applicant, if approved by the board, shall be permanently registered and a license issued for the ensuing year.

**History:** 1941 Comp., § 51-563, enacted by Laws 1953, ch. 136, § 8; 1953 Comp., § 67-10-8; Laws 1979, ch. 369, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

### **61-12-9. Fees; renewals; suspensions and revocations. (Effective until July 1, 1998.)**

A. Each application for registration and licensing under the Physical Therapist Act [this article] shall be accompanied by a fee set by the board not to exceed one hundred fifty dollars (\$150) payable to the board. This initial fee is not refundable and shall cover the costs of processing the application and shall include, for successful applicants, the annual license fee. An additional fee to cover the cost of the examination shall be charged.

B. On or before the first day of June of each year, every physical therapist licensed under that act shall transmit to the registrar a renewal fee to be set by the board not to exceed seventy-five dollars (\$75.00) accompanied by the person's name, address and registration number and proof of completion of continuing education requirements as required by the board and shall receive therefor a renewal license certificate.

C. On or before the first day of June of each year, every physical therapist assistant licensed under that act shall transmit to the registrar a renewal fee set by the board not to exceed fifty dollars (\$50.00) accompanied by the person's name, address and registration number and proof of completion of continuing education as required by the board and shall receive therefor a renewal license certificate.

D. Any license granted by the board shall be automatically suspended if the holder fails to apply for the renewal certificate provided for in this section within a period of three months after June 1 of each year. Provided that any license so suspended may be restored by the board upon payment of a reinstatement fee of fifty dollars (\$50.00) in addition to any unpaid renewal fee. Failure to renew a license within one year from the date of suspension as provided in this section shall cause the license to be automatically revoked.

E. The board may impose a late fee not to exceed fifty dollars (\$50.00) for any applicant who fails to renew his license by June 1 of each year.

F. The board may impose reasonable administration and duplicating fees.

**History:** 1941 Comp., § 51-564; Laws 1953, ch. 136, § 9; 1953 Comp., § 67-10-9; Laws 1977, ch. 202, § 2; 1979, ch. 369, § 6; 1989, ch. 180, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**The 1989 amendment,** effective June 16, 1989, added the subsection designations; in Subsection A substituted "not to exceed one hundred fifty dollars (\$150)" for "in an amount not less than thirty-five dollars (\$35.00) nor more than one hundred dollars (\$100)" in the first sentence; in Subsection B substituted "not to exceed seventy-five dollars (\$75.00)" for "in an amount of not less than fifteen dollars (\$15.00) nor more than thirty dollars (\$30.00)"; in Subsection C substituted "not to exceed fifty dollars (\$50)" for "in an amount of not less than ten dollars (\$10) nor more than twenty dollars (\$20.00)" and made minor stylistic changes; in Subsection D substituted "reinstatement fee of fifty dollars (\$50.00)" for "fee of ten dollars (\$10.00)" in the second sentence, and made minor stylistic changes throughout the subsection; and added Subsections E and F.

**Continuing education.** - Absent authorization by the legislature, physical therapist licensing board could not require continuing education as a prerequisite for licensure renewal. 1975 Op. Att'y Gen. No. 75-40.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 11, 22, 38, 52.

**61-12-10. Qualifications for licensure. (Effective until July 1, 1998.)**

A. To be eligible for licensing and registration under the Physical Therapist Act [this article], a person shall be of good moral character, have reached the age of majority and have completed a program of education approved by the board.

B. An approved program for physical therapists shall include the successful completion of an accredited course in physical therapy education which provides adequate instruction in the basic sciences, clinical sciences and physical therapy theory and procedures, as determined by the board.

C. An approved program for physical therapist assistants shall be at least a two-year program offered by a college accredited by a recognized accrediting agency and including such elementary or intermediate courses in the biological, anatomical and physical sciences as may be prescribed by the board.

D. Foreign-trained applicants will be considered on the basis of reports of a credential evaluating service as endorsed by the American physical therapy association.

**History:** 1941 Comp., § 51-565, enacted by Laws 1953, ch. 136, § 10; 1953 Comp., § 67-10-10; Laws 1973, ch. 50, § 1; 1979, ch. 369, § 7.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - As to the age of majority, see 28-6-1 NMSA 1978.

**Physical therapist assistants.** - Physical therapist assistants graduated from an approved two-year program may be licensed as physical therapists, provided they meet the requirements of this section and 61-12-11 NMSA 1978. 1975 Op. Att'y Gen. No. 75-40.

Since administrative agencies possess only those powers expressly conferred by statute and those necessarily implied therefrom, physical therapist's licensing board cannot make any special provisions for the licensure of physical therapist assistants as physical therapists. 1975 Op. Att'y Gen. No. 75-40.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 58, 61.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

## **61-12-11. Examinations; minimum requirements. (Effective until July 1, 1998.)**

The board shall, by examination or by such other means as it shall deem advisable, determine whether each person seeking to be licensed and registered under the Physical Therapist Act [this article] possesses the necessary knowledge and skill to practice physical therapy as defined therein. The minimum knowledge and skill required of applicants to be eligible for licensing and to be permitted to practice in this state shall be not less than the minimum knowledge and skill required of persons for membership in the American physical therapy association.

**History:** 1941 Comp., § 51-566, enacted by Laws 1953, ch. 136, § 11; 1953 Comp., § 67-10-11; Laws 1979, ch. 369, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Licensing of physical therapist assistants.** - Physical therapist assistants graduated from an approved two-year program may be licensed as physical therapists, provided they meet the requirements of this section and 61-12-10 NMSA 1978. 1975 Op. Att'y Gen. No. 75-40.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

## **61-12-11.1. Licensure without examination. (Effective until July 1, 1998.)**

Upon the submission to the board of a written application upon forms furnished by the board, accompanied by a fee set by the board in an amount not less than thirty-five dollars (\$35.00) nor more than one hundred dollars (\$100), the board shall issue a license without examination to any person holding a valid current license as a physical therapist or a physical therapist assistant issued by another state, territory or possession of the United States or by the District of Columbia, provided that the requirements for licensure or registration in such state, territory, possession or district at the date of his license or registration in that jurisdiction were substantially equal to the requirements set forth in the Physical Therapist Act [this article].

**History:** 1978 Comp., § 61-12-11.1, enacted by Laws 1979, ch. 369, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

## **61-12-12. Disciplinary proceedings. (Effective until July 1, 1998.)**

The board may, in accordance with the procedures under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], refuse to issue a license to a person or, if a license has already been issued, may suspend or revoke the license of any person found by the board to have:

- A. made false representations to the board in order to obtain registration and licensing;
- B. been adjudged insane or mentally incompetent;
- C. been convicted of a felony involving moral turpitude;
- D. become chronically or persistently inebriate or addicted to drugs;
- E. been guilty of unprofessional conduct as defined in the Physical Therapist Act [this article]; or
- F. Aided or abetted in the practice of physical therapy by a person not licensed by the board.

**History:** 1941 Comp., § 51-567, enacted by Laws 1953, ch. 136, § 13; 1953 Comp., § 67-10-12; 1989, ch. 180, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - As to nature of "unprofessional conduct," see 61-12-13 NMSA 1978.

**The 1989 amendment,** effective June 16, 1989, added the present catchline, inserted "in accordance with the procedures under the Uniforming Licensing Act" in the undesignated introductory paragraph and made minor stylistic changes therein, redesignated former Paragraphs (1) through (5) as present Subsections A through E, and added Subsection F.

**Physical therapists licensing board could not cancel license** issued by the board in 1953 after a recent review indicated that the licensee's original qualifications had been insufficient to qualify him for licensing and registration, where there was no fraud on the licensee's part. 1957-58 Op. Att'y Gen. No. 57-138.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

### **61-12-13. Unprofessional conduct. (Effective until July 1, 1998.)**

For the purposes of the Physical Therapist Act [this article], the following practices or acts by a licensee shall be termed unprofessional conduct:

A. acceptance for treatment by a licensed physical therapist of a patient without a current medical diagnosis for that specific medical or physical problem by a licensed primary health care provider; except those children participating in special education programs in accordance with the provisions of Section 22-13-5 NMSA 1978;

B. any conduct or practice contrary to the recognized standards of the ethics of the physical therapy profession or any conduct or practice which does or might constitute a danger to the health, welfare or safety of the patient or public;

C. failure to refer a patient to a licensed health care provider when the condition is beyond the scope of practice of physical therapy;

D. a known violation or attempt to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision of this act; or

E. practice by a physical therapist assistant other than under the direction of a licensed physical therapist.

**History:** 1941 Comp., § 51-568, enacted by Laws 1953, ch. 136, § 14; 1953 Comp., § 67-10-13; Laws 1979, ch. 369, § 10; 1989, ch. 180, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, rewrote Subsection A, which formerly read "acceptance for treatment by a licensed physical therapist of any patient other than upon the prescription, recommendation of a physician licensed to practice medicine, dentistry or podiatry"; rewrote Subsection B, which formerly read "treatment by a licensed physical therapist of any patient by means, methods or in any manner other than that prescribed, recommended or advised by such patient's licensed physician, dentist or podiatrist"; added present Subsections C and D; and redesignated former Subsection C as present Subsection E.

**Meaning of "this act".** - The term "this act" referred to in Subsection D appeared in this section as amended by Laws 1989, ch. 180, § 6. The intended reference, however, appears to be the Physical Therapy Act, which is this article.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 39, 53 to 57.

**61-12-14. [Procedure for suspension, revocation or refusal to issue license; hearings.] (Effective until July 1, 1998.)**

The suspension, revocation or the refusal to issue any license by the board as provided in this act shall be done only after a hearing or the opportunity for a hearing is afforded the licensee or applicant concerned. When the board shall determine that grounds exist for the denial of any application or for the suspension or revocation of any license to practice they shall notify the applicant or licensee by registered mail of such grounds and of the board's intention to deny or to suspend or revoke such license, as the case may be, giving the applicant or licensee the right to show cause at a hearing before the board not less than thirty (30) days following receipt of such notice, why the board should not deny, suspend or revoke their [his] license to practice.

**History:** 1941 Comp., § 51-569, enacted by Laws 1953, ch. 136, § 15; 1953 Comp., § 67-10-14.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Cross-references.** - For Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**Meaning of "this act".** - See same catchline in the notes following 61-12-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

**61-12-15. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-12-1 through 61-12-20 NMSA 1978.

**History:** 1953 Comp., § 67-10-14.1, enacted by Laws 1974, ch. 78, § 18.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 47 to 49.

**61-12-16. [Judicial review by writ of certiorari.] (Effective until July 1, 1998.)**

Any persons who shall deem themselves to be aggrieved by any final decision of the state physical therapists' licensing board shall have the right to obtain a review of such decision in the district court of Santa Fe county. Such a review must be obtained by filing an application for a writ of certiorari not later than fifteen (15) days subsequent to the entering of the final decision of the board sought to be reviewed. Review by the district court shall be by writ of certiorari and shall follow the procedures as are applicable in such proceedings.

**History:** 1941 Comp., § 51-570, enacted by Laws 1953, ch. 136, § 16; 1953 Comp., § 67-10-15.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**61-12-17. [Deposit and use of funds.] (Effective until July 1, 1998.)**

All funds received by the registrar are to be deposited by the secretary-treasurer of the board with the state treasurer to be credited to the physical therapists' licensing board fund. Such funds shall be used solely for the administration of and to carry out the purposes of this act.

**History:** 1941 Comp., § 51-571, enacted by Laws 1953, ch. 136, § 17; 1953 Comp., § 67-10-16.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See the same catchline in the notes following 61-12-5 NMSA 1978.

**61-12-18. Power to make regulations; legal counsel; continuing education; procedures. (Effective until July 1, 1998.)**

The state physical therapists' licensing board is herewith empowered to make such rules and regulations and to prescribe the forms of license certificates, application blanks and such other documents, as it shall deem necessary to the carrying out of the provisions of Sections 61-12-1 to 61-12-20 NMSA 1978. The board may obtain the

assistance of the attorney general for such legal assistance as the board may deem necessary. In adopting regulations, the board shall, by regulation, establish mandatory educational requirements as a condition of the renewal of licenses. The board may expend such sums from the physical therapists' licensing board fund as they may deem necessary for carrying out the purposes and for the administration of Sections 61-12-1 to 61-12-20 NMSA 1978. All expenditures are to be made upon vouchers signed by the secretary-treasurer of the board submitted to the department of finance and administration with payment to be made upon warrants drawn by the secretary of finance and administration upon the state treasurer.

**History:** Laws 1953, ch. 136, § 18; 1941 Comp. Supp., § 51-572; 1953 Comp., § 67-10-17; Laws 1977, ch. 202, § 1; 1977, ch. 247, § 173; 1978, ch. 116, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

#### **61-12-19. Penalty. (Effective until July 1, 1998.)**

Any person who shall practice physical therapy as defined in the Physical Therapist Act [this article], not in compliance with the provisions of that act or who professes himself to be a licensed physical therapist, registered physical therapist or a licensed physical therapist assistant when he is not in fact licensed and registered under that act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed one hundred dollars (\$100) or imprisonment in the county jail not to exceed ninety days or by both such fine and imprisonment.

**History:** 1941 Comp., § 51-573, enacted by Laws 1953, ch. 136, § 19; 1953 Comp., § 67-10-18; Laws 1979, ch. 369, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

#### **61-12-20. [Exemptions from provisions of act.] (Effective until July 1, 1998.)**

Nothing in this act shall apply to any practitioner of the healing arts licensed to practice under the laws of this state nor to any person or persons not holding themselves out as physical therapists or physiotherapists, who administer massage, heat therapy or hydrotherapy under the immediate personal supervision of a licensed practitioner of the healing arts, or to such persons administering massage or rendering service as a masseuse or operating or giving mineral water, warm water or other therapeutic baths,

when the rendering or administration of such service or baths is not represented as a cure or treatment for specific disease or injury.

**History:** 1941 Comp., § 51-574, enacted by Laws 1953, ch. 136, § 20; 1953 Comp., § 67-10-19.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12-21 NMSA 1978 and notes thereto.

**Meaning of "this act".** - See the same catchline in the notes following 61-12-5 NMSA 1978.

**"Supervision".** - Term "immediate personal supervision," as used in this section, calls for close, direct supervision by a licensed practitioner of the healing arts. 1957-58 Op. Att'y Gen. No. 57-316.

**Holding self out as physical therapist.** - Even without an appropriate title or set of initials, an individual could still be publicly professing to be a physical therapist. 1957-58 Op. Att'y Gen. No. 57-316.

**Masseur.** - Masseur who merely massaged other persons without professing to do so to relieve disease or pain did not come within the provisions of former licensing act, but when he held himself as being able to heal or cure diseases, he was subject to prosecution. 1941-42 Op. Att'y Gen. No. 3956; 1949-50 Op. Att'y Gen. No. 5275.

**Violation of act.** - While unlicensed individual might not be guilty of unprofessional conduct within the meaning of 61-12-13 NMSA 1978 since he works for physicians on a prescription basis, his want of a license plus lack of knowledge of his activities by the orthopedic surgeon under whose control he ostensibly works, and lack of close, direct and personal supervision of such activities by any licensed practitioner, clearly indicates a lack of compliance with this act. 1957-58 Op. Att'y Gen. No. 57-316.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

### **61-12-21. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The physical therapists' licensing board is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 12 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 12 of Chapter 61 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-12-21, enacted by Laws 1979, ch. 369, § 12; 1981, ch. 241, § 25; 1985, ch. 87, § 10; 1991, ch. 189, § 18.

## ANNOTATIONS

**Delayed repeals.** - Laws 1991, ch. 189, § 18 amends this section to repeal Chapter 61, Article 12 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## ARTICLE 12A OCCUPATIONAL THERAPY

### **61-12A-1. Short title. (Effective until July 1, 1996.)**

This act [61-12A-1 to 61-12A-20 NMSA 1978] may be cited as the "Occupational Therapy Act".

**History:** Laws 1983, ch. 267, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-2. Definitions. (Effective until July 1, 1996.)**

As used in the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978]:

A. "board" means the board of occupational therapy practice;

B. "occupational therapy" means the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences or the aging process in order to maximize independence, prevent disability and maintain health. The practice encompasses evaluation, treatment and consultation. Specific occupational therapy services include:

(1) teaching daily living skills;

(2) developing perceptual motor skills and sensory integrative functioning;

(3) developing play skills and prevocational and leisure capacities;

(4) designing and fabricating or applying selected orthotic and prosthetic devices or select adaptive equipment;

(5) using specifically designed crafts and exercises to enhance functional performance;

- (6) administering and interpreting tests; and
- (7) adapting environments for the handicapped.

These services are provided individually, in groups or through social systems;

C. "occupational therapist" means a person licensed to practice occupational therapy under the Occupational Therapy Act;

D. "occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the Occupational Therapy Act;

E. "occupational therapy aide" means a person who assists in the practice of occupational therapy and whose activities require an understanding of occupational therapy but do not require specialized training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy; and

F. "person" means any individual, partnership, unincorporated organization or corporate body.

**History:** Laws 1983, ch. 267, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

#### **61-12A-3. License required; examination; penalty. (Effective until July 1, 1996.)**

A. After the results of the first examination held pursuant to the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] are announced, no person shall practice occupational therapy or hold himself out as an occupational therapist or an occupational therapy assistant or as being able to practice occupational therapy or to render occupational therapy services in this state unless he is licensed in accordance with the provisions of the Occupational Therapy Act.

B. Any person violating Subsection A of this section is guilty of a misdemeanor.

**History:** Laws 1983, ch. 267, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 45 to 47, 58 to 62, 72.

53 C.J.S. Licenses §§ 5, 7, 30, 37 to 41, 47, 50 to 66, 82.

#### **61-12A-4. Exemptions. (Effective until July 1, 1996.)**

Nothing in the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] shall be construed as preventing or restricting the practice, services or activities of:

A. any person licensed in this state by any other law when engaging in the profession or occupation for which he is licensed;

B. any person lawfully engaged in a profession or occupation known by a name other than occupational therapy on the effective date of the Occupational Therapy Act when engaging in that profession or occupation;

C. any person employed by the United States if that person provides occupational therapy solely under the direction or control of the organization by which he is employed;

D. any person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program accredited by the board if the activities and services constitute part of a supervised course of study and if that person is designated by a title which clearly indicates his status as a student or trainee;

E. any person fulfilling the supervised field work experience requirements of the Occupational Therapy Act if the activities and services constitute part of the experience necessary to meet that requirement;

F. any person who performs occupational therapy services in the state for no more than twenty days in a calendar year in an association with a licensed occupational therapist if:

(1) that person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of the Occupational Therapy Act; or

(2) that person is resident in a state not having such requirements and meets such requirements as the board specifies by regulation;

G. any person employed by an occupational therapist as an occupational therapy aide;

H. any person holding a limited permit. A limited permit may be granted to a person who has completed the education and experience requirements of the Occupational Therapy Act. The permit shall allow the person to practice occupational therapy in association with an occupational therapist and shall be valid until the date on which the results of the next qualifying examination have been made public. The limited permit shall not be renewed if the applicant has failed the examination; or

I. any person now practicing in this state and who is registered with the American Occupational Therapy Association as an occupational therapist and who has so practiced for a minimum of two years. Such person shall, on the effective date of the Occupational Therapy Act, be deemed to have met the qualifications for licensing as an occupational therapist.

**History:** Laws 1983, ch. 267, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-5. Board of occupational therapy practice; created; compensation. (Effective until July 1, 1996.)**

A. There is created the "board of occupational therapy practice". The board shall consist of eight members appointed by the governor and residents of the state at the time of appointment, four of whom are licensed pursuant to the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] and four of whom are members of the public with no direct interest in the regulated profession. The licensure requirement shall not apply to the first appointments to the board, but four members of that original board shall be occupational therapists or occupational therapy assistants.

B. Appointments shall be made for three-year terms beginning on July 1 of the appropriate year. The initial appointments shall be made within sixty days of the effective date of the Occupational Therapy Act and for terms of such length that each term expires on June 30 of the appropriate year and that no more than three terms end at any one time. No person shall serve more than two consecutive terms unless at least three years have intervened since the end of his last term.

C. The board shall meet during the first month of each calendar year to select a chairman. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any two board members. A majority of the members of the board constitutes a quorum. Meetings shall be open to the public.

D. Board members shall receive no compensation, perquisite or allowance other than pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

E. Any member failing, after proper notice, to attend any three consecutive meetings of the board without a reasonable excuse shall be automatically removed from the board.

**History:** Laws 1983, ch. 267, § 5; 1989, ch. 58, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "eight" for "five" near the beginning of the second sentence and substituted "four of whom are members" for "one of whom is a member" near the end of that sentence; in Subsection B substituted "three terms" for "two terms" near the end of the second sentence; and added Subsection E.

### **61-12A-6. Board; powers and duties. (Effective until July 1, 1996.)**

A. The board shall administer, coordinate and enforce the provisions of the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] and evaluate the qualifications for licensure under that act. The board may examine witnesses, administer oaths and investigate allegations of practices violating the provisions of that act.

B. The board shall adopt rules and regulations relating to professional conduct to carry out the policy of the Occupational Therapy Act, including but not limited to regulations relating to professional examination and licensure, including reasonable application, renewal and late fees, and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state, and may amend or repeal the rules and regulations.

C. The board shall conduct hearings and keep records and minutes necessary to carry out its functions.

**History:** Laws 1983, ch. 267, § 6.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-7. Board; administrative provisions. (Effective until July 1, 1996.)**

The board may employ and, at its pleasure, discharge an executive secretary and such officers and employees as are necessary and shall determine their duties and fix their compensation.

**History:** Laws 1983, ch. 267, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-8. Board officers. (Effective until July 1, 1996.)**

The board shall, within sixty days after its appointment, meet and organize, designating one member as president, one as vice president and one as secretary-treasurer. The board shall appoint a registrar who is either the member designated as secretary-treasurer or such other person as the board may designate who is an employee of the state. The registrar of the board may receive reimbursement for necessary expenses incurred in carrying out his duties and, if he is an employee, such compensation as the board may set.

**History:** Laws 1983, ch. 267, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-9. Duties of registrar. (Effective until July 1, 1996.)**

The registrar shall keep a record book in which shall be registered the name, number of license, date of license issue, current address, record of annual license fee payments and any other data deemed necessary by the board regarding persons licensed under the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978].

**History:** Laws 1983, ch. 267, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-10. Issuance of license. (Effective until July 1, 1996.)**

The board shall issue a license to any person who meets the requirements of the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] upon payment of the license fee prescribed.

**History:** Laws 1983, ch. 267, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-11. Suspension and revocation of license; refusal to renew. (Effective until July 1, 1996.)**

A. The board shall deny or refuse to renew a license, suspend or revoke a license or impose probationary conditions where the licensee or applicant for license has been guilty of unprofessional conduct that has endangered or is likely to endanger the health, welfare or safety of the public. Such unprofessional conduct includes:

(1) obtaining a license by means of fraud, misrepresentation or concealment of material facts;

(2) being guilty of unprofessional conduct as defined by the rules established by the board or violating the code of ethics adopted and published by the board;

(3) being convicted in any court of a crime punishable by imprisonment in excess of six months;

(4) violating any lawful order, rule or regulation rendered or adopted by the board; and

(5) violating any provision of the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978].

B. Denial of, refusal to renew, suspension of, revocation of or imposition of probationary conditions on a license may be ordered by the board in a decision made after a hearing in the manner provided by the rules and regulations adopted by the board. One year from the date of the revocation of a license, application may be made to the board for reinstatement. The board has discretion to accept or reject an application for reinstatement and may hold a hearing to consider reinstatement.

**History:** Laws 1983, ch. 267, § 11.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-12. Renewal of license. (Effective until July 1, 1996.)**

A. Licenses issued under the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] shall be subject to annual renewal upon payment of a renewal fee and shall expire unless renewed in the manner prescribed by the rules and regulations of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules and regulations, but no late renewal of a license may be granted more than five years after its expiration. A licensee who has failed to renew within a five-year period from the effective date of the Occupational Therapy Act or expiration date of his last license, whichever is later, shall be required to pass an examination prescribed by the board.

B. A suspended license is subject to expiration and may be renewed as provided in this section, but renewal does not entitle the licensee, while the license remains suspended,

to engage in the licensed activity or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any applicable late fee.

**History:** Laws 1983, ch. 267, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

#### **61-12A-13. Requirements for licensure. (Effective until July 1, 1996.)**

An applicant applying for a license as an occupational therapist or occupational therapy assistant shall file a written application on forms provided by the board, showing to the satisfaction of the board that he meets the following requirements:

A. he is of good moral character;

B. he has successfully completed the academic requirements of an educational program in occupational therapy accredited by the board, with a concentration in biological or physical science, psychology or sociology, and with education in selected manual skills;

C. he has successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where he met the academic requirements of Subsection B of this section, for a minimum of:

(1) six months, for an occupational therapist; or

(2) two months, for an occupational therapy assistant; and

D. he has passed the examination prescribed by the board. An applicant who has practiced as an occupational therapy assistant for four years may take the examination to be licensed as an occupational therapist without meeting the educational requirements of Subsection C of this section for occupational therapists.

**History:** Laws 1983, ch. 267, § 13.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

#### **61-12A-14. Waiver of requirements for licensure. (Effective until July 1, 1996.)**

A. The board may grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia or a territory of the United States that requires the standard for licensure of the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978].

B. The board may waive the education, experience or examination requirement for licensure of Subsections B, C and D of Section 13 [61-12A-13 NMSA 1978] of the Occupational Therapy Act for applicants who present evidence to the board that they have been engaged in the practice of occupational therapy on and prior to the effective date of the Occupational Therapy Act. Proof of actual practice shall be presented to the board in the manner it prescribes by regulation.

**History:** Laws 1983, ch. 267, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

#### **61-12A-15. Denial of application; suspension or revocation of license. (Effective until July 1, 1996.)**

The suspension or revocation of or refusal to issue any license by the board as provided in the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] shall be done only after a hearing or the opportunity for a hearing is afforded the licensee or applicant concerned. When the board determines that grounds exist for the denial of any application or for the suspension or revocation of any license to practice, it shall notify the applicant or licensee by registered mail of those grounds and of the board's intention to deny, suspend or revoke the license, giving the applicant or licensee the right to show cause, at a hearing before the board not less than thirty days following receipt of the notice, why the board should not deny, suspend or revoke his license to practice.

**History:** Laws 1983, ch. 267, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

#### **61-12A-16. Right of review. (Effective until July 1, 1996.)**

Any person who deems himself to be aggrieved by any final decision of the board has the right to obtain a review of the decision in the district court of Santa Fe county. A review may be obtained by filing an appeal no later than fifteen days subsequent to the entering of the final action decision of the board sought to be reviewed.

**History:** Laws 1983, ch. 267, § 16.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-17. Board funds; appropriation; disposition. (Effective until July 1, 1996.)**

All funds received by the registrar shall be deposited by the secretary-treasurer with the state treasurer to be credited to the "occupational therapists' licensing fund", hereby created. Expenditures from the fund shall be made only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration. Money in the fund shall be used for the administration of, and to carry out the purposes of, the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978].

**History:** Laws 1983, ch. 267, § 17; 1989, ch. 58, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, added "disposition" at the end of the catchline, and substituted the present second and third sentences for the former second sentence, which read " The fund is appropriated to the board for the administration of, and to carry out the purposes of, the Occupational Therapy Act".

### **61-12A-18. Powers of the board; legal counsel; continuing education. (Effective until July 1, 1996.)**

The board is empowered to make such rules and regulations and to prescribe the forms of license certificates, application blanks and other documents it deems necessary to carry out the provisions of the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978]. The board may obtain the legal assistance of the attorney general as the board deems necessary. The board may expend such sums from the occupational therapists' licensing fund as it deems necessary to carry out the purposes and for the administration of the Occupational Therapy Act. All expenditures shall be made upon vouchers signed by the secretary-treasurer and submitted to the state auditor, with payment to be made upon warrants drawn by the secretary of finance and administration. The board shall by regulation establish mandatory continuing education requirements as a condition of the renewal of licenses.

**History:** Laws 1983, ch. 267, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-19. License registration fees. (Effective until July 1, 1996.)**

Persons who meet the requirements for licensure in the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] shall pay to the registrar a license registration fee in an amount to be determined by the board, but not to exceed seventy-five dollars (\$75.00) per year.

**History:** Laws 1983, ch. 267, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12A-20 NMSA 1978 and notes thereto.

### **61-12A-20. Termination of agency life; delayed repeal. (Effective until July 1, 1996.)**

The board of occupational therapy practice is terminated on July 1, 1995 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the Occupational Therapy Act [61-12A-1 to 61-12A-20 NMSA 1978] until July 1, 1996. Effective July 1, 1996, the Occupational Therapy Act is repealed.

**History:** Laws 1983, ch. 267, § 21; 1989, ch. 58, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 58, § 3 amends this section to repeal Chapter 61, Article 12A NMSA 1978, effective July 1, 1996.

**The 1989 amendment,** effective June 16, 1989, substituted "1995" for "1989" in the first sentence, and substituted "1996" for "1990" in the second and third sentences.

## **ARTICLE 12B RESPIRATORY CARE**

### **61-12B-1. Short title. (Effective until July 1, 1996.)**

This act [61-12B-1 to 61-12B-16 NMSA 1978] may be cited as the "Respiratory Care Act".

**History:** Laws 1984, ch. 103, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

## **61-12B-2. Purpose of act. (Effective until July 1, 1996.)**

The purpose of the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] is to safeguard life and health and to promote the public welfare by licensing and regulating the practice of respiratory care in the state.

**History:** Laws 1984, ch. 103, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

## **61-12B-3. Definitions. (Effective until July 1, 1996.)**

As used in the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978]:

A. "board" means the advisory board of respiratory care practitioners;

B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;

C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;

D. "practice of respiratory care" includes, but is not limited to:

(1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;

(2) cardiopulmonary care services, including but not limited to the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;

(3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including but not limited to pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;

(4) observation, assessment and monitoring of signs and symptoms, general behavior, general physical response to cardiopulmonary care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions behavior or general response exhibit abnormal characteristics;

(5) implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a physician authorized to practice medicine or the initiation of emergency procedures, or as otherwise permitted in the Respiratory Care Act;

(6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support diagnosis; and

(7) the practice of respiratory care performed in any clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the board;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has completed a recognized program of study to function beyond the scope of practice of respiratory care;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico. The respiratory care practitioner may transcribe and implement a physician's written and verbal orders pertaining to the practice of respiratory care and "respiratory care protocols", meaning a predetermined, written medical care plan, which can include standing orders;

G. "respiratory therapy training program" means a program accredited or recognized by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education; and

H. "superintendent" means the superintendent of regulation and licensing.

**History:** Laws 1984, ch. 103, § 3; 1987, ch. 329, § 1; 1987, ch. 346, § 1; 1993, ch. 150, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, substituted "cardiopulmonary" for "pulmonary" or "respiratory" in Paragraphs (1), (2) and (4) of Subsection D; added "and baromedical therapy" at the end of Paragraph (2) of Subsection D; inserted "and venous" near the end of Paragraph (3) of Subsection D; deleted "under the laws of New

Mexico" following "practice medicine" in Paragraph (5) of Subsection D; added current Subsection E; and redesignated former Subsections E to G as Subsections F to H.

#### **61-12B-4. License required; exceptions. (Effective until July 1, 1996.)**

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed under the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978], except as otherwise provided by that act.

B. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of New Mexico, self-care by a patient or gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner or respiratory care services in case of an emergency.

C. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that he is qualified by examination to perform, so long as the testing body offering the examination is certified by the national commission for health certifying agencies.

D. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967 as amended, or accredited by the college of American pathologists or the joint commission on accreditation of hospitals from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

**History:** Laws 1984, ch. 103, § 4; 1987, ch. 55, § 1; 1993, ch. 150, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, in Subsection D, inserted "as amended" following "Act of 1967" and substituted "commission on accreditation" for "commission for accreditation".

**Clinical Laboratories Improvement Act of 1967.** - The federal Clinical Laboratories Improvement Act of 1967, referred to in Subsection D, appears as 42 U.S.C. § 263a.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31 to 33, 51 to 61, 63 to 65, 67, 68, 74 to 120, 125.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 11 to 13, 19 to 28, 35 to 52.

### **61-12B-5. Advisory board created. (Effective until July 1, 1996.)**

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" consisting of eight members as follows:

(1) one physician licensed in New Mexico who is knowledgeable in respiratory care;

(2) three respiratory care practitioners; and

(3) four public members who are residents of New Mexico. The public members shall not have been licensed as respiratory care practitioners nor shall they have any financial interest, direct or indirect, in the occupation regulated.

B. Each member shall serve a term of three years. The initial appointments to the board shall be as follows:

(1) two members for one-year terms;

(2) two members for two-year terms; and

(3) two members for three-year terms.

C. The members of the board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of their duties as board members.

D. Any member failing, after proper notice, to attend any three consecutive meetings of the board without a reasonable excuse shall be automatically removed from the board.

**History:** Laws 1984, ch. 103, § 5; 1987, ch. 329, § 2; 1989, ch. 109, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection A substituted "eight" for "five" in the introductory paragraph, substituted the present language of the first sentence of Paragraph (3) for "one public member who is a resident of New Mexico", and made minor stylistic changes in the second sentence of Paragraph (3); substituted the present language of Subsection B(1) for "one member for a one-year term"; and added Subsection D.

### **61-12B-6. Department; duties. (Effective until July 1, 1996.)**

A. The department, in consultation with the board, shall:

(1) evaluate the qualifications of applicants and review any required examination results of applicants and may recognize the entry level examination written by the national board for respiratory care, inc. or any successor board;

(2) collect and review data and statistics with respect to respiratory care, treatment, services or facilities for the purpose of granting, suspending or revoking respiratory care licenses;

(3) issue licenses and temporary permits to applicants who meet the requirements of the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978];

(4) administer, coordinate and enforce the provisions of the Respiratory Care Act and investigate persons engaging in practices that may violate the provisions of that act; and

(5) adopt rules and regulations to allow the interstate transport of patients.

B. The department, in consultation with the board, may:

(1) conduct any required examinations of respiratory care practitioner applicants; and

(2) deny, suspend or revoke temporary permits or licenses to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1984, ch. 103, § 6; 1993, ch. 150, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, added Paragraph (5) and made minor stylistic changes.

### **61-12B-7. Licensing by training and examination. (Effective until July 1, 1996.)**

A. Any person desiring to become licensed as a respiratory care practitioner shall make application to the department on a written form and in such manner as the department prescribes, pay all required application fees and certify and furnish evidence to the department that the applicant:

(1) has successfully completed a training program as defined in the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978];

(2) has passed an entry level examination, as specified by rules and regulations of the department, for respiratory care practitioners administered by the national board of respiratory care, incorporated, or any successor board;

(3) is of good moral character; and

(4) has successfully completed any other training or education programs and passed any other examinations as required by rules and regulations of the department.

B. The department, in consultation with the board, shall develop rules and regulations that describe the scope and qualifications for expanded practice roles of respiratory care practitioners.

**History:** Laws 1984, ch. 103, § 7; 1993, ch. 150, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, substituted the language beginning "the national board" for "a nationally recognized organization for respiratory care" at the end of Paragraph (2) of Subsection A and added Subsection B.

#### **61-12B-8. Licensing without training and examination. (Effective until July 1, 1996.)**

The department shall waive the education and examination requirements for applicants who present proof of current licensure in a state which has standards at least equal to those for licensure in New Mexico as required by the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978].

**History:** Laws 1984, ch. 103, § 8; 1993, ch. 150, § 5.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, inserted "training and" in the catchline; deleted the subsection designation "A" at the beginning of the section; substituted "required by the Respiratory Care Act" for "determined by the department" at the end of the section; and deleted former Subsection B, pertaining to the conditions for issuance of a license to a practitioner without the education and examination requirements.

#### **61-12B-9. Other licensing provisions. (Effective until July 1, 1996.)**

A. The department, in consultation with the board, shall adopt rules and regulations for mandatory continuing education requirements which shall be completed as a condition for renewal of any license issued under the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978].

B. The department, in consultation with the board, may adopt rules and regulations for issuance of temporary permits for students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules and regulations shall be adopted defining, for the purposes of the Respiratory Care Act, the terms "students" and "direct supervision".

C. The license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".

D. Unless licensed as a respiratory care practitioner under the Respiratory Care Act, no person shall use the title "respiratory care practitioner", the abbreviation "R.C.P." or any other title or abbreviation to indicate that the person is a licensed respiratory care practitioner.

E. A copy of the valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's place of employment.

F. Licenses, including initial licenses, shall be issued for a period of two years.

**History:** Laws 1984, ch. 103, § 9; 1987, ch. 329, § 3; 1993, ch. 150, § 6.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, in Subsection E, inserted "copy of the" preceding "valid" and substituted "kept on file" for "displayed".

#### **61-12B-10. Licensure; date required. (Effective until July 1, 1996.)**

No person shall be required to be licensed as a respiratory care practitioner until October 1, 1984.

**History:** Laws 1984, ch. 103, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

### **61-12B-11. Fees. (Effective until July 1, 1996.)**

A. The superintendent, in consultation with the board, shall establish a schedule of reasonable fees for licenses, temporary permits and renewal of licenses for respiratory care practitioners.

B. The initial application fee shall be set in an amount not to exceed one hundred fifty dollars (\$150).

C. A biennial license renewal fee shall be established in an amount not to exceed one hundred fifty dollars (\$150).

**History:** Laws 1984, ch. 103, § 11; 1987, ch. 329, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

### **61-12B-12. Denial, suspension, revocation and reinstatement of licenses. (Effective until July 1, 1996.)**

A. The superintendent may refuse to issue or may suspend or revoke any license in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] for any of the following causes:

- (1) fraud in the procurement of any license under that act;
- (2) imposition of any disciplinary action upon a person by an agency of another state which regulates respiratory care, but not to exceed the period or extent of such action;
- (3) conviction of a crime which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;
- (4) impersonating or acting as a proxy for an applicant in any examination given under that act;
- (5) habitual or excessive use of intoxicants or drugs;
- (6) gross negligence in practice as a respiratory care practitioner;
- (7) violating any of the provisions of the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] or any rules or regulations duly adopted under that act or aiding or abetting any person to violate the provisions of or any rules or regulations adopted under that act;

(8) engaging in unprofessional conduct; or

(9) committing any fraudulent, dishonest or corrupt act which is substantially related to the qualifications, functions or duties of a respiratory care practitioner.

B. One year from the date of revocation of a license under the Respiratory Care Act, application may be made to the superintendent for reinstatement, restoration or modification of probation. The superintendent, in consultation with the board, shall have the discretion to accept or reject an application and may require an examination for such reinstatement, restoration or modification of probation when it is deemed appropriate.

C. The department, in consultation with the board, shall write rules and regulations to establish guidelines for the reinstatement or restoration of a license suspended or revoked due to the abuse of intoxicants or drugs.

**History:** Laws 1984, ch. 103, § 12; 1987, ch. 329, § 5; 1993, ch. 150, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, added Subsection C.

#### **61-12B-13. Respiratory care fund created; disposition; method of payment. (Effective until July 1, 1996.)**

A. There is created in the state treasury the "respiratory care fund".

B. All funds received by the superintendent and money collected under the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the respiratory care fund.

C. All amounts paid into the respiratory care fund shall be expended only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act. All money unused at the end of the fiscal year shall remain in the respiratory care fund for use in accordance with the provisions of the Respiratory Care Act.

**History:** Laws 1984, ch. 103, § 13; 1987, ch. 329, § 6; 1989, ch. 109, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**The 1989 amendment**, effective June 16, 1989, in Subsection C, substituted all of the language of the first sentence beginning with "expended" for "subject to the order of the superintendent and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act".

#### **61-12B-14. Department; rules and regulations. (Effective until July 1, 1996.)**

The department, in consultation with the board, shall make rules and regulations necessary to implement the provisions of the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1984, ch. 103, § 14; 1987, ch. 329, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

#### **61-12B-15. Enforcement. (Effective until July 1, 1996.)**

A. Violation of any provision of the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] is a misdemeanor.

B. The department may bring civil action in any district court to enforce any of the provisions of the Respiratory Care Act.

**History:** Laws 1984, ch. 103, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12B-16 NMSA 1978 and notes thereto.

**Cross-references.** - As to penalties for misdemeanors, see 31-19-1 NMSA 1978.

#### **61-12B-16. Termination of board; delayed repeal. (Effective until July 1, 1996.)**

The board is terminated on July 1, 1995 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate until July 1, 1996. Effective July 1, 1996, the Respiratory Care Act [61-12B-1 to 61-12B-16 NMSA 1978] is repealed.

**History:** Laws 1984, ch. 103, § 16; 1989, ch. 109, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1989, ch. 109, § 3 amends this section to repeal Chapter 61, Article 12B NMSA 1978, effective July 1, 1996.

**The 1989 amendment,** effective June 16, 1989, substituted "1995" for "1989" in the first sentence, and substituted "1996" for "1990" in the second and third sentences.

## **ARTICLE 12C**

### **MESSAGE THERAPY PRACTICE**

#### **61-12C-1. Short title. (Effective until July 1, 2000.)**

Chapter 61, Article 12C NMSA 1978 may be cited as the "Massage Therapy Practice Act".

**History:** Laws 1991, ch. 147, § 1; 1993, ch. 173, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 147, § 27 repeals 61-12C-1 to 61-12C-25 NMSA 1978, the Massage Therapy Practice Act, as enacted by Laws 1991, ch. 147, §§ 1 to 25, effective July 1, 1999.

See 61-12C-28 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 61, Article 12C NMSA 1978" for "Sections 1 through 25 of this act".

#### **61-12C-2. Legislative purpose. (Effective until July 1, 1999.)**

The legislature recognizes that the practice of massage therapy is potentially dangerous to the public. Therefore, it is necessary and in the interest of public health, safety and welfare, to regulate the practice of massage therapy.

**History:** Laws 1991, ch. 147, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

#### **61-12C-3. Definitions. (Effective until July 1, 2000.)**

As used in the Massage Therapy Practice Act [this article]:

- A. "approved massage therapy school" means a facility registered with the board that meets established standards of training and curriculum;
- B. "board" means the board of massage therapy;
- C. "department" means the regulation and licensing department;
- D. "massage therapist" means a person who uses the title of massage therapist, is licensed pursuant to the Massage Therapy Practice Act and administers massage therapy for compensation;
- E. "massage therapy" means the treatment of soft tissues for therapeutic purposes as defined in Section 61-12C-4 NMSA 1978; and
- F. "jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy.

**History:** Laws 1991, ch. 147, § 3; 1993, ch. 173, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, substituted "registered with" for "certified by" in Subsection A; inserted "therapy" preceding "for compensation" in Subsection D; substituted "Section 61-12C-4 NMSA 1978" for "Section 4 of the Massage Therapy Practice Act" in Subsection E; added Subsection F; and made minor stylistic changes throughout the section.

#### **61-12C-4. Massage therapy; therapy; defined. (Effective until July 1, 2000.)**

A. Massage therapy is the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain. Massage therapy is a health care service. Massage therapy includes but is not limited to effleurage, petrissage, tapotement, compression, vibration, friction, nerve strokes and Swedish gymnastics. Massage therapy may include the use of oils, salt glows, hot or cold packs or hydrotherapy. Synonymous terms for massage therapy include massage, therapeutic massage, body massage, myomassage, bodywork, body rub or any derivation of those terms.

B. The terms "therapy" and "therapeutic massage" do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic, physical therapy, occupational therapy, acupuncture or podiatry is required by law.

**History:** Laws 1991, ch. 147, § 4; 1993, ch. 158, § 8; 1993, ch. 173, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**1993 amendments.** Laws 1993, ch. 158, § 8 amending this section, effective June 18, 1993, by in the last sentence of Subsection A, correcting the spelling of "Synonymous" and inserting "body work"; and substituting "chiropractic, physical therapy, occupational therapy, acupuncture and oriental medicine" for "chiropracty, physical therapy, occupational therapy, acupuncture" in Subsection B, was approved April 2, 1993. However, Laws 1993, ch. 173, § 3 also enacted an amendment to this section, effective June 18, 1993, which substituted "Synonymous" for "Synonomous" and inserted "bodywork" in the final sentence of Subsection A and, in Subsection B, inserted "nursing," and substituted "chiropractic" for "chiropracty" and "acupuncture" for "accupuncture", and was approved April 2, 1993. The section is set out as amended by Laws 1993, ch. 173, § 3. See 12-1-8 NMSA 1978.

### **61-12C-5. License required. (Effective until July 1, 2000.)**

Effective April 30, 1992:

A. it is unlawful for any person to practice massage therapy for compensation, to offer services as a massage therapist for compensation or to purport to be a massage therapist unless that person possesses a license to practice massage therapy under the provisions of the Massage Therapy Practice Act [this article]; and

B. no person shall use the title of or represent himself to be a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate that person is a massage therapist unless he is licensed to practice massage therapy pursuant to the provisions of the Massage Therapy Practice Act.

**History:** Laws 1991, ch. 147, § 5; 1993, ch. 173, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, deleted "licensed" preceding "massage" in two places in Subsection B.

### **61-12C-6. Exemptions. (Effective until July 1, 2000.)**

Nothing in the Massage Therapy Practice Act [this article] shall be construed to prevent:

A. qualified members of other recognized professions that are licensed or regulated under New Mexico law from rendering services within the scope of their license or regulation, provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of an approved massage therapy school and under the supervision of a licensed massage therapy instructor;

C. visiting massage therapy instructors from another state or territory of the United States, the District of Columbia or any foreign nation from teaching massage therapy; provided the instructor is duly licensed or registered, if required, and is qualified in his place of residence for the practice of massage therapy. The board shall establish by rule the duration of stay for a visiting massage therapy instructor; and

D. sobadores and Native American healers from using traditional Hispanic or Native American healing practices. Healers who use these practices but apply for a license or registration pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements.

**History:** Laws 1991, ch. 147, § 6; 1993, ch. 173, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, inserted the subsection designation "A"; deleted "certified" and "certification" following "licensed" and "license" and deleted "licensed" preceding "massage therapists" in Subsection A; and added Subsections B to D.

### **61-12C-7. Board created; membership. (Effective until July 1, 2000.)**

A. There is created the "board of massage therapy". The board shall be administratively attached to the department.

B. The board shall consist of five members who are New Mexico residents. Members of the board shall be appointed by the governor. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice in New Mexico. Two members of the board shall be public members. The initial three professional members appointed shall meet the requirements for licensure and be licensed by the deadline specified for licensure in the Massage Therapy Practice Act.

The public members shall not have been licensed or have any financial interest, direct or indirect, in the profession regulated.

C. Each member of the board shall hold office until the expiration of the term for which appointed or until a successor has been appointed and qualified.

D. No board member shall serve more than two consecutive terms.

E. The board shall elect annually a chairman and such other officers as it deems necessary. The board shall meet as often as necessary for the conduct of business, but no less than twice a year. Meetings shall be called by the chairman or upon the written request of three or more members of the board. Three members, at least one of whom is a public member, shall constitute a quorum.

F. Any board member may be recommended for removal as a member of the board for failing to attend, after proper notice, three consecutive board meetings.

G. Members of the board shall be reimbursed as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1991, ch. 147, § 7; 1993, ch. 173, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, inserted "each" in the third sentence of Subsection B; deleted former Subsection C, pertaining to initial appointments to the board; redesignated former Subsections D to F as Subsections C to E; added "and qualified" at the end of Subsection C; and added current Subsection F.

### **61-12C-8. Board duties. (Effective until July 1, 2000.)**

The board shall have the power to:

A. adopt and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations necessary to carry out the provisions of the Massage Therapy Practice Act [this article], in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

B. provide for the evaluation of the qualifications of applicants for licensure or registration under the Massage Therapy Practice Act;

- C. provide for the issuance of licenses or registrations to applicants who meet the requirements of the Massage Therapy Practice Act;
- D. provide for the inspection, when required, of the business premises of any licensee during regular business hours;
- E. establish minimum training and educational standards for licensure;
- F. establish a process for approval of training programs and massage therapy schools;
- G. provide for the investigation of persons engaging in practices that may violate the provisions of the Massage Therapy Practice Act;
- H. revoke, suspend or deny a license or registration in accordance with the provisions of the Uniform Licensing Act;
- I. adopt an annual budget;
- J. adopt a code of ethics; and
- K. provide for the investigation of complaints against licensees. The board may issue investigation subpoenas prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA 1978.

**History:** Laws 1991, ch. 147, § 8; 1993, ch. 173, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, inserted "have the power to" in the introductory paragraph; added current Subsection A; redesignated former Subsections A to I as Subsections B to J; substituted "provide for the evaluation of" for "evaluate" at the beginning and inserted "or registration" in Subsection B; substituted "provide for the issuance of" for "issue", inserted "or registrations" and substituted "who meet" for "to meet" in Subsection C; substituted "provide for the inspection" for "inspect" and inserted "of" in Subsection D; substituted "provide for the investigation of" for "investigate" in Subsection G; inserted "or registration" in Subsection H; deleted former Subsections J and K, pertaining to establishment of policies regarding continuing education and the adoption of rules and regulations; added current Subsection K; and made a minor stylistic change.

**61-12C-9. Requirements for licensure; registered instructors.  
(Effective until July 1, 2000.)**

A. The board shall issue a license to practice massage therapy to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has completed all educational requirements established by the board;

(3) has completed a training program approved by the board, at a school approved by the board, that program being at least six hundred fifty hours in length; provided that if the approved training program is less than six hundred fifty hours, the applicant shall provide documentation of up to three hundred fifty hours of alternative qualifying experience, including but not limited to professional massage therapy experience, apprenticeship training in massage therapy, clinical or internship training and prior experience in a health career, to be approved by the board; and

(4) demonstrates professional competence by passing a written examination as prescribed by the board.

B. The board may also require a practical examination as a condition for licensure.

C. The board shall register as a massage therapy instructor any applicant who:

(1) is currently licensed as a massage therapist; and

(2) proves to the board's satisfaction that he meets the minimum requirement of two years of experience in his area of instruction.

**History:** Laws 1991, ch. 147, § 9; 1993, ch. 173, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, deleted "and registered with the commission on higher education" following "by the board" and substituted "shall provide" for "must provide" in Paragraph (3) of Subsection A; deleted "satisfactorily" preceding "passing" and "and a practical" preceding "examination" in Paragraph (4) of Subsection A; substituted the current provision of Subsection B for "Every massage therapy instructor must be currently licensed as a massage therapist"; designated the former second sentence of Subsection B as current Subsection C and deleted "documents a minimum of two years of experience in his area of instruction" at the end of the introductory paragraph and added Paragraphs (1) and (2) therein.

**61-12C-10. Approved massage therapy schools; registration.  
(Effective until July 1, 2000.)**

A. The board shall establish by rule procedures for approval of massage therapy schools and shall register massage therapy schools that meet the educational requirements of the Massage Therapy Practice Act [this article].

B. The board shall establish minimum standards of training and curriculum for approved training programs and for approved massage therapy schools. At a minimum, approved massage therapy schools shall provide training programs that include a minimum of three hundred hours of training. This shall include instruction in:

- (1) anatomy;
- (2) physiology;
- (3) massage therapy;
- (4) business;
- (5) hydrotherapy;
- (6) first aid;
- (7) cardiopulmonary resuscitation; and
- (8) professional ethics.

C. The board shall establish a list of approved massage therapy schools and shall register any institution that meets the requirements of the board and files a current curriculum and list of instructors.

D. An approved massage therapy school shall register annually with the board.

**History:** Laws 1991, ch. 147, § 10; 1993, ch. 173, § 9.

**ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added current Subsection A; redesignated former Subsection A as Subsection B and inserted the paragraph designations in that subsection; rewrote the first and second sentences of former Subsection B as present Subsection C and designated the final sentence of former

Subsection B as Subsection D; and deleted "and the commission on higher education" at the end of Subsection D.

### **61-12C-11. Display of license. (Effective until July 1, 2000.)**

A massage therapy license or registration issued by the board shall at all times be posted in a conspicuous place in the holder's principal place of business.

**History:** Laws 1991, ch. 147, § 11; 1993, ch. 173, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "or registration" and "holder's" and deleted "of the licensee" at the end.

### **61-12C-12. Assignability of license. (Effective until July 1, 2000.)**

A license or registration issued pursuant to the Massage Therapy Practice Act is not assignable or transferable [this article].

**History:** Laws 1991, ch. 147, § 12; 1993, ch. 173, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "or registration".

### **61-12C-13. Examinations. (Effective until July 1, 2000.)**

A. Examinations shall be held at least twice each year on a date and at a location established by the board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to taking and retaking licensure examinations. The board shall determine the passing grade on examinations.

B. The board shall specify by rule the general areas of competency to be covered by examinations for licensure and ensure that the examinations measure adequately both

an applicant's competency and knowledge of related statutory requirements. Professional testing services may be utilized for the examinations.

C. After taking the written examination, each applicant may be tested in the practical application of massage therapy techniques in such a manner and by such methods as shall reveal the applicant's skill and knowledge.

D. All licensing examinations shall be conducted in such a manner that the applicants shall be known to the board by number until the examination is completed and the grade determined. A record of each examination shall be filed in the board office and available for inspection for a period of not less than two years immediately following the examination.

**History:** Laws 1991, ch. 147, § 13; 1993, ch. 173, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, deleted "Written and practical" at the beginning of Subsection A; substituted "examinations" for "written exam" at the end of Subsection B; substituted "may be tested" for "shall be tested" in Subsection C; deleted former Subsection D, pertaining to compliance with state and federal equal opportunity guidelines; and designated former Subsection E as Subsection D.

### **61-12C-14. Temporary license. (Effective until July 1, 2000.)**

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy, provided that the applicant meets all the requirements for licensure except completion of the examination.

B. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied. If approved, the applicant shall be issued the initial license for the remainder of the year.

C. No more than one temporary license may be issued to an individual, and no temporary license shall be issued to an applicant who has previously failed the examinations.

**History:** Laws 1991, ch. 147, § 14; 1993, ch. 173, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, rewrote the catchline, which formerly read "Provisional Licensure"; substituted "temporary license" for "provisional license" throughout the section; deleted former Subsection B, which read "Each recipient of a provisional license shall practice under the direct supervision of a licensed massage therapist"; redesignated former Subsections C and D as Subsections B and C; added "and a license is issued or denied" at the end of the first sentence and added the second sentence of Subsection B; and substituted "failed the examinations" for "failed either the written or the practical examination" at the end of Subsection C.

### **61-12C-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 173, § 22 repeals 61-12C-15 NMSA 1978, as enacted by Laws 1991, ch. 147, § 15, concerning licensure without examination, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

### **61-12C-16. Licensure by credentials. (Effective until July 1, 2000.)**

After successful completion of a jurisprudence examination, the board may license an applicant, provided that he possesses a valid license or registration to practice massage therapy issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational requirements substantially equivalent to or exceeding those established pursuant to the Massage Therapy Practice Act [this article].

**History:** Laws 1991, ch. 147, § 16; 1993, ch. 173, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, added "After successful completion of a jurisprudence examination" at the beginning of the section; deleted "without examination" following "applicant"; inserted "or registration"; and substituted "and has met educational requirements" for "that, in the judgment of the board, has requirements".

### **61-12C-17. License or registration renewal; continuing education. (Effective until July 1, 2000.)**

A. Massage therapy licenses shall expire biennially, and massage therapy school registrations shall expire annually on a date established by rule.

B. Each licensee shall renew his license by submitting a renewal application on a form provided by the board. Initial licenses may be valid for one or two years, depending on assigned license number and board rule.

C. The board may establish continuing educational requirements as a condition of the renewal of licenses.

D. Each massage therapy school shall renew its registration by submitting a renewal application and providing a description of its current curriculum and list of all instructors.

E. A sixty-day grace period shall be allowed each license or registration holder after the end of the renewal period, during which time a license or registration may be renewed upon payment of the renewal fee and a late fee as prescribed by the board.

**History:** Laws 1991, ch. 147, § 17; 1993, ch. 173, § 15.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, rewrote the catchline, which formerly read "License Renewal"; added current Subsection A and added Subsections C and D; redesignated former Subsections A and B as Subsections B and E; deleted "biennially" following "license" in the first sentence and substituted "rule" for "regulations" in the second sentence of Subsection B; and substituted "each license or registration holder" for "each licensee", "renewal period" for "licensing period", and "a license or registration" for "licenses" in Subsection E.

### **61-12C-18. Inactive status. (Effective until July 1, 1999.)**

A. Any license not renewed at the end of the sixty-day grace period shall be placed on inactive status for a period not to exceed two years. At the end of two years, if the license has not been reactivated, it shall automatically expire.

B. If, within a period of two years from the date the license was placed on inactive status, the massage therapist wishes to resume practice, the board shall be notified in writing, and, upon proof of completion of any continuing education or refresher courses prescribed by regulation of the board and payment of an amount set by the board in lieu of all lapsed renewal fees, the license shall be restored in full.

**History:** Laws 1991, ch. 147, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

### **61-12C-19. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1993, ch. 173, § 22 repeals 61-12C-19 NMSA 1978, as enacted by Laws 1991, ch. 147, § 19, concerning massage therapy schools, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

### **61-12C-20. License fees. (Effective until July 1, 2000.)**

A. The board shall establish a schedule of reasonable fees for applications, licenses, registrations, renewals, placement on inactive status and necessary administrative fees.

B. The initial licensure application fee shall not exceed fifty dollars (\$50.00).

C. The initial license fee shall not exceed one hundred fifty dollars (\$150).

D. The examination fee shall not exceed four hundred dollars (\$400).

E. The biennial renewal fee shall not exceed three hundred dollars (\$300).

F. The fee for reactivation of an inactive license shall not exceed four hundred dollars (\$400).

G. A late renewal fee shall not exceed one hundred dollars (\$100).

H. The registration fee for an approved massage therapy school shall not exceed one hundred dollars (\$100).

I. The registration fee for a massage therapy instructor shall not exceed fifty dollars (\$50.00).

**History:** Laws 1991, ch. 147, § 20; 1993, ch. 173, § 16.

## ANNOTATIONS

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, substituted "registrations, renewals" for "renewal of licenses" in Subsection A; inserted "licensure" in Subsection B; deleted "first year" following "initial" in Subsection C; substituted "four hundred dollars (\$400)" for "two hundred dollars (\$200)" in Subsection D; deleted "annually" at the end of Subsection H; and added Subsection I.

### **61-12C-21. Advertising. (Effective until July 1, 2000.)**

Each massage therapist licensed under the provisions of the Massage Therapy Practice Act [this article] shall include the number of his license or registration, and the designation as either a license or registration, in any advertisement of massage therapy services appearing in any newspaper, airwave transmission, telephone directory or other advertising medium.

**History:** Laws 1991, ch. 147, § 21; 1993, ch. 173, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, inserted "or registration, and the designation as either a license or registration," and inserted "therapy" preceding "services".

### **61-12C-22. Power of county or municipality to regulate massage. (Effective until July 1, 2000.)**

A county or municipality, within its jurisdiction, may regulate persons licensed pursuant to the Massage Therapy Practice Act [61-12C-1 to 61-12C-25 NMSA 1978]. Regulation shall not be inconsistent with the provisions of that act. This section shall not be construed to prohibit a county or municipality from enacting any regulation of persons not licensed pursuant to that act.

**History:** Laws 1991, ch. 147, § 22.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

### **61-12C-23. Fund created. (Effective until July 1, 2000.)**

There is created in the state treasury the "massage therapy fund". Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Massage Therapy Practice Act [61-12C-1 to 61-12C-25 NMSA 1978]. All funds received or collected by the board or the department under the Massage Therapy Practice Act shall be deposited with the state treasurer, who shall place the money to the credit of the massage therapy fund. No balance in the fund at the end of any fiscal year shall revert to the general fund.

**History:** Laws 1991, ch. 147, § 23.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

### **61-12C-24. Denial, suspension, revocation and reinstatement of licenses. (Effective until July 1, 2000.)**

A. The board may impose a fine not to exceed one thousand dollars (\$1,000), place on probation as specified by the board or refuse to issue or renew or may deny, suspend or revoke any license, temporary license or registration held or applied for under the Massage Therapy Practice Act [this article] in accordance with the procedures set forth in the Uniform Licensing Act upon a finding by the board that the licensee, registrant or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure a license or registration provided for in the Massage Therapy Practice Act;

(2) attempted to use as his own the license or registration of another;

(3) allowed the use of his license or registration by another;

(4) has been adjudicated as mentally incompetent by regularly constituted authorities;

(5) has been convicted or found guilty, regardless of adjudication, of a crime, in any jurisdiction, that directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for the purposes of this section;

(6) is guilty of unprofessional or unethical conduct or a violation of the code of ethics;

(7) is habitually or excessively using controlled substances or alcohol;

(8) is guilty of false, deceptive or misleading advertising;

(9) is guilty of aiding, assisting or advertising any unlicensed or unregistered person in the practice of massage therapy;

(10) is grossly negligent or incompetent in the practice of massage therapy; or

(11) has had a license or registration to practice massage therapy revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee or registrant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of such conviction.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

C. The board may establish the guidelines for the disposition of the disciplinary cases. Such guidelines may include minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license or registration.

D. License and registration holders who have been found culpable and sanctioned by the board shall be responsible for the payments of all costs of the disciplinary proceedings.

**History:** Laws 1991, ch. 147, § 24; 1993, ch. 173, § 18.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, inserted "impose a fine not to exceed one thousand dollars (\$1,000), place on probation as specified by the board or" near the beginning, "temporary license or registration" near the middle and "registrant" near the end of the introductory paragraph, substituted "a license" for "any license" in Paragraph (1), inserted "or registration" following "license" in Paragraphs (1) to (3) and (11), added "or a violation of the code of ethics" at the end of Paragraph (6), inserted "or unregistered" in Paragraph (9), inserted "or registrant" near the middle and substituted the language beginning "conviction shall" for "the jurisdiction making such revocation, suspension or denial shall be conclusive evidence thereof" at the end of Paragraph (11); rewrote Subsection C, which made violation of the Massage Therapy Practice Act a petty misdemeanor and provided a fine not exceeding \$500 or imprisonment up to six months in jail or both; and added Subsection D.

**61-12C-25. Criminal offender's character evaluation. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Massage Therapy Practice Act [61-12C-1 to 61-12C-25 NMSA 1978].

**History:** Laws 1991, ch. 147, § 25.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-12C-1 NMSA 1978 and notes thereto.

See 61-12C-28 NMSA 1978.

#### **61-12C-26. Protected actions. (Effective until July 1, 2000.)**

A. No member of the board shall bear liability or be subject to civil damages or criminal prosecution for any action undertaken or performed within the scope of his duty.

B. No person or legal entity providing truthful and accurate information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**History:** Laws 1993, ch. 173, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-12C-28 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 173 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-12C-27. Penalties. (Effective until July 1, 2000.)**

Any person who violates any provision of the Massage Therapy Practice Act [this article] is guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment for a period not to exceed one year or both.

**History:** Laws 1993, ch. 173, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-12C-28 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 173 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-12C-28. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board of massage therapy is terminated on July 1, 1999, pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 12C NMSA 1978 until July 1, 2000. Effective July 1, 2000, Article 12C of Chapter 61 NMSA 1978 is repealed.

**History:** Laws 1993, ch. 173, § 21.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 173 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

## **ARTICLE 13 NURSING HOME ADMINISTRATORS**

### **61-13-1. Short title. (Effective until July 1, 1998.)**

This act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978] may be cited as the "Nursing Home Administrators Act".

**History:** 1953 Comp., § 67-37-1, enacted by Laws 1970, ch. 61, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

### **61-13-2. Definitions. (Effective until July 1, 1998.)**

As used in the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978]:

A. "board" means the board of nursing home administrators;

B. "nursing home administrator" means any individual who is responsible for planning, organizing, directing and controlling the operation of a nursing home or who shares such functions with one or more persons in operating a nursing home;

C. "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities, and whether a separate entity or a part of a medical institutional facility; and

D. "practice of nursing home administration" means the planning, organizing, directing and control of the operation of a nursing home.

**History:** 1953 Comp., § 67-37-2, enacted by Laws 1970, ch. 61, § 2; 1993, ch. 245, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, made stylistic changes in Subsection B, and substituted "facility by the public health division of the department of health" for "home by the health and social services department" and deleted "extended care facilities" before "skilled nursing home facilities" in Subsection C.

**Intermediate care facility for mentally retarded** properly licensed by the health and social services department as an intermediate care facility is not a nursing home as defined by this section; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 40 Am. Jur. 2d Hospitals and Asylums § 2.

7 C.J.S. Asylums § 1.

### **61-13-3. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Nursing Home Administration [Administrators] Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978].

**History:** 1953 Comp., § 67-37-2.1, enacted by Laws 1974, ch. 78, § 35.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

#### **61-13-4. Board of nursing home administrators. (Effective until July 1, 1998.)**

A. There is created the "board of nursing home administrators", consisting of seven members appointed by the governor. Two members of the board shall be practicing nursing home administrators licensed under the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978], one member shall be a hospital administrator, one member shall be a practicing physician licensed in this state and three members shall be from the public.

B. All initial appointments to the board shall be for a term of three years. Subsequently, the term of each member expires on June 30 in the third year after his appointment. In the case of a vacancy on the board, the governor shall, within ninety days of the occurrence of the vacancy, appoint a member to fill the unexpired portion of the term. Board members shall be citizens of the United States and residents of the state, and not more than one member shall be an employee of any state or other public agency.

**History:** 1953 Comp., § 67-37-3, enacted by Laws 1970, ch. 61, § 3; 1977, ch. 34, § 1; 1991, ch. 189, § 19; 1993, ch. 245, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Cross-references.** - For the Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, deleted "of examiners" following "Board" in the catchline; in Subsection A, substituted "created the" for "created a state" and "seven members" for "five members" in the first sentence, substituted "one member" for "two members" and added "and three members shall be from the public" at the end of the second sentence and made related stylistic changes; in Subsection B, deleted the former first sentence relating to appointment of members of the original board, divided the former second sentence into two sentences and rewrote the provision which read "Thereafter all appointments to the board shall be for a term of three years or less so that the term of each member expires on June 30 in the third year after his appointment", substituted "three members" for "four members" in the fourth and fifth sentences, substituted "health services division of the health and environment department" for "health facilities service division of the health and social services department" in the fifth sentence and made related and minor stylistic changes throughout the section.

**The 1993 amendment**, effective June 18, 1993, deleted the former third and fourth sentences of Subsection B, which related to the qualifications of the three members of the board initially appointed as nursing home or hospital administrators.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 70 C.J.S. Asylums § 5.

### **61-13-4.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1991, ch. 189, § 25 repeals 61-13-4.1 NMSA 1978, as enacted by Laws 1978, ch. 206, § 2, relating to lay membership, effective June 14, 1991. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-13-5. Organization of board; meetings. (Effective until July 1, 1998.)**

The board shall elect annually from its membership a chairman and such other officers as may be necessary. The board shall meet at least three times a year and at such other times as it deems appropriate. Meetings shall be at the call of the chairman of the board or upon the call of any two members of the board. A majority of the board shall constitute a quorum at any meeting or hearing of the board. Any board member failing to attend three consecutive meetings of the board, at least two of which were regular meetings, shall automatically be dropped as a member of the board.

**History:** 1953 Comp., § 67-37-4, enacted by Laws 1970, ch. 61, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Quorum.** - Four members of the board of nursing home administrators is a quorum. 1989 Op. Att'y Gen. No. 89-08.

The expiration of a board member's term of office or a member's resignation does not create a corporeal "vacancy". Until successors are appointed who duly qualify for office, the current six members continue to serve in office, and accordingly, the quorum requirement remains at four. 1989 Op. Att'y Gen. No. 89-08.

### **61-13-6. Duties of the board. (Effective until July 1, 1998.)**

It is the duty of the board to:

A. formulate, adopt and regularly revise such rules and regulations not inconsistent with law as may be necessary to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978];

B. approve for licensure applicants for:

- (1) initial licensure;
- (2) annual renewal of current, active licenses;
- (3) reciprocity;
- (4) reinstatement of revoked or suspended licenses; and
- (5) reactivation of inactive or expired licenses;

C. cause the prosecution or enjoinder of all persons violating the Nursing Home Administrators Act and deny, suspend or revoke licenses in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

D. submit a written annual report to the governor and the legislature detailing the actions of the board and including an accounting of all money received and expended by the board;

E. employ such administrative personnel as may be necessary for the efficient operation of the Nursing Home Administrators Act; and

F. maintain a register of licensees and a record of all applicants for licensure received by the board.

**History:** 1953 Comp., § 67-37-5, enacted by Laws 1970, ch. 61, § 5; 1993, ch. 245, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, made a stylistic change in the introductory language and in Subsection A, and rewrote Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 C.J.S. Asylums § 5.

### **61-13-7. Compensation of board members. (Effective until July 1, 1998.)**

Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] but shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 67-37-6, enacted by Laws 1970, ch. 61, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**61-13-8. Licensure of nursing home administrators. (Effective until July 1, 1998.)**

A. The board shall issue a license as a nursing home administrator to each applicant who files an application in the form and manner prescribed by the board, accompanied by the required fee, and who furnishes evidence satisfactory to the board that he:

(1) is of good moral character;

(2) has successfully completed a course of study for a baccalaureate degree and has been awarded such degree from an accredited institution in a course of study approved by the board as being adequate preparation for nursing home administrators;

(3) demonstrates professional competence by passing an examination in nursing home administration as prepared and published by the professional examination service or such other nationally recognized examination as the board shall prescribe in its rules and regulations;

(4) demonstrates knowledge of state regulations governing the operation of nursing homes in a manner as the board shall prescribe in its rules and regulations; and

(5) has successfully completed an internship or administrator-in-training program as prescribed by the board in its rules and regulations.

**History:** 1953 Comp., § 67-37-7, enacted by Laws 1970, ch. 61, § 7; 1973, ch. 68, § 1; 1993, ch. 245, § 4.

**ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to the age of majority, see 28-6-1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 40 Am. Jur. 2d Hospitals and Asylums § 4; 51 Am. Jur. 2d Licenses and Permits § 4.

7 C.J.S. Asylums § 7; 53 C.J.S. Licenses §§ 34, 39.

**61-13-9. Educational programs. (Effective until July 1, 1998.)**

The board shall:

A. approve or establish appropriate courses of study within and without the state to enable applicants for licensure to attain the requisite professional skill to qualify them to sit for the examination for licensure; and

B. approve or establish appropriate courses of study to further the professional qualifications of licensees through continuing educational programs.

**History:** 1953 Comp., § 67-37-8, enacted by Laws 1970, ch. 61, § 8; 1993, ch. 245, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, deleted "Provisional license" from the beginning of the catchline; deleted former Subsection A, which provided for the issuance of a provisional license, expiring June 20, 1972, to certain applicants; and rewrote former Subsection B as present Subsection A, renumbering former Subsection C as present Subsection B.

### **61-13-10. Licensure by examinations by board. (Effective until July 1, 1998.)**

A. Upon investigation of the application and other evidence submitted, the board shall, not less than thirty days prior to any scheduled examination, notify each applicant that the application and evidence submitted is satisfactory or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

B. Examinations shall be held at least twice each year at such a time and place as the board may determine, and at other times as in the opinion of the board the number of applicants for licensure warrants.

C. The board shall administer the national standards examination in a manner specified by the national examination service with which it contracts.

**History:** 1953 Comp., § 67-37-9, enacted by Laws 1970, ch. 61, § 9; 1993, ch. 245, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, rewrote Subsection C.

### **61-13-11. Licensure without examination. (Effective until July 1, 1998.)**

The board shall issue a nursing home administrator's license, without examination, to any person who holds a nursing home administrator's license current and in good standing, in another jurisdiction, provided that the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978].

**History:** 1953 Comp., § 67-37-10, enacted by Laws 1970, ch. 61, § 10; 1993, ch. 245, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, substituted "nursing home administrator's license current and in good standing, in" for "current license as a nursing home administrator from".

### **61-13-12. License and renewal fees; board expenditures. (Effective until July 1, 1998.)**

A. The board shall require by appropriate rule or regulation that applicants for licensure as nursing home administrators pay a license fee in an amount set by the board not to exceed two hundred fifty dollars (\$250) and an annual renewal fee in an amount set by the board not to exceed two hundred dollars (\$200).

B. The board shall deposit all fees received by the board in a special fund maintained by the state treasurer for use in defraying the expenses of administration of the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978]. All unexpended balance remaining in the fund at the end of each fiscal year shall remain to the credit of the board.

C. The board may obtain and administer programs of grants-in-aid or financial assistance from any governmental agency or private source in the furtherance of programs consistent with the Nursing Home Administrators Act.

**History:** 1953 Comp., § 67-37-11, enacted by Laws 1970, ch. 61, § 11; 1992, ch. 69, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**The 1992 amendment**, effective May 20, 1992, in Subsection A, substituted "shall" for "may", deleted "or applicants for annual renewal" following "administrators", substituted

"two hundred fifty dollars (\$250)" for "one hundred twenty-five dollars (\$125.00)", and substituted "two hundred dollars (\$200)" for "fifty dollars (\$50.00)".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

53 C.J.S. Licenses §§ 64 to 73.

### **61-13-13. Refusal, suspension or revocation of license. (Effective until July 1, 1998.)**

The board may refuse to issue or may suspend or revoke any license in accordance with the procedures as contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], upon the grounds that the licensee or applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure a license to practice as a nursing home administrator;

B. is convicted of a felony;

C. is guilty of gross incompetence;

D. is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a nursing home administrator;

E. is guilty of failing to comply with any of the provisions of the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978] or any rules or regulations of the board adopted and filed in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978];

F. has been declared mentally incompetent by regularly constituted authorities; provided that the revocation shall only be in effect during the period of such incompetency; or

G. is guilty of substandard performance and conduct, including but not limited to the following:

(1) he has been convicted of a misdemeanor substantially relating to the practice of nursing home administration;

(2) he has been found by a court of law, the board, an agency responsible for the certification and licensure of nursing homes, a state medicaid fraud and abuse unit or any other duly recognized state agency to be responsible for the neglect or abuse of nursing home residents or the misappropriation of their personal funds or property;

(3) he has been found by a state nursing home licensing board, an agency responsible for the certification and licensure of nursing homes or any other duly recognized state agency as responsible for substandard care in a nursing home;

(4) he has been found to have falsified records related to the residents or employees of a nursing home on the basis of race, religion, color, national origin, sex, age or handicap in violation of federal or state laws; or

(5) he has had a license revoked, suspended or denied by another state for any of the reasons contained in this section.

**History:** 1953 Comp., § 67-37-12, enacted by Laws 1970, ch. 61, § 12; 1993, ch. 245, § 8.

## ANNOTATIONS

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Cross-references.** - For Mental Health and Developmental Disabilities Code, see Chapter 43, Article 1 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, added Subsection G, making related grammatical changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 50 to 53.

### **61-13-14. Penalties. (Effective until July 1, 1998.)**

It shall be a misdemeanor for any person to:

A. sell or fraudulently obtain or furnish any license or aid or abet in the obtaining or furnishing of any license under the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978];

B. practice as a nursing home administrator, under cover of any license or registration illegally or fraudulently obtained or unlawfully issued;

C. practice as a nursing home administrator or use in connection with his name any designation tending to imply that he is a nursing home administrator unless duly licensed and registered to so practice under the provisions of the Nursing Home Administrators Act; or

D. practice as a nursing home administrator without a valid license or during the time his license or registration issued under the provisions of the Nursing Home Administrators Act is suspended or revoked.

**History:** 1953 Comp., § 67-37-13, enacted by Laws 1970, ch. 61, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to penalties for misdemeanors, see 31-19-1 NMSA 1978.

**Intermediate care facility for mentally retarded** properly licensed by the health and social services (now health and environment) department as an intermediate care facility is not a nursing home as defined by 61-13-2C NMSA 1978; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 72.

53 C.J.S. Licenses §§ 82 to 84.

### **61-13-15. Injunctive proceedings. (Effective until July 1, 1998.)**

A. The board may, in the name of the state of New Mexico, through the attorney general, apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act declared to be a misdemeanor by the Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978].

B. If it be established that the defendant has been or is committing an act declared to be a misdemeanor by the Nursing Home Administrators Act, the court shall enter a decree perpetually enjoining said defendant from further committing such act.

C. Such injunctive proceedings shall be in addition to, and not in lieu of, all penalties and other remedies in the Nursing Home Administrators Act.

**History:** 1953 Comp., § 67-37-14, enacted by Laws 1970, ch. 61, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Cross-references.** - As to injunctions, see Rules 1-065 and 1-066.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 70.

### **61-13-16. Exemptions. (Effective until July 1, 1998.)**

The Nursing Home Administrators Act [61-13-1, 61-13-2, 61-13-4, 61-13-5 to 61-13-16 NMSA 1978] does not apply to boardinghouses or to sheltered-care facilities.

**History:** 1953 Comp., § 67-37-15, enacted by Laws 1970, ch. 61, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-13-17 NMSA 1978 and notes thereto.

**Severability clauses.** - Laws 1970, ch. 61, § 16, provides for the severability of the Nursing Home Administrators Act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38.

53 C.J.S. Licenses §§ 35, 36.

### **61-13-17. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of nursing home administrators is terminated on July 1, 1997 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Article 13 of Chapter 61 NMSA 1978 is repealed.

**History:** 1953 Comp., § 67-37-16, enacted by Laws 1978, ch. 206, § 1; 1981, ch. 241, § 26; 1985, ch. 87, § 11; 1991, ch. 189, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - Laws 1991, ch. 189, § 20 amends this section to repeal Chapter 61, Article 13 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 14 VETERINARY MEDICINE**

## **61-14-1. Short title. (Effective until July 1, 1998.)**

This act may be cited as the "Veterinary Practice Act".

**History:** 1953 Comp., § 67-11-12, enacted by Laws 1967, ch. 62, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Meaning of "this act".** - The term "this act" refers to Laws 1967, ch. 62, the provisions of which are presently compiled as 61-14-1, 61-14-2, 61-14-4, 61-14-5, 61-14-8 to 61-14-10, 61-14-12 to 61-14-15 and 61-14-17 to 61-14-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity of statutes or regulations relating to practice of veterinary medicine, 8 A.L.R.4th 223.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

## **61-14-2. Definitions. (Effective until July 1, 1998.)**

As used in the Veterinary Practice Act:

A. "animal" means any animal other than man;

B. "practice of veterinary medicine" means:

(1) the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any procedure for artificial insemination, testing for pregnancy, diagnosing and treating sterility or infertility or rendering advice with regard to any of these;

(2) the representation, directly or indirectly, publicly or privately, of an ability and willingness to do any act mentioned in Paragraph (1) of this subsection; or

(3) the use of any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act mentioned in Paragraph (1) of this subsection;

C. "veterinarian" means a person having the degree of doctor of veterinary medicine or its equivalent from a veterinary school or a person who has received a medical education in veterinary medicine in a foreign country and has thereafter entered the United States and fulfilled the requirements and standards set forth by the American

veterinary medical association and has passed all examinations required by the board prior to being issued any license to practice veterinary medicine in this state;

D. "licensed veterinarian" means a person licensed to practice veterinary medicine in this state;

E. "veterinary school" means any veterinary college or any division of a university or college which is approved for accreditation by the American veterinary medical association;

F. "board" means board of veterinary medicine;

G. "veterinary technician" means a skilled person certified by the board as being qualified by academic and practical training to provide veterinary services under the supervision and direction of the licensed veterinarian who is responsible for the performance of that technician;

H. "committee" means the veterinary technician examining committee;

I. "direct supervision" means the treatment of animals on the direction, order or prescription of a licensed veterinarian who is available on the premises and who has established a valid veterinarian-client-patient relationship;

J. "valid veterinarian-client-patient relationship" means:

(1) the veterinarian has assumed responsibility for making medical judgments regarding the health of an animal being treated and the need for and the course of the animal's medical treatment;

(2) the client has agreed to follow the instructions of the veterinarian;

(3) the veterinarian is sufficiently acquainted with an animal being treated, whether through examination of the animal or timely visits to the animal's habitat for purposes of assessing the condition in which the animal is kept, to be capable of making a preliminary or general diagnosis of the medical condition of the animal being treated; and

(4) the veterinarian is reasonably available for follow-up treatment; and

K. "veterinary medicine" means veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine.

**History:** 1953 Comp., § 67-11-13, enacted by Laws 1967, ch. 62, § 2; 1975, ch. 96, § 1; 1977, ch. 236, § 1; 1993, ch. 163, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, rewrote Subsection C; substituted "veterinary medicine" for "veterinary examiners" in Subsection F; added Subsections I to K; and made minor stylistic changes in Paragraph (3) of Subsection B and Subsection G.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 5.

### **61-14-3. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-13.1, enacted by Laws 1974, ch. 78, § 19.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

### **61-14-4. Board created; terms; compensation; finance. (Effective until July 1, 1998.)**

A. The "board of veterinary medicine" is created. The board shall consist of seven members who are citizens of the United States and residents of the state of New Mexico. Veterinary members must have been licensed to practice veterinary medicine in the state for five years preceding their appointment to the board.

B. Members of the board and their successors shall be appointed by the governor. Five of the members shall be licensed veterinarians in New Mexico, and these appointments may be made from a list of five names for each professional vacancy, submitted to the governor by the New Mexico veterinary medical association. Two members shall represent the public and shall not have been licensed as veterinarians or have any significant financial interest, whether direct or indirect, in the occupation regulated.

C. Members shall be appointed to staggered terms of four years each. Appointments shall be made in such manner that the terms of no more than two board members

expire on July 1 of each year. All board members shall hold office until their successors are appointed and qualified. Appointments to vacancies shall be for the unexpired terms. Board members shall not serve more than two consecutive four-year terms.

D. A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four members is required for suspension or revocation of a license. The board shall elect a chairman and other necessary officers prescribed by regulation of the board.

E. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance. This reimbursement and all other expenses involved in carrying out the Veterinary Practice Act shall be paid exclusively from fees received under the Veterinary Practice Act. The board shall deposit all fees received under the Veterinary Practice Act with the state treasurer for the exclusive use of the board, and money shall be expended only upon vouchers certified by a majority of the board.

F. Any board member failing to attend three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

**History:** 1953 Comp., § 67-11-14, enacted by Laws 1967, ch. 62, § 3; 1975, ch. 96, § 2; 1979, ch. 76, § 1; 1991, ch. 189, § 21; 1993, ch. 163, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1991 amendment**, effective June 14, 1991, substituted "seven members" for "six members" in Subsection A; in the second sentence in Subsection B, substituted "Two members" for "One member" and "veterinarians or" for "a veterinarian nor shall such public member"; rewrote Subsection C; and made a minor stylistic change in Subsection F.

**The 1993 amendment**, effective June 18, 1993, rewrote Subsection A, which formerly read "The 'board of veterinary examiners' is created. The board shall consist of seven members" and rewrote Subsection C to the extent that a detailed comparison is impracticable.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

### **61-14-5. Board; duties. (Effective until July 1, 1998.)**

The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish annually a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;

E. employ personnel necessary to carry out its duties;

F. promulgate and enforce regulations necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all regulations promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee; and

I. adopt regulations establishing continuing education requirements as a condition for license renewal.

**History:** 1953 Comp., § 67-11-15, enacted by Laws 1967, ch. 62, § 4; 1975, ch. 96, § 3; 1977, ch. 167, § 1; 1993, ch. 163, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, substituted "persons" for "licensed veterinarians" in Subsection D and substituted "education requirements as a condition for license renewal" for "educational requirements for veterinarians as a condition for the license renewal" in Subsection I.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Licensing duties not usurped by regulation and licensing department.** - Neither the Regulation and Licensing Department Act, 9-16-1 to 9-16-13 NMSA 1978, nor any rules and regulations that it has promulgated pursuant to that act, supersede the specific

statutory powers and licensing duties that the legislature has given to the board of veterinary examiners pursuant to this article: The regulation and licensing department is to provide general administrative services to the board. 1987 Op. Att'y Gen. No. 87-58.

### **61-14-5.1. Impaired veterinarian. (Effective until July 1, 1998.)**

A. The board may appoint an impaired-veterinarian committee to organize and administer a program that will:

(1) serve as a diversion program to which the board may refer licensees in lieu of or in addition to other disciplinary action under terms set by the board; and

(2) be a confidential source of treatment or referral for veterinarians who, on a voluntary basis and without the knowledge of the board, desire to avail themselves of treatment for emotionally based or chemical-dependence impairments.

B. The impaired-veterinarian committee shall:

(1) provide evaluations for veterinarians who request participation in the diversion program;

(2) review and designate treatment facilities and services to which veterinarians in the diversion program may be referred;

(3) receive and review information concerning the status and progress of participants in the diversion program;

(4) publicize the diversion program in coordination with veterinary professional associations; and

(5) prepare and provide reports at least annually to the board.

C. Each veterinarian referred to the diversion program by the board shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of diversion program participation; termination of diversion program participation shall be reported to the board by the impaired-veterinarian committee. Participation in the diversion program shall not be a defense against, but may be considered in mitigating, any disciplinary action taken by the board. The board is not precluded from commencing a disciplinary action against a veterinarian who is participating in the diversion program or has been terminated.

D. No member of the board or the impaired-veterinarian committee shall be liable for civil damages because of acts or omissions that occur in administering the provisions of this section.

**History:** Laws 1993, ch. 163, § 11.

### ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see 61-14-20 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 163 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-14-6. Veterinary technician examining committee; membership; terms; compensation. (Effective until July 1, 1998.)**

A. The "veterinary technician examining committee" shall consist of five members appointed by the board of veterinary medicine. The committee shall consist of two licensed veterinarians, one member of the board and two registered veterinary technicians.

B. Committee members shall serve for terms of four years except the board member on the committee shall be appointed for one year. With the exception of the board member on the committee, the terms of committee members shall be staggered by one year. Committee members shall serve until their successors have been appointed and qualified. Any vacancy shall be filled by appointment by the board of veterinary medicine for the remainder of the unexpired term.

C. Members of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 67-11-15.1, enacted by Laws 1975, ch. 96, § 4; 1993, ch. 163, § 4.

### ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, rewrote Subsections A and B to the extent that a detailed comparison is impracticable.

**61-14-7. Duties of the veterinary technician examining committee. (Effective until July 1, 1998.)**

A. The committee shall evaluate qualifications of education, skill and experience for certification of a person as a veterinary technician and provide forms and procedures for the board for certificates of qualification and for annual registration of employment.

B. The committee shall assist the board in the examination of applicants for veterinary technician certification. Such examination shall be held at least once a year at the times and places designated by the board.

**History:** 1953 Comp., § 67-11-15.2, enacted by Laws 1975, ch. 96, § 5.

**ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**61-14-8. Application for license. (Effective until July 1, 1998.)**

A. Any person desiring a license to practice veterinary medicine in this state may make written application to the board showing that he:

(1) has reached the age of majority; and

(2) is a person of good moral character.

The application shall contain other information and proof as required by regulation of the board and shall be accompanied by an application fee established by the board.

B. If the board finds that the applicant possesses the proper qualifications, it shall admit him to the next examination. If an applicant is found unqualified to take the examination, the board shall immediately notify the applicant in writing of its findings and the grounds for them.

**History:** 1953 Comp., § 67-11-16, enacted by Laws 1967, ch. 62, § 5; 1973, ch. 49, § 1; 1993, ch. 163, § 5.

**ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Cross-references.** - For the Uniform Licensing Act, see 61-1-1 NMSA 1978 et seq.

As to the age of majority, see 28-6-1 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, substituted "person" for "veterinarian" in the introductory paragraph, deleted former Paragraph (2), which read "is a citizen of the United States or an applicant for citizenship; and", and redesignated former Paragraph (3) as Paragraph (2), making a related grammatical change; and in Subsection B, deleted "or, if the applicant is eligible for license without examination, it shall forthwith grant him a license" at the end of the first sentence and deleted "or to receive a license without examination" preceding "the board" in the second sentence.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 3.

Failure to procure license as affecting recovery for services, 30 A.L.R. 900, 42 A.L.R. 1226, 118 A.L.R. 646.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

### **61-14-9. Examination. (Effective until July 1, 1998.)**

The board shall conduct at least one examination each calendar year following public notice of the time and place. Examinations shall be prepared and conducted under regulations promulgated by the board, and shall be designed to test the applicant's knowledge and proficiency in the practice of veterinary medicine. Immediately after the results of each examination are determined, the board shall notify each applicant of the results of his examination and issue a license to those applicants successfully completing it. Any applicant failing an examination shall be admitted to any subsequent examination upon payment of another application fee.

**History:** 1953 Comp., § 67-11-17, enacted by Laws 1967, ch. 62, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 4.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

### **61-14-10. License by endorsement. (Effective until July 1, 1998.)**

A. Pursuant to its regulations, the board may issue a license without written examination, except an examination on state laws and other state and federal regulations related to the practice of veterinary medicine, to any qualified applicant who furnishes satisfactory evidence that he is a veterinarian and has for the five years next

prior to filing his application, been a practicing veterinarian and licensed in a state, territory or district of the United States having license requirements at the time the applicant was first licensed that were substantially equivalent to the requirements of the Veterinary Practice Act.

B. Pursuant to its regulations, the board may issue, with examination, a limited practice license in veterinary medicine, which limited practice license shall describe adequately that area of veterinary medicine that the licensee is entitled to practice.

C. At its discretion, the board may examine, orally or practically, any person qualifying for a license under this section.

D. The board may issue without examination the privilege of obtaining a temporary permit to practice veterinary medicine to:

(1) a qualified applicant for a license pending examination, provided the applicant is employed by and working under the direct supervision of a licensed veterinarian provided:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued; and

(b) no additional temporary permit shall be issued to an applicant who has failed the required components of the New Mexico examination in this or any other state or any other territory, district or commonwealth of the United States; or

(2) a nonresident veterinarian validly licensed, and in good standing with the licensing authority in another state, territory, district or commonwealth of the United States, provided that the temporary permit shall be issued for a period lasting no more than sixty days, and that not more than one permit shall be issued to such a person during each calendar year. No more than two temporary permits shall be issued to any one individual.

E. A temporary permit to practice veterinary medicine may be summarily revoked by a majority vote of the board without a hearing.

**History:** 1953 Comp., § 67-11-18, enacted by Laws 1967, ch. 62, § 7; 1975, ch. 96, § 6; 1993, ch. 163, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, rewrote the catchline, which formerly read "License without examination"; in Subsection A, added "Pursuant to its regulations" at the beginning, inserted "except an examination on state laws and other state and

federal regulations related to the practice of veterinary medicine", and deleted former Paragraph (2), which read "within the three years next prior to filing his application, successfully completed the examination conducted by the national board of veterinary examiners"; in Subsections A and B, made minor stylistic changes; and added Subsections D and E.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 4.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

**61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (Effective until July 1, 1998.)**

A. No person shall perform or attempt to perform as a veterinary technician without first applying for and obtaining a certificate of qualification from the board of veterinary medicine as a veterinary technician and having his employment registered in accordance with board regulation.

B. A veterinary technician shall perform only those acts and duties assigned him by a supervising licensed veterinarian that are within the scope of practice of such supervising veterinarian, not to include diagnosis, prescription or surgery.

C. An applicant for a certificate of qualification as a veterinary technician shall complete application forms as supplied by the board of veterinary medicine, successfully complete an examination conducted by the board and pay a fee to defray the cost of processing the application and administering the examination, which fee is not returnable.

D. Each certified veterinary technician shall annually register his employment with the board of veterinary medicine, stating his name and current address, the name and office address of both his employer and supervising licensed veterinarian and such additional information as the board deems necessary. Upon any change of employment as a veterinary technician, such registration shall automatically be void. Each annual registration or registration of new employment shall be accompanied by fees set by the board for use by the board in defraying the cost of administering the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-18.1, enacted by Laws 1975, ch. 96, § 7; 1993, ch. 163, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, inserted "of veterinary medicine" following "board" in Subsections A and C and in the first sentence of Subsection D; deleted "of fifty dollars (\$50.00)" following "pay a fee" in Subsection C; deleted the former second sentence of Subsection C, pertaining to enrollment on a roster of veterinary technicians; and deleted "in amounts not to exceed twenty dollars (\$20.00)" following "by the board" in the second sentence of Subsection D.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

### **61-14-12. License, permit and registration renewal. (Effective until July 1, 1998.)**

A. All licenses, permits and registrations may be renewed by payment of the renewal fee and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Any person may reinstate an expired license, registration or permit within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder must apply for a new license, registration or permit and take the required examination.

C. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when he is on active duty with any branch of the armed services of the United States for the duration of a national emergency.

**History:** 1953 Comp., § 67-11-19, enacted by Laws 1967, ch. 62, § 8; 1975, ch. 96, § 8; 1977, ch. 167, § 2; 1993, ch. 163, § 8.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, deleted "expire on December 31 each year and" following "registrations" and "annual" preceding "renewal"

in the first sentence and substituted "thirty days prior to expiration" for "December 1 each year", deleted "on December 31" following "expire", and made stylistic changes in the second sentence; and in Subsection C, substituted "for the duration of a national emergency" for "not to exceed three years or for the duration of a national emergency, whichever is longer" at the end.

**61-14-13. Denial, suspension or revocation of license. (Effective until July 1, 1998.)**

A. Upon written complaint by any person and after notice and hearing as prescribed in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may place a licensee on probation; impose on a licensee an administrative penalty in an amount not to exceed two thousand five hundred dollars (\$2,500); reprimand, deny, suspend for a definite period or revoke the license, certificate or permit; or take any other reasonable action as established by the board. This applies to any person whose activities are covered by the Veterinary Practice Act for:

- (1) fraud, misrepresentation or deception in obtaining a license or permit;
- (2) adjudication of insanity or manifest incapacity;
- (3) use of advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under regulations promulgated by the board;
- (4) conviction of a felony or other crime involving moral turpitude;
- (5) dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;
- (6) having professional association with or employing any person practicing veterinary medicine unlawfully;
- (7) fraud or dishonesty in the application or reporting of any test for disease in animals;
- (8) failure to maintain professional premises and equipment in a clean and sanitary condition in compliance with regulations promulgated by the board;
- (9) habitual or excessive use of intoxicants or drugs;
- (10) cruelty to animals;
- (11) revocation of a license to practice veterinary medicine by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;
- (12) unprofessional conduct by violation of a regulation promulgated by the board under the Veterinary Practice Act;

- (13) failure to perform as a veterinary technician under the direct supervision of a licensed veterinarian;
- (14) failure of a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;
- (15) aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;
- (16) using any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;
- (17) willfully or negligently administering a drug or substance that will adulterate meat, milk, poultry, fish or eggs;
- (18) failure to maintain required logs and records;
- (19) the use of prescription or sale of any prescription drug or the prescription of extra-label use of any over the counter drug in the absence of a valid veterinarian-client-patient relationship;
- (20) failure to report, as required by law, or making false report of any contagious or infectious disease; or
- (21) unfair or deceptive practices.

B. Any person whose license, certificate or permit is suspended or revoked by the board under this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement.

**History:** 1953 Comp., § 67-11-20, enacted by Laws 1967, ch. 62, § 9; 1975, ch. 96, § 9; 1993, ch. 163, § 9.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment,** effective June 18, 1993, in Subsection A, rewrote the introductory paragraph and Paragraph (9); added "or manifest incapacity" at the end of Paragraph (2); inserted "dishonesty" at the beginning of Paragraph (5); inserted "or permit" near the end of Paragraph (11); and added Paragraphs (13) to (21); in Subsection B, inserted "certificate or permit" near the beginning; and deleted former Subsection C, which listed the grounds for denial or suspension of registration or denial or revocation of any certificate of qualification.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Section is not too vague** to enable establishment by board of reasonable guidelines for revocation or suspension of license. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Board need not specify acts deemed unprofessional** by rule or regulation, as these acts usually reflect general standards of ethics and practice which are adhered to in a profession. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Presence at hearing.** - Absent evidence of prejudice or bias on part of board, fact that one member was not present for part of suspension hearing, while he was attempting to locate a witness, was excusable. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 5.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 35 to 42, 53 to 57.

### **61-14-14. Exemptions. (Effective until July 1, 1998.)**

Provisions of the Veterinary Practice Act do not apply to:

- A. employees of federal, state or local governments performing official duties;
- B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;
- C. reciprocal aid of neighbors in performing routine accepted livestock management practices;
- D. any veterinarian licensed in any foreign jurisdiction consulting with a licensed veterinarian;
- E. any merchant or manufacturer selling at his regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;
- F. the owner of an animal, his consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;
- G. a member of the faculty of a veterinary school performing his regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in

connection with the continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;

H. a person selling or applying any pesticide, insecticide or herbicide;

I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals;

J. a person who is artificially inseminating or diagnosing pregnancy with a valid permit issued by the board; or

K. any act, task or function performed by a veterinary technician under the direct supervision of a licensed or license-exempt veterinarian, when:

(1) the veterinary technician is certified by and annually registered with the board as one qualified by training or experience to function as an assistant to a veterinarian;

(2) the act, task or function is performed in accordance with rules and regulations promulgated by the board; and

(3) the services of the veterinary technician are limited to assisting the veterinarian in the particular fields for which the assistant has been trained, certified and registered; provided that this subsection shall not limit or prevent any veterinarian from delegating to a qualified person any acts, tasks or functions that are otherwise permitted by law but that do not include diagnosis, prescription or surgery.

**History:** 1953 Comp., § 67-11-21, enacted by Laws 1967, ch. 62, § 10; 1975, ch. 96, § 10; 1993, ch. 163, § 10.

## ANNOTATIONS

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**The 1993 amendment**, effective June 18, 1993, substituted "a valid permit issued by the board" for "written consent of the New Mexico livestock board" at the end of Subsection J; substituted "under the direct supervision of a licensed or license-exempt" for "at the direction of and under the supervision of a licensed" in the introductory paragraph of Subsection K; deleted "at the direction of and under the supervision of a licensed veterinarian" following "performed" in Paragraph (2) of Subsection K; and made minor stylistic changes in Subsections I and K.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**State personnel board may not require New Mexico license** for veterinarians in addition to what the veterinarian statutes indicate as acceptable qualifications; however,

the board can require qualifications, other than licensure in the state, of its professional employees. 1974 Op. Att'y Gen. No. 74-20.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers § 13.

### **61-14-15. Persons previously licensed. (Effective until July 1, 1998.)**

The board shall issue a license to any person holding a valid license to practice veterinary medicine in this state on the effective date of the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-22, enacted by Laws 1967, ch. 62, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

### **61-14-16. Responsibility. (Effective until July 1, 1998.)**

Every veterinarian using, supervising or employing a registered veterinary technician shall be individually responsible and liable for the performance of the acts and omissions delegated to the veterinary technician. Nothing herein shall be construed to relieve the veterinary technician of any responsibility and liability for any of his own acts and omissions. No veterinarian may have under his supervision more than two currently registered veterinary technicians.

**History:** 1953 Comp., § 67-11-22.1, enacted by Laws 1975, ch. 96, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Severability clauses.** - Laws 1975, ch. 96, § 12, provides for the severability of the Veterinary Practice Act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 8.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 83 to 86.

## **61-14-17. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 163, § 13 repeals 61-14-17 NMSA 1978, as enacted by Laws 1967, ch. 62, § 12, concerning qualifications for permits, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

## **61-14-18. Penalty. (Effective until July 1, 1998.)**

It is a misdemeanor for any person to engage in the practice of veterinary medicine in this state unless he is a licensed veterinarian.

**History:** 1953 Comp., § 67-11-24, enacted by Laws 1967, ch. 62, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

## **61-14-19. Injunction. (Effective until July 1, 1998.)**

The board or any person may bring an action in the district court to enjoin any person who is not a licensed veterinarian from engaging in the practice of veterinary medicine. If the court finds that the defendant is violating, or threatening to violate, the Veterinary Practice Act, it shall enter an order restraining him from the violating, without regard to any criminal provisions of the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-25, enacted by Laws 1967, ch. 62, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14-20 NMSA 1978 and notes thereto.

**Veterinary Practice Act.** - See 61-14-1 NMSA 1978 and notes thereto.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 78 Am. Jur. 2d Veterinarians § 6.

## **61-14-20. Termination of agency life; delayed repeal.**

The board of veterinary medicine is terminated on July 1, 1997 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 14 NMSA 1978 until July 1, 1998. Effective July 1, 1998, Chapter 61, Article 14 NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-14-20, enacted by Laws 1979, ch. 76, § 2; 1981, ch. 241, § 27; 1985, ch. 87, § 12; 1991, ch. 189, § 22; 1993, ch. 163, § 12.

### ANNOTATIONS

**Delayed repeals.** - Laws 1991, ch. 189, § 22 amends this section to repeal Chapter 61, Article 14 NMSA 1978 effective July 1, 1998.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

**The 1993 amendment,** effective June 18, 1993, substituted "medicine" for "examiners" in the first sentence and made a minor stylistic change in the second sentence.

## ARTICLE 14A

# ACUPUNCTURE AND ORIENTAL MEDICINE PRACTICE

### 61-14A-1. Short title. (Effective until July 1, 2000.)

Sections 61-14A-1 through 61-14A-21 NMSA 1978 may be cited as the "Acupuncture and Oriental Medicine Practice Act".

**History:** 1978 Comp., § 61-14A-1, enacted by Laws 1993, ch. 158, § 9.

### ANNOTATIONS

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Cross-references.** - As to prohibition of discrimination against oriental medical doctors, see 59A-47-28.2 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 9 repeals former 61-14A-1 NMSA 1978, as enacted by Laws 1981, ch. 62, § 1, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Regulation of practice of acupuncture, 17 A.L.R.4th 964.

### 61-14A-2. Purpose. (Effective until July 1, 2000.)

In the interest of the public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine, it is necessary to provide laws and regulations to govern the practice

of acupuncture and oriental medicine. The primary responsibility and obligation of the board of acupuncture and oriental medicine is to protect the public.

**History:** 1978 Comp., § 61-14A-2, enacted by Laws 1993, ch. 158, § 10.

## **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 10 repeals former 61-14A-2 NMSA 1978, as amended by Laws 1989, ch. 96, § 4, defining certain terms, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-3. Definitions. (Effective until July 1, 2000.)**

As used in the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978]:

A. "acupuncture" means the use of needles inserted into the human body and the use of other modalities and procedures at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "department" means the regulation and licensing department;

D. "doctor of oriental medicine" means a physician licensed to practice acupuncture and oriental medicine and includes the terms "oriental medical physician", "doctor of acupuncture", "acupuncture physician", "acupuncture practitioner" and "acupuncturist";

E. "moxibustion" means the use of heat on or above specific locations or on acupuncture needles at specific locations on the body for the prevention, cure or correction of any disease, illness, injury, pain or other condition;

F. "oriental medicine" means the distinct system of primary health care that uses all allied techniques of oriental medicine, both traditional and modern, to diagnose, treat and prescribe, as defined in Subsection G of this section, for the prevention, cure or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health; and

G. "techniques of oriental medicine" means the diagnostic and treatment techniques utilized in oriental medicine that include but are not limited to diagnostic procedures;

acupuncture; moxibustion; manual therapy, also known as tui na; breathing and exercise techniques, dietary, nutritional and lifestyle counseling; and the prescription or administration of any herbal medicine, homeopathic medicine, vitamin, mineral, enzyme, glandular or nutritional supplement.

**History:** 1978 Comp., § 61-14A-3, enacted by Laws 1993, ch. 158, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 11 repeals former 61-14A-3 NMSA 1978, as enacted by Laws 1981, ch. 62, § 3, relating to the requirement of a license, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 3, 42.

#### **61-14A-4. License required. (Effective until July 1, 2000.)**

Unless licensed as a doctor of oriental medicine pursuant to the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978], no person shall:

A. practice acupuncture or oriental medicine;

B. use the title or represent himself as a licensed doctor of oriental medicine or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a doctor of oriental medicine; or

C. advertise, hold out to the public or represent in any manner that he is authorized to practice acupuncture and oriental medicine.

**History:** 1978 Comp., § 61-14A-4, enacted by Laws 1993, ch. 158, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 12 repeals former 61-14A-4 NMSA 1978, as amended by Laws 1989, ch. 96, § 5, relating to exemptions, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 31, 132.

### **61-14A-5. Title. (Effective until July 1, 2000.)**

Any person licensed under the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978], in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". Effective July 1, 1994, the title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all titles that include the words "medical doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to the Medical Practice Act [61-6-1 to 61-6-35].

**History:** 1978 Comp., § 61-14A-5, enacted by Laws 1993, ch. 158, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 13 repeals former 61-14A-5 NMSA 1978, as enacted by Laws 1981, ch. 62, § 5, relating to criminal offender's character evaluation, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-6. Exemptions. (Effective until July 1, 2000.)**

A. Nothing in the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978] is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their license as defined by each profession's New Mexico licensing statutes, but they shall not hold themselves out to the public or any private group or business by using any title or description of services that includes the terms acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

B. Students enrolled in an educational program in acupuncture and oriental medicine may practice acupuncture and oriental medicine under the direct supervision of a teacher at an institute or with a private tutor as part of the educational program in which they are enrolled.

C. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the following practices, provided that the individual does not hold himself out as a doctor of oriental medicine or as practicing acupuncture or oriental medicine:

(1) the administering of gratuitous services in cases of emergency;

(2) the domestic administering of family remedies;

(3) the counseling about or the teaching and demonstration of breathing and exercise techniques;

(4) the counseling or teaching about diet and nutrition;

(5) the spiritual or lifestyle counseling of any individual or spiritual group, or the practice of the religious tenets of any church; or

(6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements.

**History:** 1978 Comp., § 61-14A-6, enacted by Laws 1993, ch. 158, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 14 repeals former 61-14A-6 NMSA 1978, as amended by Laws 1989, ch. 96, § 6, creating the board and relating to officers and compensation, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-7. Board created; appointment; officers; compensation. (Effective until July 1, 2000.)**

A. There is created the "board of acupuncture and oriental medicine".

B. The board shall be administratively attached to the department.

C. The board shall consist of seven members appointed by the governor for terms of three years each. Four members of the board shall be doctors of oriental medicine who have been licensed to practice acupuncture and oriental medicine in New Mexico for at least five years and have practiced in New Mexico for at least two years preceding the date of their appointment. Three members shall be appointed to represent the public and shall not have practiced acupuncture and oriental medicine in this or any other jurisdiction or have any financial interest in the profession regulated. No more than two board members shall be:

(1) owners of institutes offering educational programs in acupuncture and oriental medicine;

(2) faculty members at institutes offering educational programs in acupuncture and oriental medicine;

(3) private tutors offering educational programs in acupuncture and oriental medicine; or

(4) officers in a professional association of acupuncture and oriental medicine.

D. Members of the board shall be appointed by the governor for staggered terms of three years that shall be made in such a manner that the terms of board members will expire on July 1. When a board member's term has expired, he shall serve until his successor has been appointed. Vacancies from an unexpired term shall be filled for the remainder of the term in the same manner as the original appointment.

E. No board member shall serve more than two consecutive full terms, and any member failing to attend, after he has received proper notice, three consecutive meetings, shall be recommended for removal as a board member unless excused for reasons set forth by rule.

F. The board shall elect annually from its membership a chairman and other officers as necessary to carry out its duties.

G. The board shall meet at least once each year and at other times deemed necessary. Other meetings may be called by the chairman, a majority of board members or the governor. A simple majority of the board members serving constitutes a quorum of the board.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1978 Comp., § 61-14A-7, enacted by Laws 1993, ch. 158, § 15.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 15 repeals former 61-14A-7 NMSA 1978, as enacted by Laws 1981, ch. 62, § 7, relating to powers and duties of the board, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-8. Board; powers. (Effective until July 1, 2000.)**

In addition to any authority provided by law, the board shall have the power to:

A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978];

B. adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA

1978], all rules and regulations necessary for the implementation and enforcement of the provisions of the Acupuncture and Oriental Medicine Practice Act;

C. adopt a code of ethics;

D. adopt and use a seal;

E. inspect institutes, tutorships and the offices of licensees;

F. adopt rules implementing continuing education requirements for the purpose of protecting the health and well-being of the citizens of this state and maintaining and continuing informed professional knowledge and awareness;

G. employ agents or attorneys;

H. issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

I. administer oaths and take testimony on any matters within the board's jurisdiction;

J. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act; and

K. grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules and regulations of the board.

**History:** 1978 Comp., § 61-14A-8, enacted by Laws 1993, ch. 158, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 16 repeals former 61-14A-8 NMSA 1978, as amended by Laws 1989, ch. 96, § 7, relating to funds and fees, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-9. Board; duties. (Effective until July 1, 2000.)**

The board shall:

A. establish fees;

B. provide for the examination of applicants for licensing as doctors of oriental medicine as provided in the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978];

C. keep a record of all examinations held, together with the names and addresses of all persons taking the examinations, and the examination results;

D. notify each applicant, in writing, of the results of his examinations within twenty-one days after the results of an examination are available to the board;

E. keep a licensee record in which the names, addresses and license numbers of all licensees shall be recorded together with a record of all license renewals, suspensions and revocations;

F. provide for the granting and renewal of licenses and approval of educational programs; and

G. keep an accurate record of all its meetings, receipts and disbursements.

**History:** 1978 Comp., § 61-14A-9, enacted by Laws 1993, ch. 158, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 17 repeals former 61-14A-9 NMSA 1978, as amended by Laws 1989, ch. 96, § 8, relating to qualifications for examination, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

#### **61-14A-10. Requirements for licensing. (Effective until July 1, 2000.)**

The board shall grant a license to practice acupuncture and oriental medicine to any person who has submitted to the board:

A. the completed application for licensing on the form provided by the board;

B. the required documentation as determined by the board;

C. the required fees;

D. an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;

E. proof, as determined by the board, that the applicant has completed an educational program in acupuncture and oriental medicine as provided for in the Acupuncture and

Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978] and the rules and regulations of the board; and

F. proof that he has passed an examination approved by the board.

**History:** 1978 Comp., § 61-14A-10, enacted by Laws 1993, ch. 158, § 18.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 18 repeals former 61-14A-10 NMSA 1978, as amended by Laws 1989, ch. 96, § 9, relating to requirements for institutes and private tutorships, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-11. Examinations. (Effective until July 1, 2000.)**

A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.

B. The board shall establish by rule the deadline for receipt of the application for licensing examination and other rules relating to the taking and retaking of licensing examinations.

C. The board shall establish by rule the passing grades for its approved examinations.

D. The board may approve by rule examinations that are used for national certification or other examinations.

E. The board shall require each qualified applicant to pass a written examination that includes, as a minimum, the following subjects:

(1) anatomy and physiology;

(2) pathology;

(3) diagnosis; and

(4) principles, practices and treatment techniques of acupuncture and oriental medicine.

F. The board shall require each qualified applicant to pass a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine.

G. The board shall require each qualified applicant to pass a written or a practical examination or both in the following subjects:

- (1) hygiene, sanitation and clean-needle technique; and
- (2) needle and instrument sterilization techniques.

H. The board may require each qualified applicant to pass a written examination on the state laws and regulations that pertain to the practice of acupuncture and oriental medicine.

**History:** 1978 Comp., § 61-14A-11, enacted by Laws 1993, ch. 158, § 19.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 19 repeals former 61-14A-11 NMSA 1978, as amended by Laws 1989, ch. 96, § 10, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 56 to 60.

### **61-14A-12. Requirements for temporary licensing. (Effective until July 1, 2000.)**

A. The board shall establish by rule the criteria for temporary licensing of out-of-state doctors of oriental medicine.

B. The board may grant a temporary license to any person who:

(1) is licensed, certified, registered or legally recognized to practice acupuncture and oriental medicine in another state, district or territory of the United States or a foreign country;

(2) is under the sponsorship of and in association with a licensed New Mexico doctor of oriental medicine or New Mexico institute offering an educational program approved by the board;

(3) submits the completed application for temporary licensing on the form provided by the board;

(4) submits the required documentation, including proof of adequate education and training, as determined by the board;

(5) submits the required fee for application for temporary licensing;

(6) submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency; and

(7) submits an affidavit from the sponsoring and associating New Mexico doctor of oriental medicine or New Mexico institute attesting to the qualifications of the applicant and the activities the applicant will perform.

C. The board may grant a temporary license to allow the temporary licensee to:

(1) teach acupuncture and oriental medicine;

(2) consult, in association with the sponsoring doctor of oriental medicine, regarding the sponsoring doctor's patients;

(3) perform specialized diagnostic or treatment techniques in association with the sponsoring doctor of oriental medicine regarding the sponsoring doctor's patients;

(4) assist in the conducting of research in acupuncture and oriental medicine; and

(5) assist in the implementation of new techniques and technology related to acupuncture and oriental medicine.

D. Temporary licensees may engage in only those activities authorized on the temporary license.

E. The temporary license shall identify the sponsoring and associating New Mexico doctor of oriental medicine or institute.

F. The temporary license shall be issued for a period of time established by rule; provided that temporary licenses may not be issued for a period of time to exceed eighteen months, including renewals.

G. The temporary license may be renewed upon submission of:

(1) the completed application for temporary license renewal on the form provided by the board; and

(2) the required fee for temporary license renewal.

H. In the interim between regular board meetings, whenever a qualified applicant has filed his application and complied with all other requirements of this section, the board's chairman or an authorized representative of the board may grant an interim temporary license that will suffice until the next regular licensing meeting of the board.

**History:** 1978 Comp., § 61-14A-12, enacted by Laws 1993, ch. 158, § 20.

## **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 20 repeals former 61-14A-12 NMSA 1978, as amended by Laws 1989, ch. 96, § 11, relating to reciprocal licensure requirements, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-13. Requirements for reciprocal licensing. (Effective until July 1, 2000.)**

The board may grant a license to practice acupuncture and oriental medicine to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country if the applicant:

- A. submits the completed application for reciprocal licensing on the form provided by the board;
- B. submits the required documentation as determined by the board;
- C. submits the required fee for application for reciprocal licensing;
- D. submits an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;
- E. has passed a practical examination that demonstrates his knowledge of and skill in the application of the diagnostic and treatment techniques of acupuncture and oriental medicine or within the last six years has five years of clinical experience, as defined by rule, in the practice of acupuncture and oriental medicine;
- F. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in another state, district or territory of the United States or foreign country, in which the requirements for practice are similar to those of this state; and
- G. is licensed, certified, registered or legally recognized as a doctor of oriental medicine in a state, district or territory of the United States or foreign country that permits a doctor of oriental medicine licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act [61-14A-1 through 61-14A-21 NMSA 1978] to practice acupuncture and oriental medicine in that jurisdiction by reciprocal credentials review.

**History:** 1978 Comp., § 61-14A-13, enacted by Laws 1993, ch. 158, § 21.

## ANNOTATIONS

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 21 repeals former 61-14A-13 NMSA 1978, as enacted by Laws 1981, ch. 62, § 13, relating to continuing education, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 67, 68.

### **61-14A-14. Approval of educational programs. (Effective until July 1, 2000.)**

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For the educational program in acupuncture and oriental medicine to meet board approval, proof shall be submitted to the board demonstrating that the educational program:

- (1) was for a period of not less than four academic years;
- (2) included a minimum of seven hundred fifty hours of supervised clinical practice;
- (3) was taught by qualified teachers or a qualified private tutor;
- (4) required as a prerequisite to graduation personal attendance in all classes and clinics and, as a minimum, the completion of the following subjects:
  - (a) anatomy and physiology;
  - (b) pathology;
  - (c) diagnosis;
  - (d) oriental principles of life therapy, including diet, nutrition and counseling;
  - (e) theory and techniques of traditional and modern acupuncture and oriental medicine;
  - (f) precautions and contra-indications for acupuncture treatment;
  - (g) theory and application of meridian pulse evaluation and meridian point location;
  - (h) traditional and modern methods of life-energy evaluation;
  - (i) the prescription of herbal medicine and precautions and contra-indications for its use;

(j) hygiene, sanitation and clean-needle technique;

(k) care and management of needling devices; and

(l) needle and instrument sterilization techniques; and

(5) resulted in the presentation of a certificate or diploma after completion of all the educational program requirements.

B. All institutes and private tutors in New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board shall have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

C. Institutes and private tutors outside New Mexico that offer educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may have their educational programs annually approved by the board. For the educational program in acupuncture and oriental medicine to be approved by the board, the institute or private tutor shall submit:

(1) the completed application for approval of an educational program;

(2) the required documentation as determined by the board;

(3) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

D. Each institute and private tutor in New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection B of this section shall renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

E. Each institute and private tutor outside New Mexico that offers an approved educational program in acupuncture and oriental medicine as referred to in Subsection C of this section may renew their approval annually by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met; and

(3) the required fee for application for renewal of approval of an educational program.

F. A sixty-day grace period shall be allowed each institute or private tutor after the end of the approval period, during which time the approval may be renewed by submitting:

(1) the completed application for renewal of approval of an educational program on the form provided by the board;

(2) proof, as determined by the board, that the educational requirements referred to in Subsection A of this section are being met;

(3) the required fee for application for renewal of approval of an educational program; and

(4) the required fee for late renewal of approval.

G. Any approval not renewed at the end of the grace period shall be considered expired. For renewal of an expired approval the board shall establish by rule any requirements or fees that are in addition to the fee for annual renewal of approval and may require the institute or private tutor to reapply as a new applicant.

**History:** 1978 Comp., § 61-14A-14, enacted by Laws 1993, ch. 158, § 22.

## **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 22 repeals former 61-14A-14 NMSA 1978, as enacted by Laws 1981, ch. 62, § 14, relating to refusal, suspension or revocation of license, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-15. License renewal. (Effective until July 1, 2000.)**

A. Each licensee shall renew his license biennially by submitting:

- (1) the completed application for license renewal on the form provided by the board; and
- (2) the required fee for biennial license renewal.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A sixty-day grace period shall be allowed each licensee after the end of the licensing period, during which time the license may be renewed by submitting:

- (1) the completed application for license renewal on the form provided by the board;
- (2) the required fee for biennial license renewal; and
- (3) the required fee for late license renewal.

D. Any license not renewed at the end of the grace period shall be considered expired and the licensee shall not be eligible to practice within the state. For renewal of an expired license the board shall establish by rule any requirements or fees that are in addition to the fee for biennial license renewal and may require the former licensee to reapply as a new applicant.

**History:** 1978 Comp., § 61-14A-15, enacted by Laws 1993, ch. 158, § 23.

#### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 23 repeals former 61-14A-15 NMSA 1978, as enacted by Laws 1981, ch. 62, § 15, relating to penalties, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-16. Fees. (Effective until July 1, 2000.)**

The board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

- A. application for licensing

.....\$500;

B. application for reciprocal licensing  
.....750;

C. application for temporary licensing  
.....300;

D. examination, not including the cost of any nationally  
recognized  
  
examination  
.....350;

E. biennial license renewal  
.....400;

F. late license renewal  
.....200;

G. expired license renewal  
.....400;

H. temporary license renewal  
.....100;

I. application for approval or renewal of approval of an  
educational  
program .....  
.....400;

J. late renewal of approval of an educational program  
.....200;

K. expired renewal of approval of an educational program  
.....400;

L. annual continuing education provider registration  
.....200;

and

M. any and all fees to cover reasonable and necessary administrative expenses.

**History:** 1978 Comp., § 61-14A-16, enacted by Laws 1993, ch. 158, § 24.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 158, § 24 repeals former 61-14A-16 NMSA 1978, as enacted by Laws 1987, ch. 124, § 5, providing for termination of agency life and delayed repeal, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1989 Replacement Pamphlet.

### **61-14A-17. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Effective until July 1, 2000.)**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any permanent or temporary license held or applied for under the Acupuncture and Oriental Medicine Practice Act [61-14A-1 to 61-14A-21 NMSA 1978], upon findings by the board that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) has been convicted of a felony. A certified copy of the record of conviction shall be conclusive evidence of such conviction;
- (3) is guilty of incompetence;
- (4) is habitually intemperate, is addicted to the use of habit-forming drugs or is addicted to any vice to such a degree as to render him unfit to practice as a doctor of oriental medicine;
- (5) is guilty of unprofessional conduct, as defined by rule;
- (6) is guilty of any violation of the Controlled Substances Act [30-31-1 to 30-31-28 and 30-31-30 to 30-31-40 NMSA 1978];
- (7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules and regulations adopted by the board;

(8) is guilty of failing to furnish the board, its investigators or representatives with information requested by the board;

(9) is guilty of willfully or negligently practicing beyond the scope of acupuncture and oriental medicine as defined in the Acupuncture and Oriental Medicine Practice Act;

(10) is guilty of failing to adequately supervise a sponsored temporary licensee;

(11) is guilty of aiding or abetting the practice of acupuncture and oriental medicine by a person not licensed by the board;

(12) is guilty of practicing or attempting to practice under an assumed name;

(13) advertises by means of knowingly false statements;

(14) advertises or attempts to attract patronage in any unethical manner prohibited by the Acupuncture and Oriental Medicine Practice Act or the rules and regulations of the board;

(15) has been declared mentally incompetent by regularly constituted authorities; or

(16) has had a license, certificate or registration to practice as a doctor of oriental medicine revoked, suspended or denied in any jurisdiction of the United States or a foreign country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of the costs of the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

**History:** 1978 Comp., § 61-14A-17, enacted by Laws 1993, ch. 158, § 25.

## **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Physicians, Surgeons and Other Healers, §§ 74 to 120.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 42.

### **61-14A-18. Fund created. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "board of acupuncture and oriental medicine fund".

B. All money received by the board pursuant to the Acupuncture and Oriental Medicine Practice Act [61-14A-1 to 61-14A-21 NMSA 1978] shall be deposited with the state treasurer for credit to the board of acupuncture and oriental medicine fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the board of acupuncture and oriental medicine fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Acupuncture and Oriental Medicine Practice Act.

**History:** 1978 Comp., § 61-14A-18, enacted by Laws 1993, ch. 158, § 26.

### **ANNOTATIONS**

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Temporary provisions.** - Laws 1993, ch.158, § 31, effective June 18, 1993, provides that all money in the acupuncture board fund shall be transferred to the credit of the board of acupuncture and oriental medicine fund.

### **61-14A-19. Penalties. (Effective until July 1, 2000.)**

Any person who violates any provision of the Acupuncture and Oriental Medicine Practice Act [61-14A-1 to 61-14A-21 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

**History:** 1978 Comp., § 61-14A-19, enacted by Laws 1993, ch. 158, § 27.

## ANNOTATIONS

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 125 to 130.

### **61-14A-20. Criminal Offender Employment Act. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Acupuncture and Oriental Medicine Practice Act [61-14A-1 to 61-14A-21 NMSA 1978].

**History:** 1978 Comp., § 61-14A-20, enacted by Laws 1993, ch. 158, § 28.

## ANNOTATIONS

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-14A-21. Licensed acupuncture practitioner; license valid under new act. (Effective until July 1, 2000.)**

Any person validly licensed as an acupuncture practitioner under prior law of this state shall be deemed licensed under the provisions of the Acupuncture and Oriental Medicine Practice Act [61-14A-1 to 61-14A-21 NMSA 1978].

**History:** 1978 Comp., § 61-14A-21, enacted by Laws 1993, ch. 158, § 29.

## ANNOTATIONS

**Delayed repeals.** - See § 61-14A-22 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after

adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**61-14A-22. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board of acupuncture and oriental medicine is terminated on July 1, 1999 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to Sections 61-14A-1 through 61-14A-21 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Sections 61-14A-1 through 61-14A-21 NMSA 1978 are repealed.

**History:** 1978 Comp., § 61-14A-22, enacted by Laws 1993, ch. 158, § 30.

**ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 158 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**ARTICLE 14B  
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY**

**61-14B-1. Short title. (Effective until July 1, 1996.)**

This act [61-14B-1 to 61-14B-16 NMSA 1978] may be cited as the "Speech-Language Pathology and Audiology Act".

**History:** Laws 1981, ch. 249, § 1.

**ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**61-14B-2. Definitions. (Effective until July 1, 1996.)**

As used in the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978]:

A. "department" means the regulation and licensing department or the division of the department designated to administer the provisions of the Speech-Language Pathology and Audiology Act;

B. "board" means the speech-language pathology and audiology advisory board;

C. "audiologist" means a person holding at least a master's degree in audiology and meeting the academic requirements for certification by a nationally recognized speech-language and hearing association;

D. "speech-language pathologist" means a person holding at least a master's degree in speech-pathology or speech-language pathology and meeting the academic requirements for certification by a nationally recognized speech-language and hearing association;

E. "practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prediction, aural rehabilitation, aural habilitation, consultation, hearing-aid selection, counseling, instruction and research related to hearing and disorders of hearing for the purpose of nonmedical diagnosis, prevention, identification, amelioration or the modification of communicative disorders involving speech, language, auditory function or other aberrant behavior related to hearing disorders;

F. "practice of speech-language pathology" means the rendering or offering to render to individuals, groups, organizations or the public any service in speech or language pathology involving the nonmedical application of principles, methods and procedures for the measurement, testing, diagnosis, prediction, counseling and instruction related to the development and disorders of speech, voice or language for the purpose of nonmedical diagnosing, preventing, treating and ameliorating such disorders and conditions in individuals and groups of individuals;

G. "speech and language disorders" includes any and all conditions, whether of organic or nonorganic origin, which impede the normal process of human communication; and

H. "speech-language pathology or audiology intern" means any person who has fulfilled academic requirements under the Speech-Language Pathology and Audiology Act and who is actively engaged in fulfilling the professional experience requirements.

**History:** Laws 1981, ch. 249, § 2; 1987, ch. 329, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-3. Advisory board. (Effective until July 1, 1996.)**

A. The superintendent of regulation and licensing shall appoint the "speech-language pathology and audiology advisory board", consisting of seven members as follows:

(1) two speech-language pathologists;

(2) two audiologists; and

(3) three public members who are residents of New Mexico. The public members of the board shall not have been licensed as a speech-language pathologist or an audiologist nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated. The board shall assist in the development of rules and regulations pursuant to the Speech-Language Pathology and Audiology Act and shall serve a term necessary to accomplish that purpose. The members of the board shall serve at the pleasure of the superintendent.

B. The superintendent of regulation and licensing may appoint successor advisory boards, of the same composition as that of the advisory board appointed pursuant to Subsection A of this section, as he deems necessary to assist in carrying out the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978]. Such boards shall serve terms as the superintendent deems necessary, and the members of the boards shall serve at the pleasure of the superintendent.

C. The members of any board created pursuant to this section shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of their duties as members.

**History:** Laws 1981, ch. 249, § 3; 1987, ch. 329, § 9; 1990, ch. 16, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - Section 61-14B-17 NMSA 1978 provides that the speech-language pathology and audiology advisory board is terminated on July 1, 1995, pursuant to 12-9-16.1 NMSA 1978, in the Sunset Act; however, the board is to continue to operate according to the provisions of Chapter 61, Article 14B NMSA 1978 until July 1, 1996, at which time Chapter 61, Article 14B NMSA 1978 is repealed.

**The 1990 amendment,** effective May 16, 1990, in Subsection A, deleted "Before July 1, 1981" at the beginning and substituted "seven members" for "five members" and, in Paragraph (3) of Subsection A, substituted "three public members who are residents" for "one public member who is a resident" at the beginning and "members" for "member" in two places in the second sentence.

#### **61-14B-4. Administration of act. (Effective until July 1, 1996.)**

The regulation and licensing department through its designated division shall enforce and administer the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978].

**History:** Laws 1981, ch. 249, § 4; 1987, ch. 329, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-5. Licensure and regulation of speech-language pathologists or audiologists. (Effective until July 1, 1996.)**

No person shall practice or hold himself out as being able to practice speech-language pathology or audiology in this state unless he is licensed in either field or both in accordance with the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978].

**History:** Laws 1981, ch. 249, § 5.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits, §§ 4, 5, 14, 34, 35, 45 to 47, 58 to 62, 72.

53 C.J.S. Licenses §§ 5, 7, 30, 35 to 41, 47, 50 to 63, 82.

### **61-14B-6. Persons and practices not affected. (Effective until July 1, 1996.)**

A. Nothing in the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978] prevents qualified members of other recognized professional groups, such as, but not limited to, physicians licensed to practice medicine in New Mexico, dentists, certified teachers of the deaf and licensed hearing-aid dealers and fitters from doing appropriate work in the area of communication disorders consistent with the standards and ethics of their respective professions.

B. Nothing in the Speech-Language Pathology and Audiology Act restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed; provided such persons are performing those activities as part of the duties for which they were employed and performing those activities solely within the confines of or under the jurisdiction of the state board of education in which they are employed and do not offer to render speech-language pathology or audiology services to the public for a fee, monetary or otherwise, paid to the individual, institution or agency.

C. Nothing in the Speech-Language Pathology and Audiology Act restricts the activities and services of a graduate student (speech-language pathology or audiology trainee) pursuing a course of study leading to a graduate degree in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility; provided that these activities and services constitute a part of his

supervised course of study and that he is designated as a speech-language pathology trainee, audiology trainee or other such title clearly indicating the training status appropriate to his level of training.

D. Nothing in the Speech-Language Pathology and Audiology Act restricts the activities of a speech-language pathology intern or an audiology intern; provided they conduct such activities under the supervision of a sponsor as outlined in requirements of a nationally recognized speech-language and hearing association and follow the guidelines therein prescribed.

**History:** Laws 1981, ch. 249, § 6.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

#### **61-14B-7. Rules and regulations. (Effective until July 1, 1996.)**

The department shall enforce rules and regulations to:

- A. classify a licensee as speech-language pathologist or audiologist or both;
- B. limit the field and scope of practice of a licensee to those in which he is classified and qualified to engage; and
- C. carry out the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978].

**History:** Laws 1981, ch. 249, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

#### **61-14B-8. Qualifications of applicants for licensure. (Effective until July 1, 1996.)**

Each applicant for licensure as a speech-language pathologist or audiologist shall make application on a written form in such manner as the department prescribes and pay all required application fees and furnish evidence satisfactory to the department that the applicant:

- A. has reached the age of majority; and

B. currently holds a certificate of clinical competence from a nationally recognized speech [speech-language] and hearing association in the area for which he is applying for a license; or

C. has submitted evidence of having completed the current academic, practicum and paid experience requirements for a certificate of clinical competence from a nationally recognized speech [speech-language] and hearing association in the area for which he is applying for a license and passes [has passed] a recognized standard national examination in either speech-language pathology or audiology, or both.

**History:** Laws 1981, ch. 249, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-9. Licensing under special conditions. (Effective until July 1, 1996.)**

A. The department shall waive the education and experience requirements for applicants who present proof of current licensure in a state which has standards at least equal to those for licensure in New Mexico as determined by the board.

B. The department shall issue a license to an applicant to practice speech-language pathology or audiology without the educational and experience requirements if:

(1) he makes application for a license prior to September 1, 1981; and

(2) he is, on the effective date of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978], engaged in the practice of speech-language pathology or audiology in New Mexico and certifies to the department that within five years he will meet the requirements as established in that act and is actively engaged in working toward such requirements; or

(3) he has been engaged in the practice of speech-language pathology or audiology in New Mexico for at least three years within the five-year period immediately prior to the effective date of the Speech-Language Pathology and Audiology Act and certifies to the department that within five years he will meet the full requirements as established in that act and is actively engaged in working toward such requirements.

**History:** Laws 1981, ch. 249, § 9; 1987, ch. 329, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**"Effective date of the Speech-Language Pathology and Audiology Act".** - The phrase "effective date of the Speech-Language Pathology and Audiology Act" in this section refers to the effective date of Laws 1981, ch. 249, which took effect May 20, 1981.

**61-14B-10. Powers and duties of the department. (Effective until July 1, 1996.)**

The department shall:

A. administer, coordinate and enforce the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978], evaluate the qualifications of the applicants, review the examination results of applicants, investigate persons engaging in practices which violate the provisions of the Speech-Language Pathology and Audiology Act and may issue subpoenas, examine witnesses, administer oaths and bring actions for contempt;

B. conduct such hearings and keep such records and minutes as shall be necessary to an orderly dispatch of business;

C. adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], all rules and regulations for the implementation and enforcement of the provisions of the Speech-Language Pathology and Audiology Act; and

D. issue appropriate licenses to all applicants who meet the requirements of the Speech-Language Pathology and Audiology Act.

**History:** Laws 1981, ch. 249, § 10.

**ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**61-14B-11. Disposition of funds. (Effective until July 1, 1996.)**

All fees and other funds collected under the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978] shall be deposited with the state treasurer to the account of the department, who may use the money to defray the costs of the administration of that act. Any surplus funds at the end of the fiscal year shall not revert to the general fund, but shall be used to carry out the provisions of that act.

**History:** Laws 1981, ch. 249, § 11; 1990, ch. 16, § 3.

**ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**The 1990 amendment**, effective May 16, 1990, substituted "the money" for "the same" near the end of the first sentence and rewrote the second sentence which read "Any surplus funds at the end of the fiscal year shall revert to the general fund."

### **61-14B-12. Licensure. (Effective until July 1, 1996.)**

A. A separate license shall be granted in speech-language pathology and in audiology. An applicant may be granted a dual license upon successful completion of the requirements for both licenses.

B. Each applicant shall submit proof of having achieved a passing score on a nationally recognized standard examination in either speech-language pathology or audiology, or both.

C. A speech-language pathologist or audiologist certified or licensed in another state and who has made application to the department for a license in this state may perform activities and services of a speech-language pathologic or audiologic nature without a valid license for a period not to exceed ninety days from the time of submitting his application; provided he works under the supervision of a licensed practitioner.

D. An audiologist licensed under the Hearing-Aid Act [61-24A-1 to 61-24A-18 NMSA 1978] as a dispensing audiologist shall be fully licensed under the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978] as an audiologist and shall not be required to:

(1) pay fees under the Speech-Language Pathology and Audiology Act if paid under the Hearing-Aid Act; and

(2) meet the continuing education requirements of the Speech-Language Pathology and Audiology Act if the continuing education requirements of the Hearing-Aid Act are met.

**History:** Laws 1981, ch. 249, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-13. Fees. (Effective until July 1, 1996.)**

The following schedule of fees, payable to the department, shall apply to the designated license:

A. a fee set by the department in the amount not to exceed fifty dollars (\$50.00) for the initial issuance of any license;

B. a fee set by the department in an amount not to exceed fifty dollars (\$50.00) for the annual renewal of either a speech-language pathologist or audiologist license;

C. any person to whom both a speech-language pathologist and an audiologist license is issued shall only pay a single fee not to exceed fifty dollars (\$50.00); and

D. for late renewal beyond thirty days after expiration of the license, a late charge set by the department in an amount not to exceed twenty-five dollars (\$25.00), which late fee is in addition to any other fees.

**History:** Laws 1981, ch. 249, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-14. Denial, suspension and revocation. (Effective until July 1, 1996.)**

A. The department may deny an application for, suspend, revoke or impose probationary conditions upon a license for a period not to exceed one year for either of the following causes:

(1) performing unethical practice as defined in a nationally recognized code of ethics in determining such practice; or

(2) violating any of the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978] or regulations duly adopted pursuant to that act.

B. The department may deny an application for, suspend, revoke or impose probationary conditions upon a license after a hearing. One year from the date of revocation of a license, application may be made to the department for reinstatement. The department shall have discretion to accept or reject an application for reinstatement.

C. A license shall not be suspended or revoked nor shall prohibitory [probationary] conditions be imposed until after a hearing before the department pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1981, ch. 249, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

### **61-14B-15. Penalties. (Effective until July 1, 1996.)**

Any person who violates any of the provisions of the Speech-Language Pathology and Audiology Act [61-14B-1 to 61-14B-16 NMSA 1978] is guilty of a petty misdemeanor.

**History:** Laws 1981, ch. 249, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

#### **61-14B-16. Annual renewal of licenses. (Effective until July 1, 1996.)**

A. Each holder of a license to practice speech-language pathology or audiology shall annually renew the license on or before January 30 of each year and shall pay the renewal fee.

B. Each application for renewal shall include a statement of the licensee's having completed twenty hours every two years of continuing education in the field of his licensure. Renewal of a license shall be contingent upon the fulfillment of the continuing education standards and the supplying of evidence thereof by the licensee.

C. A person licensed as both a speech-language pathologist and an audiologist must fulfill the requirements of twenty hours of continuing education every two years for each field.

**History:** Laws 1981, ch. 249, § 16.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14B-17 NMSA 1978.

**Severability clauses.** - Laws 1981, ch. 249, § 17, provides for the severability of the act if any part or application thereof is held invalid.

#### **61-14B-17. Termination of agency life; delayed repeal. (Effective until July 1, 1996.)**

The speech-language pathology and audiology advisory board is terminated on July 1, 1995, pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 14B NMSA 1978 until July 1, 1996. Effective July 1, 1996, Chapter 61, Article 14B NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-14B-17, enacted by Laws 1990, ch. 16, § 4.

## **ARTICLE 14C**

### **MEDICAL ASSISTANTS**

#### **61-14C-1. Notice; penalty.**

A. Any physician employing or sponsoring a physician's assistant pursuant to Section 61-6-6 NMSA 1978 or any osteopathic physician employing or sponsoring an osteopathic physician's assistant pursuant to the Osteopathic Physicians' Assistants Act [61-10A-1 to 61-10A-7 NMSA 1978] shall post a notice of such employment in a prominent place calculated to inform any member of the public entering the office of the physician or osteopathic physician. The notice shall further state the basis upon which charges for services of the assistant are calculated and how they differ, if at all, from the charges for services of the physician or osteopathic physician.

B. Any physician or osteopathic physician violating the provisions of Subsection A of this section is guilty of a petty misdemeanor.

**History:** Laws 1981, ch. 251, § 1.

#### **ANNOTATIONS**

**Cross-references.** - As to penalties for misdemeanors, see 31-19-1 NMSA 1978.

## **ARTICLE 14D**

### **ATHLETIC TRAINER PRACTICE**

#### **61-14D-1. Short title. (Effective until July 1, 2000.)**

Sections 1 through 19 [61-14D-1 to 61-14D-19 NMSA 1978] of this act may be cited as the "Athletic Trainer Practice Act".

**History:** 1978 Comp., § 61-14D-1, enacted by Laws 1993, ch. 325, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-1 NMSA 1978, as enacted by Laws 1983, ch. 147, § 1, providing the title of the Athletic Trainer Act, and § 1 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

#### **61-14D-2. Purpose. (Effective until July 1, 2000.)**

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of athletic training, it is necessary to provide laws and regulations to govern the granting of the privilege to practice as an athletic trainer. The primary responsibility and obligation of the athletic trainer practice board is to protect the public.

**History:** 1978 Comp., § 61-14D-2, enacted by Laws 1993, ch. 325, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-2 NMSA 1978, as enacted by Laws 1983, ch. 147, § 2, containing definitions, and § 2 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits, §§ 4, 5, 14, 34 to 36, 39, 45 to 47.

53 C.J.S. Licenses §§ 5, 7, 30, 34 to 41, 64.

### **61-14D-3. Definitions. (Effective until July 1, 2000.)**

As used in the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978]:

A. "athlete" means a person trained to participate in exercise requiring physical agility and stamina;

B. "athletic trainer" means a person who, with the advice and consent of a licensed physician, practices the treatment, prevention, care and rehabilitation of injuries incurred by athletes;

C. "board" means the athletic trainer practice board;

D. "department" means the regulation and licensing department;

E. "district" means an area having the same boundaries as a congressional district in the state; and

F. "licensed physician" means a chiropractor, osteopath or physician licensed pursuant to Articles 4, 6 or 10 of Chapter 61 NMSA 1978.

**History:** 1978 Comp., § 61-14D-3, enacted by Laws 1993, ch. 325, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-3 NMSA 1978, as enacted by Laws 1983, ch. 147, § 3, creating the athletic trainers advisory board, and § 3 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

#### **61-14D-4. License required. (Effective until July 1, 2000.)**

A. Unless licensed pursuant to the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978], no person shall:

(1) practice as an athletic trainer as defined in the Athletic Trainer Practice Act;

(2) use the title or represent himself as a licensed athletic trainer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as an athletic trainer; or

(3) advertise, hold out to the public or represent in any manner that he is authorized to practice athletic training in the jurisdiction.

**History:** 1978 Comp., § 61-14D-4, enacted by Laws 1993, ch. 325, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-4 NMSA 1978, as enacted by Laws 1983, ch. 147, § 4, concerning meetings, officers, and support personnel of the athletic trainers advisory board, and § 4 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

#### **61-14D-5. Exemptions. (Effective until July 1, 2000.)**

A. Nothing in the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] shall be construed:

(1) as preventing qualified members of other recognized professions that are licensed, certified or regulated under New Mexico law or regulation from rendering services within the scope of their license, certification or regulation, provided they do not represent themselves as licensed athletic trainers;

(2) as preventing the practice of athletic training by a student enrolled in a program of study at a nationally accredited institution approved by the board; provided that the student renders services pursuant to a course of instruction or assignment under the supervision of a licensed athletic trainer; or

(3) as requiring any school district to employ an athletic trainer.

**History:** 1978 Comp., § 61-14D-5, enacted by Laws 1993, ch. 325, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-5 NMSA 1978, as amended by Laws 1987, ch. 329, § 12, concerning the powers of the athletic trainers advisory board, and § 5 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

**Compiler's note.** - As enacted by Laws 1993, ch. 325, § 5 this section did not contain a subsection (B).

### **61-14D-6. Scope of practice. (Effective until July 1, 2000.)**

The practice of athletic training includes the prevention, care and rehabilitation of athlete's injuries. Athletic trainers may evaluate and treat athletes pursuant to the written prescription, standing order or protocol of a licensed physician; provided that an athletic trainer may treat postsurgical conditions only pursuant to the written prescription of that athlete's surgeon. To carry out these functions, an athletic trainer may use exercise and physical modalities such as heat, light, sound, cold, electricity or mechanical devices related to rehabilitation and treatment. Nothing in the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] shall be construed to allow an athletic trainer to provide the initial treatment or evaluation of an athlete injured in a non-athletic setting.

**History:** 1978 Comp., § 61-14D-6, enacted by Laws 1993, ch. 325, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-6 NMSA 1978, as amended by Laws 1989, ch. 40, § 1, specifying examination and license fees, and § 6 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-7. Board created. (Effective until July 1, 2000.)**

A. There is created the "athletic trainer practice board".

B. The board shall be administratively attached to the department.

C. The board shall consist of five members appointed by the governor for staggered terms of three years each, except that the initial board shall be appointed so that the term of one member expires June 30, 1994, the terms of two members expire June 30, 1995 and the terms of two members expire June 30, 1996. Three of the members shall be athletic trainers licensed under the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] with at least three years experience in the profession in the state of New Mexico. One member shall be from each district and at least one member shall be employed by a high school. Two members shall represent the public and have no financial interest, direct or indirect, in the occupation regulated. One public member shall be from any area north of interstate 40 in the state and one public member shall be from any area south of interstate 40 in the state. Board members shall serve until their successors have been appointed.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

E. A simple majority of the board members currently serving shall constitute a quorum of the board.

F. The board shall meet at least once a year and at such other times as it deems necessary.

G. No board member shall serve more than two consecutive terms. Any member failing to attend three meetings, after proper notice, shall automatically be recommended to be removed as a board member, unless excused for reasons set forth in board regulations.

H. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

**History:** 1978 Comp., § 61-14D-7, enacted by Laws 1993, ch. 325, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-7 NMSA 1978, as enacted by Laws 1983, ch. 147, § 7, concerning the qualifications of applicants for an athletic trainer license, and § 7 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-8. Department duties. (Effective until July 1, 2000.)**

The department, in consultation with the board, shall:

A. evaluate the qualifications of applicants and review any required examination results of applicants;

B. issue licenses and provisional permits to applicants who meet the requirements of the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978];

C. administer, coordinate and enforce the provisions of the Athletic Trainer Practice Act and investigate persons engaging in practices which may violate the provisions of that act;

D. conduct any required examinations of applicants;

E. hire staff as may be necessary to carry out the actions of the board; and

F. maintain board records, including financial records.

**History:** 1978 Comp., § 61-14D-8, enacted by Laws 1993, ch. 325, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-8 NMSA 1978, as enacted by Laws 1983, ch. 147, § 8, providing an exemption from the application of the Athletic Trainer Act, and § 8 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-9. Board duties. (Effective until July 1, 2000.)**

In addition to any other authority provided by law, the board shall have the authority to:

A. adopt and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations necessary to carry out the provisions of the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978], in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], including the procedures for an appeal of an examination failure;

B. establish fees;

C. approve administration of exams;

D. adopt rules implementing continuing education requirements;

E. conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license; and

F. adopt a code of ethics.

**History:** 1978 Comp., § 61-14D-9, enacted by Laws 1993, ch. 325, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-9 NMSA 1978, as enacted by Laws 1983, ch. 147, § 9, stating that the Athletic Trainer Act does not require school districts to employ athletic trainers, and § 9 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-10. Requirements for licensure. (Effective until July 1, 2000.)**

The department shall issue a license to practice as an athletic trainer to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the applicant:

A. has completed an athletic training curriculum approved by the national athletic trainers association or has completed a baccalaureate degree and an approved internship of at least fifteen hundred clinical hours from an accredited college or university;

B. has submitted a letter of recommendation from either an athletic trainer licensed in New Mexico or a member of the national athletic trainers association;

C. submits proof of current competence in cardiopulmonary resuscitation; and

D. demonstrates professional competence by satisfactorily passing a national certification examination recognized by the board and an examination on New Mexico laws and regulations pertaining to athletic trainers prescribed by the board.

**History:** 1978 Comp., § 61-14D-10, enacted by Laws 1993, ch. 325, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-10 NMSA 1978, as enacted by Laws 1983, ch. 147, § 10, concerning the issuance of licenses to persons currently engaged as trainers, and § 10 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-11. Examinations. (Effective until July 1, 2000.)**

A. If there are applicants for examinations, written examinations shall be held at least twice each year on a date and at a location established by the department. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to taking and retaking of licensure examinations.

B. The board shall determine the passing grade on examinations.

C. The board shall require each applicant to pass an examination on the state laws and regulations pertaining to the practice of athletic training.

D. The board may accept examinations which are used for national certification or other examinations administered by the department.

**History:** 1978 Comp., § 61-14D-11, enacted by Laws 1993, ch. 325, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-11 NMSA 1978, as enacted by Laws 1983, ch. 147, § 11, concerning hearings and appeals, and § 11 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-12. Provisional permit. (Effective until July 1, 2000.)**

A. Prior to taking any other examinations, an applicant for licensure who has passed the jurisprudence examination may obtain a provisional permit to engage in the practice of athletic training, provided that the applicant meets all the requirements for licensure except completion of the professional knowledge examination.

B. The provisional permit is valid until the results of the next scheduled examination on professional knowledge are available.

C. No more than two provisional permits may be issued to an individual and no third provisional permit shall be issued to an applicant who has previously failed the professional knowledge examination.

**History:** 1978 Comp., § 61-14D-12, enacted by Laws 1993, ch. 325, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 325, § 20 repeals 61-14D-12 NMSA 1978, as amended by Laws 1987, ch. 329, § 13, authorizing expenditure of funds by the regulation and licensing department for implementing the Athletic Trainer Act, and § 12 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

### **61-14D-13. License renewal. (Effective until July 1, 2000.)**

A. Each licensee shall renew his license annually as provided by regulation, by submitting a renewal application on a form provided by the board.

B. The board may require proof of continuing education and proof of current cardiopulmonary resuscitation certification as a requirement for renewal.

**History:** 1978 Comp., § 61-14D-13, enacted by Laws 1993, ch. 325, § 13.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-14D-14. Fees. (Effective until July 1, 2000.)**

The board shall establish a schedule of reasonable fees for applications, licenses, provisional permits, renewal of licenses, placement on inactive status and necessary administrative fees. Initial licensing fees may be prorated.

**History:** 1978 Comp., § 61-14D-14, enacted by Laws 1993, ch. 325, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-14D-15. Criminal Offenders Employment Act. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978].

**History:** 1978 Comp., § 61-14D-15, enacted by Laws 1993, ch. 325, § 15.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-14D-16. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Effective until July 1, 2000.)**

A. In accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] upon findings by the board that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) has been convicted of a felony.

A certified copy of the record of conviction shall be conclusive evidence of such conviction;

- (3) is guilty of incompetence;
- (4) is guilty of unprofessional conduct;
- (5) is guilty of dispensing, administering, distributing or using a controlled substance, as defined in the Controlled Substances Act [30-31-1 to 30-31-28 and 30-31-30 to 30-31-40 NMSA 1978], or is addicted to any vice to such a degree that it renders him unfit to practice as an athletic trainer;
- (6) has violated any provisions of the Athletic Trainer Practice Act;
- (7) is guilty of willfully or negligently practicing beyond the scope of athletic training as defined in the Athletic Trainer Practice Act;
- (8) is guilty of aiding or abetting the practice of athletic training by a person not licensed by the board;

(9) is guilty of practicing without a provisional permit or license in violation of the Athletic Trainer Practice Act and its regulations; or

(10) has had a license, certificate or registration to practice as an athletic trainer revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking such disciplinary action shall be conclusive evidence of the revocation, suspension or denial.

B. Disciplinary proceedings may be instituted by the sworn complaint of any person and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a sworn complaint shall be immune from liability arising out of civil action provided the complaint is filed in good faith and without actual malice.

**History:** 1978 Comp., § 61-14D-16, enacted by Laws 1993, ch. 325, § 16.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-14D-17. Penalties. (Effective until July 1, 2000.)**

Any person who violates any provision of the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

**History:** 1978 Comp., § 61-14D-17, enacted by Laws 1993, ch. 325, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-14D-18. Fund established. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "athletic trainer practice board fund".

B. All money received by the board under the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary. Balances credited to the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Athletic Trainer Practice Act.

**History:** 1978 Comp., § 61-14D-18, enacted by Laws 1993, ch. 325, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-14D-19 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-14D-19. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The athletic trainer practice board is terminated on July 1, 1999, pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Athletic Trainer Practice Act until July 1, 2000. Effective July 1, 2000, the Athletic Trainer Practice Act [61-14D-1 to 61-14D-19 NMSA 1978] is repealed.

**History:** 1978 Comp., § 61-14D-19, enacted by Laws 1993, ch. 325, § 19.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 325 contains no effective date provision, but, pursuant to N. M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

## **ARTICLE 14E**

### **MEDICAL RADIATION HEALTH AND SAFETY**

### **61-14E-1. Short title.**

Sections 1 through 12 [61-14E-1 to 61-14E-12 NMSA 1978] of this act may be cited as the "Medical Radiation Health and Safety Act".

**History:** Laws 1983, ch. 317, § 1.

### **61-14E-2. Purpose of act.**

The purpose of the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] is to maximize the protection practicable for the citizens of New Mexico from ionizing radiation in the practice of the healing arts. This purpose is effectuated by establishing requirements for appropriate education and training of persons operating medical equipment emitting ionizing radiation, establishing standards of education and training for the persons who administer radiologic procedures and providing for the appropriate examination and certification of those persons.

**History:** Laws 1983, ch. 317, § 2.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31, 51 to 61, 63, 74 to 120, 125 to 130, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12, 13, 19 to 24, 28, 33, 35 to 57.

### **61-14E-3. Administration; enforcement.**

The administration and enforcement of the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] is vested in the department.

**History:** Laws 1983, ch. 317, § 3; 1993, ch. 140, § 2.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division".

### **61-14E-4. Definitions.**

As used in the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978]:

A. "advisory council" means the radiation technical advisory council;

B. "board" means the environmental improvement board;

C. "certificate of limited practice" means a certificate issued pursuant to the Medical Radiation Health and Safety Act to persons who perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:

(1) the viscera of the thorax;

(2) extremities;

(3) radiation to humans for diagnostic purposes in the practice of dentistry;

(4) axial/appendicular skeleton; or

(5) the foot, ankle or lower leg;

D. "department" means the department of environment;

E. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;

F. "nuclear medicine technologist" means a person other than a licensed practitioner who applies radiopharmaceutical agents to humans for diagnostic or therapeutic purposes under the direction of a licensed practitioner;

G. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

H. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

I. "radiologic technologist" means any person who is a radiographer, a radiation therapy technologist or a nuclear medicine technologist and who is certified pursuant to the Medical Radiation Health and Safety Act;

J. "radiologic technology" means the use of substances or equipment emitting ionizing radiation to humans for diagnostic or therapeutic purposes; and

K. "radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology.

**History:** Laws 1983, ch. 317, § 4; 1991, ch. 14, § 1; 1993, ch. 140, § 1.

## **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, added Paragraph (4) in Subsection C; in Subsection K, substituted "licensed practitioner" for "physician" and added "or the American chiropractic board of radiology" at the end; and made related stylistic changes.

**The 1993 amendment**, effective June 18, 1993, added Paragraph (5) of Subsection C, making related grammatical changes; and rewrote Subsection D, which formerly defined "division".

### **61-14E-5. Board; powers; duties.**

The board shall, pursuant to the advice and recommendations of the advisory council and following the procedures set forth in Section 74-1-9 NMSA 1978:

A. adopt and promulgate such rules, regulations and certification standards as may be necessary to effectuate the provisions of the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] and to maintain high standards of practice; and

B. adopt rules and regulations establishing continuing education requirements as a condition of certificate renewal for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current knowledge and practice regarding radiologic technology.

**History:** Laws 1983, ch. 317, § 5.

### **ANNOTATIONS**

**Promulgation of rules and regulations by board.** - The environmental improvement board is authorized to promulgate rules and regulations for radiation protection without the radiation technical advisory council approving the terms of such rules and regulations, if the board promulgates regulations pursuant to the Medical Radiation Health and Safety Act; but the board may not do so without the council's approval if the regulations are promulgated pursuant to the Radiation Protection Act (74-3-1 NMSA 1978 et seq.). 1988 Op. Att'y Gen. No. 88-39.

### **61-14E-6. Division; powers; duties.**

The division, pursuant to the rules and regulations promulgated by the board, shall:

A. maintain and enforce certification standards for radiography, radiation therapy technology, nuclear medicine technology and certificates of limited practice;

B. establish criteria and maintain standards for educational programs of radiography, radiation therapy and nuclear medicine and approve educational programs upon a finding that the standards and criteria have been met;

C. provide for surveys of educational programs preparing persons for certification under the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978];

D. grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, provided that a majority of the board concurs in any decision; and

E. establish procedures for examination, certification and renewal of certificates of applicants.

**History:** Laws 1983, ch. 317, § 6.

### **61-14E-7. Certification; exceptions.**

It is unlawful, unless certified by the department as a radiologic technologist, for any person to:

A. use ionizing radiation on humans;

B. use the title "radiologic technologist" or the abbreviation "L.R.T." or any other abbreviation thereof or use any other title, abbreviation, letters, figures, signs or other devices to indicate that the person is a certified radiologic technologist; or

C. engage in any of the radiology specialties as defined by the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978].

The requirement of a certificate shall not apply to a licensed practitioner or auxiliary or health practitioner licensed or certified by an independent board; provided that any certification and examination program for auxiliaries established by an independent board shall be submitted to the advisory council and approved by the board. The requirement of a certificate shall also not apply to a student who is enrolled in and attending a required individual education program of a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or radiologic technology to apply radiation to humans under the supervision of a licensed practitioner or under the direct supervision of a certified radiologic technologist.

**History:** Laws 1983, ch. 317, § 7; 1991, ch. 14, § 2; 1993, ch. 140, § 3.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, in the final paragraph, deleted "or a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or radiologic technology who applies radiation to humans while under the supervision of a licensed practitioner or the direct supervision of a certified radiologic technologist" and added the second sentence.

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division" in the introductory language.

### **61-14E-8. Temporary certification.**

The department may issue a temporary certificate to practice as a radiologic technologist to a person who satisfactorily completes an approved program in radiologic technology, provided that the temporary certificate:

- A. is applied for within one year of graduation;
- B. is valid only for a period not to exceed one year;
- C. is only issued to a person once; and
- D. is contingent upon successful completion of an examination required by the board and expires upon failure to pass the examination.

**History:** 1978 Comp., § 61-14E-8, enacted by Laws 1991, ch. 14, § 3; 1993, ch. 140, § 4.

### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1991, ch. 14, § 3 repeals former 61-14E-8 NMSA 1978, as enacted by Laws 1983, ch. 317, § 8, relating to temporary certification, and enacts the above section, effective June 14, 1991. For provisions of former section see 1989 Replacement Pamphlet.

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division" near the beginning of the section.

### **61-14E-9. Fees for certification.**

After the promulgation of rules and regulations, the department shall charge and collect the following fees:

- A. an initial application fee not to exceed ten dollars (\$10.00);
- B. an examination fee not to exceed fifty dollars (\$50.00) for a full certificate and not to exceed twenty-five dollars (\$25.00) for a certificate of limited practice;
- C. a full certificate renewal fee determined by the board in an amount not to exceed one hundred dollars (\$100) biennially; and

D. a certificate of limited practice renewal fee determined by the board in an amount not to exceed sixty dollars (\$60.00) biennially upon submission of proof of at least twenty hours of continuing education requirements as required by the department.

Any person who allows his certificate to lapse by failure to renew as provided in the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] shall be reinstated by the department on payment of the fee for the current biennium plus a reinstatement fee to be set by the department in an amount which shall not exceed the renewal fee. This provision shall not apply to anyone whose certificate has been revoked or suspended.

**History:** Laws 1983, ch. 317, § 9; 1993, ch. 140, § 5.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division" in the introductory language of the first paragraph, in Subsection D, and in two places in the first sentence of the second paragraph.

### **61-14E-10. Fund established; disposition; method of payment.**

A. There is created in the state treasury the "radiologic technology fund".

B. All fees received by the department pursuant to the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the radiologic technology fund.

C. Payments out of the radiologic technology fund shall be on vouchers issued and signed by the person designated by the department upon warrants drawn by the department of finance and administration and shall be used by the department for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Medical Radiation Health and Safety Act, the duties imposed by that act and the promotion of education and standards for radiologic technology in this state. All money unexpended or unencumbered at the end of the fiscal year shall remain in the radiologic technology fund for use in accordance with the provisions of the Medical Radiation Health and Safety Act.

**History:** Laws 1983, ch. 317, § 10; 1989, ch. 324, § 32; 1993, ch. 140, § 6.

### **ANNOTATIONS**

**The 1989 amendment**, effective April 7, 1989, deleted the former last sentence of Subsection C, which read "Any income earned on investment of the fund shall be credited to the fund for use as provided in that act".

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division" in the first sentence of Subsection B and in two places in the first sentence of Subsection C.

### **61-14E-11. Suspension; revocation; application of Uniform Licensing Act.**

The board, pursuant to the advice and recommendation of the advisory council, may deny, revoke or suspend any certificate held or applied for under the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978], pursuant to the procedures established in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], upon grounds that the radiologic technologist or the applicant:

- A. is guilty of fraud or deceit in procuring or attempting to procure a full certificate or certificate of limited practice;
- B. is convicted of a felony subsequent to certification;
- C. is unfit or incompetent;
- D. is habitually intemperate or is addicted to the use of habit-forming drugs;
- E. is mentally incompetent;
- F. has aided and abetted a person who is not certified pursuant to the Medical Radiation Health and Safety Act or otherwise authorized by that act in engaging in the activities of a certificate holder;
- G. has engaged in any practice beyond the scope of authorized activities of a full certificate or certificate of limited practice holder pursuant to the Medical Radiation Health and Safety Act;
- H. is guilty of unprofessional conduct or unethical conduct as defined by rules promulgated by the board;
- I. has interpreted a diagnostic imaging procedure for a patient, the patient's family or the public; or
- J. has willfully or repeatedly violated any provisions of the Medical Radiation Health and Safety Act.

**History:** Laws 1983, ch. 317, § 11.

### **61-14E-12. Violations; penalties.**

It is a misdemeanor for any person, firm, association or corporation to:

A. knowingly or willfully employ as a radiologic technologist any person who is required to but does not possess a valid certificate or certificate of limited practice to engage in the practice of radiologic technology;

B. sell, fraudulently obtain or furnish any radiologic technology certificate or certificate of limited practice or to aid or abet therein;

C. practice radiologic technology as defined by the Medical Radiation Health and Safety Act [61-14E-1 to 61-14E-12 NMSA 1978] unless exempted or duly certified to do so under the provisions of that act; or

D. otherwise violate any provisions of the Medical Radiation Health and Safety Act.

The department shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Medical Radiation Health and Safety Act. In prosecutions under that act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt shall constitute a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both.

**History:** Laws 1983, ch. 317, § 12; 1993, ch. 140, § 7.

#### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "department" for "division" in the first sentence of the second paragraph.

## **ARTICLE 15 ARCHITECTS**

### **61-15-1. Purposes of the act. (Effective until July 1, 2000.)**

In order to safeguard life, health and property and to promote public welfare, any person practicing architecture in this state shall be required to submit evidence that he is qualified to practice and shall be registered as provided in the Architectural Act [Chapter 61, Article 15 NMSA 1978]. It shall be unlawful for any person to practice architecture in this state unless that person is duly registered or exempt under the provisions of the Architectural Act.

**History:** Laws 1931, ch. 155, § 1; 1939, ch. 82, § 1; 1941 Comp., § 51-1401; 1953 Comp., § 67-12-1; 1987, ch. 282, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**Cross-references.** - As to engineering practice, see 61-23-1 NMSA 1978 et seq.

**The 1987 amendment,** effective June 19, 1987, deleted the Subsection A designation at the beginning, substituted "in the Architectural Act" for "and from six months after the passage of this act" at the end of the first sentence, and in the second sentence inserted "or exempt" following "is duly registered" and substituted "the Architectural Act" for "this act except as hereinafter provided" at the end.

**Registration not required for licensed engineers.** - Professional engineers licensed under 67-21-1 to 67-21-25, 1953 Comp. (now repealed) need not secure registration under this act. They are authorized to draw plans and construct buildings and to do many acts similar to those of registered architects. The two laws are similar, but need not be read together, since they are each for the purpose of regulating separate and distinct professions in which the actual practice calls for doing similar acts. 1939-40 Op. Att'y Gen. 79 (opinion rendered prior to enactment of Engineering and Land Surveying Practice Act).

**Registration and residence prerequisites to county employment.** - A county may not employ an architect who is not a resident of New Mexico and who has not obtained state registration. 1947-48 Op. Att'y Gen. No. 5072.

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects §§ 2 to 4.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

Architect's or engineer's compensation as affected by inability to carry out plan or specifications at amount satisfactory to employer, 127 A.L.R. 410.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 A.L.R.2d 1085.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 A.L.R.3d 455.

6 C.J.S. Architects § 4.

### **61-15-1.1. Short title. (Effective until July 1, 2000.)**

Chapter 61, Article 15 NMSA 1978 may be cited as the "Architectural Act".

**History:** 1978 Comp., § 61-15-1.1, enacted by Laws 1979, ch. 362, § 1; 1987, ch. 282, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, substituted "Chapter 61, Article 15 NMSA 1978" for "Sections 61-15-1 through 61-15-12 NMSA 1978".

### **61-15-2. Definitions. (Effective until July 1, 2000.)**

As used in the Architectural Act [this article]:

A. "architect" means any individual registered under the Architectural Act to practice architecture;

B. "architectural services" means the services performed in the practice of architecture. These services include planning, providing preliminary studies, designs, drawings, specifications, other technical submissions and the observation of construction for the purpose of assuring substantial compliance with drawings and specifications and include such other professional services as may be necessary to the planning, progress and completion of any architectural services. It is recognized that an architect who has complied with all of the laws of New Mexico relating to the practice of architecture has a right to engage in activities properly classifiable as engineering insofar as it is incidental to his work as an architect. Likewise, it is recognized that an engineer who has complied with all of the laws of New Mexico relating to the practice of engineering has the right to engage in activities properly classified as architecture insofar as it is incidental to his work as an engineer, provided that in such cases an architect shall not hold himself out as practicing engineering and an engineer shall not hold himself out as practicing architecture, and further provided that the architect or engineer, as the case may be, shall perform only that part of the work for which he is professionally qualified and shall utilize qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer or architect is not qualified. Furthermore, the architect or professional engineer, as the case may be, shall assume all responsibility for compliance with all laws and ordinances relating to the designs or projects with which he may be engaged;

C. "board" means the board of examiners for architects;

D. "construction observation of a construction contract" means the interpretation of the drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to determine its consistency with the general intent of the construction documents when performed by a person engaged in the practice of architecture. Inspection of buildings by contractors, subcontractors or building inspectors or their agents shall not constitute construction observation of a construction contract;

E. "direct supervision" means that any documents bearing the architect's stamp and signature have been prepared under the immediate and responsible direction of the architect, who has exercised his direction, guidance and restraining power over the preparation of the documents and has exercised his professional judgment in all architectural matters embodied within the documents; and

F. "practice of architecture" means rendering or offering to render any service which requires architectural education, training and experience in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within and surrounding those buildings, which have as their principal purpose human occupancy or habitation.

**History:** 1978 Comp., § 61-15-2, enacted by Laws 1979, ch. 362, § 2; 1987, ch. 282, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**Repeals and reenactments.** - Laws 1979, ch. 362, § 2, repealed former 61-15-2 NMSA 1978, relating to definitions of "practice of architecture," "general administration of construction" and "building," and enacted a new 61-15-2 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, alphabetized and relettered the subsections; rewrote Subsection B; in Subsection D substituted "construction observation of a construction contract" for "general administration of a construction contract" at the beginning, and added "when performed by a person engaged in the practice of architecture" to the end of the first sentence and added the second sentence; inserted Subsection E; and rewrote Subsection F.

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

### **61-15-3. Board of examiners for architects created; terms; qualifications. (Effective until July 1, 2000.)**

A. There is created a "board of examiners for architects" consisting of seven members appointed by the governor for staggered terms of three years each. Six of the members

shall be architects having ten years or more experience in the profession, five years of which shall have been in responsible charge of architectural projects, and shall have been registered as architects in New Mexico for at least five years. One of these six architects shall be in architectural education in an accredited college of architecture. The seventh member shall be a public member who is a voting member. The public member of the board shall not have been licensed as an architect, nor shall such public member have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Each member of the board shall be at least thirty years of age, a citizen of the United States and a resident of New Mexico for at least five years prior to the date of appointment.

C. Members of the board shall be appointed for staggered terms of three years each made in such a manner that the terms of not more than two members expire on June 30 of each year. Each member shall serve until his successor has been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor of a person having similar qualifications as the member that he replaces. Each member of the board whose term has not expired on the effective date of this section shall serve out his unexpired term.

D. Each member of the board shall receive a certificate of appointment from the governor and, before beginning his term of office, shall file with the secretary of state the constitutional oath of office. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence or, if the member is a licensed architect, for any improper or unprofessional conduct as defined by regulations of the board.

E. The board shall elect a chairman, a vice chairman and a secretary and any other officers it deems necessary.

**History:** 1978 Comp., § 61-15-3, enacted by Laws 1979, ch. 362, § 3; 1987, ch. 282, § 4.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**Cross-references.** - For the constitutional oath of office, see N.M. Const., art. XX, § 1.

As to termination of board, see 61-15-13 NMSA 1978.

**Repeals and reenactments.** - Laws 1979, ch. 362, § 3, repealed former 61-15-3 NMSA 1978, relating to the creation of a state board of examiners for architects, and enacted a new 61-15-3 NMSA 1978.

**The 1987 amendment**, effective June 19, 1987, in the first sentence in Subsection A, substituted "seven members" for "five members", in the second sentence substituted "six" for "four" at the beginning and inserted "five years of which shall have been in responsible charge of architectural projects" following "experience in the profession", inserted the present fourth sentence, in the fifth sentence substituted "seventh" for "fifth" and inserted "who is a voting member" at the end; in Subsection C deleted from the end "terms, and a public member shall be appointed upon the occurrence of the first vacancy on the board"; added Subsection E; and made numerous minor changes in language and punctuation throughout the section.

**"Effective date of this section"**. - The phrase "effective date of this section", referred to near the end of Subsection C, appears in Laws 1979, ch. 362, § 3 which was effective on June 16, 1979.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 6 C.J.S. Architects §§ 7, 9, 10.

#### **61-15-4. Powers and duties of the board. (Effective until July 1, 2000.)**

A. The board shall hold at least four regular meetings each year. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. A majority of the board members constitutes a quorum.

B. The board or any committee thereof shall have the power to subpoena any witness, to administer oaths and to take testimony concerning matters within its jurisdiction. It shall be within the jurisdiction of the board to determine and prescribe by regulations the professional and technical qualifications necessary for the practice of architecture in New Mexico. The board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted, and may make rules and regulations not inconsistent with law.

C. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance except for the secretary who shall receive, in addition, a salary to be set by the board. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized reimbursement, and including necessary expenses incident to cooperation with like boards of other states, shall be paid by the state treasurer out of the "fund of the board of examiners for architects" on the warrant of the secretary of finance and administration issued upon vouchers signed by the chairman and secretary or by two other members and the secretary of the board; provided, however, that at no time shall the total warrants issued exceed the total amount of funds accumulated under the Architectural Act [this article]. All money derived from the operation of the Architectural Act shall be deposited with the state treasurer who shall keep the money in the fund of the board of examiners for architects.

D. The board shall hold at least once each year an examination of applicants for registration, at a time and place designated by the board. The board shall keep a complete record of all examinations, written or oral.

E. Upon application, upon a prescribed form and upon payment by the applicant of a fee set by the board, the board shall consider the application and, in cases as herein authorized, shall issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that he is fully qualified to practice architecture.

F. It is the duty of the board to report to the district attorney of the district where the offense was committed any person violating any provision of the Architectural Act.

G. The board may refuse to issue, may suspend or may revoke any license, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], for any of the grounds set forth in Section 61-15-12 NMSA 1978 or for any violation of the Architectural Act.

H. The board, in cooperation with the state board of registration for professional engineers and land surveyors and the board of landscape architects, shall create a joint standing committee to be known as the "architect-engineer-landscape architect-joint practice committee". The committee shall have as its purpose the resolution of disputes concerning the professions. The composition of the committee and its duties and powers shall be in accordance with identical resolutions adopted by each board.

**History:** Laws 1931, ch. 155, § 3; 1939, ch. 82, § 3; 1941 Comp., § 51-1403; 1953 Comp., § 67-12-3; Laws 1959, ch. 12, § 1; 1963, ch. 43, § 16; 1977, ch. 247, § 174; 1979, ch. 362, § 4; 1987, ch. 282, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in Subsection A substituted "at least four" for "a meeting within sixty days after its members are first appointed and thereafter shall hold at least two" in the first sentence and added the last sentence; in Subsection C, in the last sentence, substituted "fund of the board of examiners for architects" for "separate fund hereinafter designated"; in Subsection D added the last sentence; in Subsection E substituted "a fee set by the board" for "a fee of fifty dollars (\$50.00)"; in Subsection H in the first sentence, inserted "and the board of landscape architects" following "land surveyors", inserted "landscape architect" in the committee name, and in the second sentence deleted "two" preceding "professions"; and made minor language changes throughout the section.

**No fee charged for registration certificate.** - A plain reading of Subsection E discloses that the board is required to issue a certificate of registration to an applicant

upon being satisfied of the applicant's qualifications. No mention is made in the section of any fee to be charged for the architect's first certificate of registration. 1966 Op. Att'y Gen. No. 66-44.

**Application fee not payable in installments.** - This section clearly prescribes an application fee of \$50.00 which must be paid in its entirety at the time the application is made. There is no provision or even an indication in the law which would permit payment of the fee in installments. 1966 Op. Att'y Gen. No. 66-44.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 6 C.J.S. Architects §§ 7, 9, 10.

### **61-15-4.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 282, § 15 repeals 61-15-4.1 NMSA 1978, as enacted by Laws 1983, ch. 63, § 1 relating to development, adoption and enforcement of rules governing the practice of architecture on public projects, effective June 19, 1987. For former provisions see the 1986 Cumulative Supplement.

### **61-15-5. Additional duties of the board. (Effective until July 1, 2000.)**

A. The board shall keep a record of its proceedings. The records of the board shall be prima facie evidence of the proceedings of the board set forth in the record and a transcript of the record, duly certified by the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

B. The board shall keep a register of all applications for registration, which shall show the name, age and residence of each applicant, the date of application, the applicant's place of business, the applicant's educational and other qualifications, whether or not an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and any other information deemed necessary by the board.

C. Annually on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of its chairman and secretary.

D. Board records and papers which are of a confidential nature and are not public records include examination material for examinations not yet given, file records of examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants, investigation files where any investigation is still pending and other materials of like confidential nature.

E. A roster showing the names and addresses of all registered architects shall be prepared by the board prior to September 1 of each even-numbered year. A supplement to the roster shall be prepared by the board prior to September 1 of each odd-numbered year. Copies of the roster and supplement shall be mailed to each registered architect and placed on file with the secretary of state, and may be distributed or sold to the public.

**History:** Laws 1931, ch. 155, § 4; 1939, ch. 82, § 4; 1941 Comp., § 51-1404; 1953 Comp., § 67-12-4; 1987, ch. 282, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, rewrote the section to the extent that a detailed comparison is impracticable.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects §§ 2 to 4.

6 C.J.S. Architects § 7.

### **61-15-6. Requirements for registration. (Effective until July 1, 2000.)**

A. To be eligible for registration, a person must be of good character and repute.

B. An applicant for registration shall have been actively engaged for eight years or more in architectural work of a character satisfactory to the board. However, each year of teaching or study of architecture satisfactorily completed in a school of architecture of a standing satisfactory to the board shall be equivalent to one year of professional experience. In addition, effective January 1, 1990, an applicant for examination for registration must have a professional degree from an accredited architectural program in order to be eligible for the examination for registration.

C. All applicants for registration shall be required to pass a written examination and may be required to pass an oral examination as required by the board.

D. In determining the qualifications of applicants for registration as architects, a majority vote of the members of the board shall be required.

E. No sole proprietorship, partnership, corporation or association shall be registered under the Architectural Act [this article]. No sole proprietorship, partnership, corporation or association shall practice or offer to practice architecture in the state except as provided in Subsections F, G and H of this section.

F. Registered architects may practice under the Architectural Act as individuals or through partnerships, associations or corporations.

G. In the case of practice through a partnership, at least one of the partners shall be a registered architect under the Architectural Act, and all plans, designs, drawings, specifications or reports issued by or for the partnership shall bear the seal of a registered architect who shall be responsible for such work.

H. In the case of practice through an association or corporation, services or work involving the practice of architecture may be offered through the association or corporation; provided the registered architect in responsible charge of the activities of the association or corporation involved in such practice has the authority to bind the association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports which are involved in the practice, and issued by or for the association or corporation bear the seal and signature of a registered architect in direct supervision of the work when issued.

**History:** Laws 1931, ch. 155, § 5; 1939, ch. 82, § 5; 1941 Comp., § 51-1405; 1953 Comp., § 67-12-5; Laws 1979, ch. 362, § 5; 1987, ch. 282, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**Cross-references.** - As to registration fee, see 61-15-4E NMSA 1978.

As to the incorporation of architects as a professional corporation, see 53-6-1 NMSA 1978 et seq.

**The 1987 amendment**, effective June 19, 1987, divided the former Subsection A into the present Subsections A and B and relettered the subsequent subsections; in Subsection B substituted "professional experience" for "such active engagement" at the end of the second sentence and added the third sentence; in Subsection D deleted the former last sentence which read "In case the board denies the issuance of a certificate to an applicant, one-half of the registration fee deposited shall be returned by the board to the applicant"; in Subsection E substituted "sole proprietorship" for "firm" where it appears in the first and second sentences, deleted "joint stock" preceding "association" both places that word appears and substituted "F, G and H" for "E, F and G"; in Subsection F substituted "individuals or through partnerships" for "individual partners or through joint stock"; in Subsection H deleted "joint stock" preceding "association" in five places, and substituted "direct supervision of" for "responsible charge of and directly responsible for" at the end; and made minor language changes throughout the section.

**United States citizenship is not required** to be an architect licensed to practice in New Mexico. 1941-42 Op. Att'y Gen. No. 4177.

**Applicant entitled to 50% refund upon examination failure.** - Because failure to pass the examinations required by the board is a statutory basis for refusal of the registration

certificate, the board must refund to the applicant 50% of the registration fee he deposited. 1966 Op. Att'y Gen. No. 66-79.

**Full fee required with subsequent application.** - A failure of all or a portion of the examination required by the board, necessitates the denial of the issuance of a certificate of registration to an applicant, and the applicant must then pay the full \$50.00 application fee before he may again be considered by the board for issuance of a certificate of registration even though he might not be required to take all sections of the examination on his subsequent attempts. 1966 Op. Att'y Gen. No. 66-79 (rendered under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects §§ 2 to 4.

Validity of license statute or ordinance which discriminates against nonresidents, 61 A.L.R. 337, 112 A.L.R. 63.

Practice of architecture by corporation, 56 A.L.R.2d 726.

Revocation or suspension of license to practice architecture, 58 A.L.R.3d 543.

Grant or denial of license to practice architecture, 2 A.L.R.4th 1103.

6 C.J.S. Architects §§ 7 to 15.

### **61-15-7. Certificates of registration. (Effective until July 1, 2000.)**

A. Each registrant may, upon registration, obtain the seal of the design authorized by the board, which bears the registrant's name and the legend "Registered Architect - State of New Mexico". Plans, specifications, plats and reports issued by a registrant shall be stamped with the seal during the life of a registrant's certificate.

B. Certificates of registration shall expire on the last day of December following their issuance or renewal and shall be invalid after that date unless renewed.

C. Renewal may be effected at any time during December by the payment of a fee in an amount set by the board. The registrant shall satisfy the board that he is still proficient and qualified to practice architecture, as required by the board. Fees shall be paid to the board.

D. The failure on the part of any registrant to renew his certificate annually in December shall not deprive that person of the right of renewal thereafter, but the fee to be paid for the renewal of a certificate after December shall be increased ten percent for each month or a fraction of a month that the payment for renewal is delayed.

**History:** Laws 1931, ch. 155, § 6; 1939, ch. 82, § 6; 1941 Comp., § 51-1406; 1953 Comp., § 67-12-6; Laws 1961, ch. 153, § 1; 1975, ch. 175, § 1; 1979, ch. 362, § 6; 1987, ch. 282, § 8.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in Subsection C deleted from the end of the first sentence "but not to exceed fifty dollars (\$50.00) for a legal resident and one hundred dollars (\$100) for a nonresident" and deleted from the last sentence "the secretary of" preceding "the board"; in Subsection D deleted the former last sentence which read "The maximum fee for a delayed renewal shall not exceed twice the normal fee for each and every year that registrant remains in default"; and made minor changes in language and punctuation throughout the section.

**Initial registration certificate free.** - This section does not provide for any registration fee to be collected at the time the applicant has been accepted by the board as being entitled to registration as a New Mexico architect. Thus, a New Mexico architect appears to be entitled to his original certificate of registration free of charge. 1966 Op. Att'y Gen. No. 66-44.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects §§ 2 to 4.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

6 C.J.S. Architects §§ 7 to 15.

### **61-15-8. Exemptions. (Effective until July 1, 2000.)**

A. The following shall be exempt from the provisions of the Architectural Act [this article]:

(1) architects who are not legal residents of and have no established places of business in this state who are acting as consulting associates of a legal resident architect registered under the provisions of the Architectural Act, provided the nonresident architects are qualified for such professional service in their own state or country; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system.

B. Nothing in the Architectural Act shall prevent the draftsmen, students, superintendents and other employees of lawfully practicing architects under the provisions of the Architectural Act from acting under the instructions, control or supervision of the employer or shall prevent the employment of superintendents on the construction, enlargement or alterations of buildings or any appurtenances thereto or shall prevent those superintendents from acting under the direct supervision of registered architects by whom the plans and specifications of any building, enlargements, constructions or alterations were prepared.

**History:** Laws 1931, ch. 155, § 7; 1939, ch. 82, § 7; 1941 Comp., § 51-1407; 1953 Comp., § 67-12-7; 1987, ch. 282, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, substituted "the Architectural Act" for "this Act" throughout the section; redesignated the former Subsections B and C as Paragraph (1) and (2) of Subsection A; deleted the former Subsection D as set out in the 1986 Replacement Pamphlet; redesignated the former Subsection E as Subsection B; and in Subsection B, deleted "clerks of the work" preceding "superintendents" near the beginning and substituted "direct supervision" for "immediate personal supervision" near the end; and made minor changes in language and punctuation throughout the section.

**Substantial compliance suffices.** - Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and climate control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident pursuant to 61-15-9 NMSA 1978. 1965 Op. Att'y Gen. No. 65-7.

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects § 11.

### **61-15-9. Restrictions. (Effective until July 1, 2000.)**

A. Except as otherwise provided in the Architectural Act [this article], neither the state nor any political subdivision of the state shall engage in the construction of any public work involving architecture for which the plans, specifications and architectural services

have not been provided by legal resident registered architects of the state. Except in the case of school districts, nothing in this section shall be held to apply to public work for which the expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000). In the case of school districts, nothing in this section shall apply:

(1) to public work for which the expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000); or

(2) to the construction or relocation of portable classroom units that are intended for use as temporary classrooms. Portable classrooms will not be considered temporary where more than four units are joined together.

B. Nothing in the Architectural Act shall prevent any person from preparing building plans and specifications without being registered unless the building plans and specifications involve public safety or health, but the work shall be done only on:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided, this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height which are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection; or

(4) nonresidential buildings, as defined in the uniform building code, unless the building code official having jurisdiction has found that the submission of plans, drawings, specifications or calculations prepared and designed by an architect or engineer licensed by the state is necessary to obtain compliance with minimum standards governing the preparation of building plans and specifications adopted by the construction industries division of the regulation and licensing department. The construction industries division shall set, by regulation, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or any political subdivision of the state to secure the services of an architect or engineer for any public work project which consists of repair, replacement or remodeling of nonstructural elements of an existing structure.

**History:** Laws 1931, ch. 155, § 8; 1939, ch. 82, § 8; 1941 Comp., § 51-1408; 1953 Comp., § 67-12-8; Laws 1963, ch. 279, § 2; 1971, ch. 190, § 1; 1975, ch. 247, § 1; 1977, ch. 53, § 1; 1979, ch. 362, § 7; 1981, ch. 75, § 1; 1983, ch. 63, § 2; 1987, ch. 282, § 10.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in Subsection B, in the opening clause, substituted "building plans" for "architectural plans" the first occurrence, substituted "building plans" for "plans" the second occurrence and deleted from the end "residences of less than three stories or the work shall be done on commercial, industrial or semi-public buildings, the construction cost of which does not exceed eighty thousand dollars (\$80,000)", and added Paragraphs (1) through (4); and deleted the former Subsection C as set out in the 1986 Replacement Pamphlet and redesignated the former Subsection D accordingly.

**Substantial compliance suffices.** - Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and client control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident of New Mexico pursuant to this section. 1965 Op. Att'y Gen. No. 65-7.

**Unlicensed architect allowed on less than three storied residence.** - An individual, firm, or corporation may practice architecture without being registered, where the work is done on residences of less than three stories. 1933-34 Op. Att'y Gen. 28.

**Licensed engineer not restricted.** - A professional licensed engineer does not violate this section by drawing plans and constructing a building, since authority to do so is conferred upon him by law. 1939-40 Op. Att'y Gen. 44 (opinion rendered prior to enactment of Engineering and Land Surveying Practice Act).

**Licensed engineers not affected.** - Section 10 of Laws 1939, ch. 82 does not repeal the matter pertaining to engineers in 67-21-1 to 67-21-25, 1953 Comp. (now repealed) since these acts must be read separately, similar powers being conferred upon professional engineers as are granted to architects in this act. 1939-40 Op. Att'y Gen. 79 (opinion rendered prior to enactment of Engineering and Land Surveying Practice Act).

**Law reviews.** - For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects §§ 2 to 4.

6 C.J.S. Architects §§ 3, 7.

## **61-15-10. Violations; penalties. (Effective until July 1, 2000.)**

Each of the following acts committed by any person constitutes a misdemeanor, punishable upon conviction by a fine of not less than two hundred fifty dollars (\$250) or more than one thousand dollars (\$1,000) or by imprisonment not to exceed three months or both:

- A. presenting or attempting to file as his own the certificate of registration as an architect of another person;
- B. willfully forging or giving false evidence of any kind to the board or any board member for the purpose of obtaining a certificate of registration as an architect;
- C. falsely impersonating any other practitioner;
- D. using or attempting to use an expired, suspended or revoked certificate of registration as an architect;
- E. using or permitting another to use his official architect's seal to stamp or seal any documents that have not been prepared either by him or under his direct supervision;
- F. engaging or offering to engage in the practice of architecture as defined in Section 61-15-2 NMSA 1978, unless exempted or duly registered to do so under the Architectural Act [this article]; or
- G. using in connection with his name any designation tending to imply that he is a registered or licensed architect.

**History:** 1978 Comp., § 61-15-10, enacted by Laws 1979, ch. 362, § 8; 1987, ch. 282, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**Cross-references.** - As to ceding fines to the current school fund, see N.M. Const., art. XII, § 4.

**Repeals and reenactments.** - Laws 1979, ch. 362, § 8, repealed former 61-15-10 NMSA 1978, relating to violations and penalties in relation to certificates of registration of architects, and enacted a new 61-15-10 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in the opening clause substituted "two hundred fifty dollars (\$250) or more than one thousand (\$1,000)" for "one hundred dollars (\$100) nor more than five hundred dollars (\$500)", in Subsection F substituted

"registered" for "licensed" following "unless exempted or duly"; and made minor language changes throughout the section.

**Designation "architect" restricted to those registered.** - The designation of "architect" may not be used by any individual or firm in New Mexico not registered as such in this state. 1949-50 Op. Att'y Gen. No. 5241.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 5 Am. Jur. 2d Architects § 23.

6 C.J.S. Architects § 3.

### **61-15-11. Criminal offender's character evaluation. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Architectural Act [this article].

**History:** 1953 Comp., § 67-12-10, enacted by Laws 1974, ch. 78, § 20; 1987, ch. 282, § 12.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, substituted "the Architectural Act" for "Sections 67-12-1 through 67-12-10 NMSA 1953".

### **61-15-12. Refusal, suspension or revocation of certificate of registration. (Effective until July 1, 2000.)**

A. In accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may refuse to issue, may suspend or may revoke any certificate of registration as an architect upon the grounds that the licensee or applicant is:

(1) found guilty by the board of any fraud or deceit in obtaining a certificate of registration;

(2) guilty of gross negligence, incompetency or misconduct in the practice of architecture;

(3) guilty of stamping with his official seal any plans, specifications, plats or reports in violation of the Architectural Act [this article];

(4) guilty of practicing architecture without a valid and current license;

(5) guilty of representing himself to be an architect without having a valid and current certificate of registration as an architect;

(6) guilty of dishonorable or unprofessional conduct as defined by regulation of the board; or

(7) convicted of a felony.

B. Disciplinary proceedings may be instituted by any person, shall be instituted by sworn complaint and shall conform to the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of the costs for the copy.

C. The board may modify any prior order of revocation, suspension or refusal to issue a license or certificate of registration of an architect, but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided, however, that any cessation of the practice of architecture for twelve months or more shall require the architect to undergo such additional examination as the board determines necessary.

D. Nothing in the Architectural Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of that act provided that the board, after an informal hearing, determines that the public interest will be adequately served by a suitable written notice or warning or by the suspension of the offender's license or certificate of registration for a period not to exceed thirty days.

**History:** 1978 Comp., § 61-15-12, enacted by Laws 1979, ch. 362, § 9; 1987, ch. 282, § 13.

## ANNOTATIONS

**Delayed repeals.** - See 61-15-13 NMSA 1978.

**The 1987 amendment,** effective June 19, 1987, in Subsection A added Paragraph (7) and made minor changes in language.

### **61-15-13. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board of examiners for architects is terminated on July 1, 1999 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 15 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 61, Article 15 NMSA 1978 is repealed.

**History:** Laws 1979, ch. 362, § 10; 1981, ch. 241, § 28; 1983, ch. 63, § 3; 1987, ch. 282, § 14; 1987, ch. 333, § 8; 1993, ch. 83, § 4.

## ANNOTATIONS

**The 1987 amendments.** - Laws 1987, ch. 282, § 14 and Laws 1987, ch. 333, § 8, both effective June 19, 1987, enacted identical amendments to this section. Both substituted "1993" for "1987" in the first sentence and "1994" for "1988" in the second and third sentences. The section is set out as amended by Laws 1987, ch. 333, § 8. See 12-1-8 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence and "July 1, 2000" for "July 1, 1994" in the last two sentences; and made a minor stylistic change.

**Severability clauses.** - Laws 1987, ch. 282, § 16, effective June 19, 1987, provides for the severability of the act if any part or application thereof is held invalid.

## ARTICLE 16 AUCTIONS

### 61-16-1. [Auction sales; puffing; fees.]

It shall be unlawful for any person who shall sell at public acution [auction] any personal property belonging to another, to bid on any article placed by him at auction, or employ, or in any way allow puffers to bid for him at any such auction, nor shall such auctioneer receive from the owner of the goods auctioneered by him, a larger fee than ten per centum of the amount brought by goods sold at public auction, when such amount is less than two hundred dollars [\$200]; nor more than eight per centum when such amount exceeds two hundred [dollars] [\$200] and is less than five hundred dollars [\$500], nor more than five per centum when the amount exceeds five hundred dollars [\$500].

**History:** Laws 1889, ch. 95, § 1; C.L. 1897, § 1290; Code 1915, § 377; C.S. 1929, § 10-101; 1941 Comp., § 51-1501; 1953 Comp., § 67-13-1.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 22, 23, 61.

Effect on auction sale of by-bidding or puffing, 46 A.L.R. 122.

Withdrawal of property from auction sale, 37 A.L.R.2d 1049.

Auctioneer's action for commissions against seller, 38 A.L.R.4th 170.

Auction sales under UCC § 2-328, 44 A.L.R.4th 110.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 3, 15, 22.

### **61-16-2. [Puffing; illegal fees; penalty; civil liability.]**

Any person whether as auctioneer or as a puffer of any auctioneer who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction before any justice of the peace [magistrate] of the precinct where the offense shall have been committed, shall be fined in a sum not less than twenty-five [\$25.00] nor more than fifty dollars [\$50.00] and costs of prosecution, or by imprisonment in the county jail for no less than thirty days, and besides such person shall be bound to the person bidding at any such public auction and injured by the unlawful bidding of the auctioneer or his puffers in double the amount of the price of the articles such person bade on, to be recovered by civil action.

**History:** Laws 1889, ch. 95, § 2; C.L. 1897, § 1291; Code 1915, § 378; C.S. 1929, § 10-102; 1941 Comp., § 51-1502; 1953 Comp., § 67-13-2.

#### **ANNOTATIONS**

**Cross-references.** - For the establishment and organization of magistrate courts, see 35-1-1 NMSA 1978 et seq.

**Meaning of "this chapter".** - The term "this chapter" apparently refers to Laws 1889, ch. 95, §§ 1 and 2, which are compiled as 61-16-1 and 61-16-2 NMSA 1978.

**Abolishment of office of justice of the peace.** - The office of justice of the peace has been abolished by 35-1-38 NMSA 1978, and the jurisdiction, powers and duties conferred by law upon justices of the peace transferred to the magistrate courts. See N.M. Const., art. VI, § 31.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 22, 23, 63, 66.

7A C.J.S. Auctions and Auctioneers §§ 23, 25, 27.

### **61-16-3. Purpose.**

The purpose of the present act [61-16-3 to 61-16-17 NMSA 1978] is to regulate auction sales of jewelry in order to prevent fraud, deception and misrepresentation upon the buying public at such sales. It is to be construed liberally to effectuate this purpose.

**History:** Laws 1941, ch. 45, § 1; 1941 Comp., § 51-1503; 1953 Comp., § 67-13-3.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 9, 40.

Jewelry auctions, regulation and licensing of, 53 A.L.R.2d 1433.

7A C.J.S. Auctions and Auctioneers §§ 3, 8, 27.

#### **61-16-4. Scope; auction sales exceptions.**

A. Chapter 61, Article 16 NMSA 1978 shall apply to all sales by auction, other than those specifically excepted in this section, of gold, silver, plated ware, precious or semiprecious stones, watches, clocks and goods, wares and merchandise commonly classified as jewelry of any kind and nature. It shall not apply to:

(1) bona fide judicial sales; or

(2) bona fide sales upon foreclosure of a chattel mortgage landlord's lien or other lien or like interests.

B. Auction sales of jewelry by transferees upon judicial or bankruptcy sales shall be subject to all the provisions of Chapter 61, Article 16 NMSA 1978.

**History:** Laws 1941, ch. 45, § 2; 1941 Comp., § 51-1504; 1953 Comp., § 67-13-4; Laws 1993, ch. 59, § 1.

#### **ANNOTATIONS**

**The 1993 amendment**, effective July 1, 1993, inserted "auction sales exceptions" in the catchline; substituted "Chapter 61, Article 16 NMSA 1978" for "This act" at the beginning of Subsection A and for "hereof" at the end of Subsection B; inserted "in this section" in the first sentence of Subsection A; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 9, 40.

7A C.J.S. Auctions and Auctioneers §§ 3, 8.

#### **61-16-5. Sales prohibited without license.**

All sales of jewelry by auction within the scope of Chapter 61, Article 16 NMSA 1978 are forbidden unless a license issued pursuant to that article has been obtained and is in effect. No such sales whether licensed or not shall be held or be or remain open for business for a period of more than fifteen consecutive days exclusive of Sundays and legal holidays nor shall any license be granted for a sale of greater duration.

**History:** Laws 1941, ch. 45, § 3; 1941 Comp., § 51-1505; 1953 Comp., § 67-13-5; Laws 1993, ch. 59, § 2.

## ANNOTATIONS

**The 1993 amendment**, effective July 1, 1993, substituted "Sales prohibited without license" for "Prohibition" in the catchline; deleted former subsection designations, so that former Subsections A and C become the first and second sentences of this section; substituted "Chapter 61, Article 16 NMSA 1978" and "that article" for "this Act" in the first sentence; and deleted former Subsection B, pertaining to limitations on the hours for sales.

**Law reviews.** - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 2, 3, 6, 9.

Unlicensed auctioneer's right to recover compensation, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

License restrictions and regulations, validity, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

Discrimination against nonresident by license, 61 A.L.R. 346, 112 A.L.R. 63.

Validity, construction and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

7A C.J.S. Auctions and Auctioneers §§ 3, 4.

### **61-16-6. Licenses.**

Licenses to conduct auction sales of jewelry within this act [61-16-3 to 61-16-17 NMSA 1978] in any municipality shall be secured upon application filed at least thirty days prior to the proposed auction sale in conformity with this act to the governing body of such municipality. Licenses to conduct such sales outside the boundaries of any incorporated municipality shall be secured upon application filed at least thirty (30) days prior to the proposed auction sale in conformity with this act to the board of county commissioners of the county wherein the sale is to be held. The municipal or county board, as the case may be, is hereinafter referred to as "the licensing authority."

**History:** Laws 1941, ch. 45, § 4; 1941 Comp., § 51-1506; 1953 Comp., § 67-13-6.

## ANNOTATIONS

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 2 to 9.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers § 4.

### **61-16-7. Application for license.**

Every application for a license hereunder shall be under oath and shall include at least the following:

A. the name, residence and business address and age of the applicant together with an account of the applicant's occupation for the five years preceding the application;

B. the name, residence and business address and age of any person who will participate in conducting the proposed auction sale together with an account of the occupation of such person or persons for the five years preceding the application;

C. a complete inventory of the merchandise to be sold at the proposed auction, assigning a number to each item describing it specifically and giving as to each at least the following information:

(1) in the case of watches and clocks: the movement number, case number and model number, if any; a statement as to whether the article is new or rebuilt; the correct number of jewels; the kind of case, and the quality of the case; whether solid, gold or silver, gold-filled and the quality of any plating; the approximate year of manufacture;

(2) in the case of diamonds, whether sold separately or as a part of other jewelry: the exact weight; the color and quality; the degree of fineness; and the degree of perfection;

(3) in the case of precious and semiprecious stones other than diamonds, whether sold separately or as a part of other jewelry: the exact weight, the degree of fineness; and whether the stone is mined, reconstructed, synthetic or imitation;

(4) in the case of metallic wares, except watches, and other jewelry: the fineness of the metal, whether solid, filled or plated; and the quality of the plating, if there be plating;

D. an oath to observe the laws of this state and of any subdivision thereof wherein the sale is to be held;

E. the address, hours and dates of the proposed sale, only one place of auction being permitted;

F. the proposed terms of all sales;

G. a statement whether or not any auction license issued to the applicant has been denied or revoked.

All applications together with accompanying documents shall be kept by the municipal or county clerk as the case may be and shall be open to public inspection at all reasonable hours.

**History:** Laws 1941, ch. 45, § 5; 1941 Comp., § 51-1507; 1953 Comp., § 67-13-7.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers § 6.

Persons eligible for license, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

7A C.J.S. Auctions and Auctioneers § 4.

### **61-16-8. Bond.**

In addition, all such applications for license shall be accompanied by the bond of the applicant in the penal sum of five thousand dollars (\$5,000) running to the state of New Mexico, and conditioned to secure the faithful observance of this act [61-16-3 to 61-16-17 NMSA 1978] by all persons taking part in the conduct of any auction hereunder. Such bonds shall be secured by two or more individual sureties each of whom must be qualified by ownership of property subject to execution within this state over and above all just debts and liabilities of a value equal to the penal sum of the bond; or by one corporate surety qualified to do business in this state.

**History:** Laws 1941, ch. 45, § 6; 1941 Comp., § 51-1508; 1953 Comp., § 67-13-8.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 5, 7.

7A C.J.S. Auctions and Auctioneers § 26.

### **61-16-9. Fees.**

All applications shall be accompanied by the payment in cash to the municipality or county as the case may be of an amount equal to twenty-five dollars (\$25.00) for each day of the proposed sale as its duration is shown by the application. Such fees are to be returned to the applicant in the event the application is denied or a pro rata share thereof shall be returned if the sale is voluntarily discontinued before its proposed

duration has expired. No return of any sums shall be made in the event said sale is terminated for any violation hereof.

**History:** Laws 1941, ch. 45, § 7; 1941 Comp., § 51-1509; 1953 Comp., § 67-13-9.

### **61-16-10. Inspectors.**

Said fees shall be used to defray the expense of employing a special inspector or inspectors who shall remain on the premises upon which the auction sale is conducted during all times when the same is open for business. The special inspectors shall be appointed specially for each auction by the licensing authority and so far as possible regularly employed police officers or deputy sheriffs shall be used for this purpose. He shall have power and be under duty to supervise the auction to ensure observance of the laws of this state and to make arrests in the same manner and to the same extent as other peace officers. Any surplus of fees over and above the cost of employing such special inspector or inspectors shall be retained by the municipality or county.

**History:** Laws 1941, ch. 45, § 8; 1941 Comp., § 51-1510; 1953 Comp., § 67-13-10.

### **61-16-11. Hearing.**

Upon the presentation of an application for a license hereunder the municipal or county clerk as the case may be shall set a date for hearing thereon not less than one week nor more than three weeks thereafter, said hearing to be held at either a regular or special meeting of the licensing authority. Notice of said hearing shall be given forthwith by registered mail to each person or company engaged in the business of selling jewelry within the particular municipality or county.

At the hearing upon said application the applicant shall attend and shall submit to an examination touching his application under oath to be conducted by the municipal or district attorney as the case may be, and by any citizen of said municipality or county, and by the attorney for any jeweler or any association of jewelers doing business within this state. The applicant or any person, persons, corporations or associations opposing the granting of a license may introduce evidence either [by] written or oral testimony or by affidavit.

If the governing board of the county or municipality as the case may be shall determine that the applicant is not disqualified, and that the application conforms with the law a license shall be granted; otherwise a license shall not be granted. As a condition of granting the license the licensing board may require more complete descriptions of the items in the inventory if they deem the tendered descriptions to be incomplete.

**History:** Laws 1941, ch. 45; § 9; 1941 Comp., § 51-1511; 1953 Comp., § 67-13-11.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers § 6.

53 C.J.S. Licenses § 43.

### **61-16-12. Licenses limited.**

Licenses issued hereunder shall be expressly limited to the particular times and premises described in the application as required in Section 5(e) [61-16-7E NMSA 1978] hereof. A license issued hereunder shall not be held to sanction any auction sale of jewelry at any time or place other than that described in the application thereof.

**History:** Laws 1941, ch. 45, § 10; 1941 Comp., § 51-1512; 1953 Comp., § 67-13-12.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 2 to 9.

7A C.J.S. Auctions and Auctioneers § 4.

### **61-16-13. Persons disqualified.**

No person shall be granted a license, if he or any of his agents, principals or employees:

A. has been convicted of a violation of this act [61-16-3 to 61-16-17 NMSA 1978] or of Sections 61-16-1 and 61-16-2 NMSA 1978;

B. has had a license issued under this act revoked;

C. has held a jewelry auction sale within thirty (30) days prior to the date given in the application for the beginning of the sale sought to be licensed.

**History:** Laws 1941, ch. 45, § 11; 1941 Comp., § 51-1513; 1953 Comp., § 67-13-13.

#### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers § 6.

7A C.J.S. Auctions and Auctioneers § 4.

### **61-16-14. Offenses.**

It shall be unlawful:

A. to employ skills or puffers at any such auction sale or to offer or to make or to procure to be offered or made any false bid or offer any false bid to buy or pretend to buy any article sold or offered for sale;

B. to make or attempt to make any sale to any but a bona fide bidder for cash at the highest bid above the reserve price, if any, named in the inventory required by Sec. [Section] 5(c) [61-16-7C NMSA 1978] hereof;

C. to misrepresent the cost price, or trade name or quality of any article offered for sale;

D. to fail to announce in a clear audible tone as to each article offered for sale its true description as found in the inventory required by Section 5(c) hereof;

E. to fail to attach to each article sold upon its delivery a card upon which shall be legibly written its inventory description and number;

F. to make any false statement in the application for license hereunder or the inventory filed therewith;

G. to sell or attempt to sell any article or merchandise falling within the class described in Section 2 [61-16-4 NMSA 1978] hereof that has not been included in the inventory required by Section 5(c) hereof;

H. for a licensee to conduct or attempt to conduct an auction within this act [61-16-3 to 61-16-17 NMSA 1978] other than on the premises described in the application as required by Section 5(e) [61-16-7E NMSA 1978].

**History:** Laws 1941, ch. 45, § 12; 1941 Comp., § 51-1514; 1953 Comp., § 67-13-14.

## ANNOTATIONS

**Cross-references.** - As to the penalty for employing puffers, see 61-16-1 and 61-16-2 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 11 to 29, 63.

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 A.L.R.2d 1362.

Implied or apparent authority of agent selling personal property to make warranties, 40 A.L.R.2d 285.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 8 to 17, 27.

## **61-16-15. Penalties.**

Any person or corporation violating the provisions of Section 3(a) [61-16-5A NMSA 1978] of this act shall upon conviction thereof be fined not less than one hundred [\$100] nor more than one thousand dollars [\$1,000] and may be imprisoned for not more than sixty (60) days.

Any person or corporation violating any other provisions of this act [61-16-3 to 61-16-17 NMSA 1978] shall upon conviction be fined not less than twenty-five [\$25.00] nor more than one hundred dollars [\$100] for each offense. Each individual illegal sale at said auction shall constitute a separate offense. Upon conviction of the licensee or his agent or principal or employee of any offense hereunder the license shall be revoked forthwith by the court in which the conviction is had.

**History:** Laws 1941, ch. 45, § 13; 1941 Comp., § 51-1515; 1953 Comp., § 67-13-15.

## **61-16-16. Suspension of license.**

Upon the filing of criminal proceedings for violation of this act [61-16-3 to 61-16-17 NMSA 1978] against any licensee or any person operating the auction, any citizen may apply to the county or municipal board which granted the license for an immediate suspension of said license. The board shall determine forthwith whether there is probable cause to believe that this act has been violated and upon an affirmative determination shall forthwith suspend the operation of the license effective upon delivery of written notice thereof to any person conducting the auction sale or soliciting bids. The suspension shall operate until the acquittal of the person accused of such violation or until revocation of the license following conviction.

**History:** Laws 1941, ch. 45, § 14; 1941 Comp., § 51-1516; 1953 Comp., § 67-13-16.

## **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 2 to 9.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

7A C.J.S. Auctions and Auctioneers § 4.

## **61-16-17. Recovery on bond.**

The state of New Mexico for the purpose of recovery of fines and penalties hereunder, and any person purchasing at any auction hereunder for the satisfaction of any civil judgment in an action for misrepresentation or fraud, or arising out of any violation of this act [61-16-3 to 61-16-17 NMSA 1978], shall have a right of action upon the bond required by Section 6 [61-16-8 NMSA 1978] hereof. Such action shall be brought in the

name of the state of New Mexico only or in the name of the state of New Mexico to the use of the party entitled to recover upon said bond, as the case may be.

**History:** Laws 1941, ch. 45, § 5; 1941 Comp., § 51-1517; 1953 Comp., § 67-13-17.

### **ANNOTATIONS**

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 7 Am. Jur. 2d Auctions and Auctioneers §§ 5, 7.

Liability of auctioneer or clerk to buyer as to title, condition or quality of goods, 80 A.L.R.2d 1237.

7A C.J.S. Auctions and Auctioneers §§ 3, 26.

## **ARTICLE 17 BARBERS**

(Repealed by Laws 1979, ch. 372, § 7; 1987, ch. 107, § 12; 1993, ch. 171, § 28.)

### **61-17-1 to 61-17-42. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 171, § 28 repeals former 61-17-1 to 61-17-6 NMSA 1978, as enacted by Laws 1963, ch. 103, § 1, and as amended by Laws 1981, ch. 27, § 1, Laws 1987, ch. 107, §§ 1 to 3, and Laws 1988, ch. 38, § 1, concerning the licensing of barbers, the short title, definitions, regulation of barber schools, barber instructors, and barber qualifications, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1987, ch. 107, § 12 repeals former 61-17-7 NMSA 1978, as amended by Laws 1979, ch. 372, § 1, relating to apprentice qualifications, effective June 19, 1987. For the provisions of the former section, see 1981 Replacement Pamphlet.

Laws 1993, ch. 171, § 28, repeals former 61-17-8 NMSA 1978, as amended by Laws 1987, ch. 107, § 4, concerning reciprocity with other states, territories or possessions of the United States, or the District of Columbia, effective June 18, 1993. For provisions of the former section, see 1987 Replacement Pamphlet.

Laws 1987, ch. 107, § 12, repeals former 61-17-9 NMSA 1978 as enacted by Laws 1937, ch. 220, § 7, relating to registered apprentices from other states, effective June 19, 1987. For the provisions of the former section, see 1981 Replacement Pamphlet.

Laws 1993, ch. 171, § 28 repeals former 61-17-10 to 61-17-25 NMSA 1978, as enacted by Laws 1937, ch. 220, §§ 10, 12, and 15 to 17; and Laws 1979, ch. 372, § 3; and as amended by Laws 1977, ch. 247, § 175; Laws 1983, ch. 262, §§ 2, 3; and Laws 1987, ch. 107, §§ 5 to 11; concerning the issuance, display, renewal, suspension or revocation of a certificate of registration, creating, organizing, and empowering the board of barber examiners, and providing laws concerning sanitation, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1979, ch. 372, § 7, repeals former 61-17-26 to 61-17-39 NMSA 1978, relating to unfair, unjust and uneconomic trading practices in the operation of barber shops in the state and the prohibition thereof.

Laws 1993, ch. 171, § 28 repeals former 61-17-40 to 61-17-42 NMSA 1978, as enacted by Laws 1974, ch. 78, § 21; and Laws 1983, ch. 262, § 5; and as amended by Laws 1987, ch. 333, § 9; concerning application of the Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, providing for the delayed repeal of this article, and construing this article, effective June 18, 1993. For provisions of the former sections, see 1987 Replacement Pamphlet.

## **ARTICLE 17A**

### **BARBERS AND COSMETOLOGISTS**

#### **61-17A-1. Short title. (Effective until July 1, 1999.)**

Sections 1 through 24 [61-17A-1 to 61-17A-24 NMSA 1978] of this act may be cited as the "Barbers and Cosmetologists Act".

**History:** Laws 1993, ch. 171, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Law reviews.** - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1972).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists §§ 1 to 11.

Places or persons within purview of statute or ordinance as to licensing of barbers, 31 A.L.R. 433, 59 A.L.R. 543.

Validity, construction, and effect of statute or ordinance regulating beauty culture schools, 56 A.L.R.2d 879.

39A C.J.S. Health and Environment §§ 37 to 39.

## **61-17A-2. Definitions. (Effective until July 1, 1999.)**

As used in the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978]:

A. "barber" means a person, other than a student, who for compensation engages in barbering;

B. "board" means the board of barbers and cosmetologists;

C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

D. "electrologist" means a person who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

E. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;

F. "esthetician" means a person who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;

G. "manicurist-pedicurist" means a person who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet; and

H. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering.

**History:** Laws 1993, ch. 171, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-3. Barbering defined. (Effective until July 1, 1999.)**

Barbering includes any one or any combination of the following practices when done upon the upper part of the human body for cosmetic purposes for the public generally, upon male or female:

- A. shaving or trimming the beard or cutting the hair;
- B. curling and waving, including permanent waving, the hair;
- C. giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
- D. shampooing, bleaching or dyeing the hair or applying tonics; or
- E. applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

**History:** Laws 1993, ch. 171, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-4. Cosmetology defined. (Effective until July 1, 1999.)**

Cosmetology means the practice of those services that include:

- A. arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances;
- B. using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person;

- C. manicuring and pedicuring the nails of a person;
- D. caring for and servicing wigs and hair pieces; or
- E. removing of unwanted hair except by means of electrology.

**History:** Laws 1993, ch. 171, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-5. License required; certification required. (Effective until July 1, 1999.)**

A. Unless licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, cosmetology or electrology for compensation.

D. Unless certified by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation.

**History:** Laws 1993, ch. 171, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Inapplicable in federal enclave.** - The state of New Mexico may not require that barbers employed at White Sands missile range by a concessionaire under contract with the army and air force exchange service be subject to licensing and other regulation under the laws of New Mexico as administered by the state board of barber examiners. 1959-60 Op. Att'y Gen. No. 60-15.

**Inspection prerequisite to reopening.** - The opening of a barber shop after it was closed for some years constitutes the opening or establishment of such shop for which the inspection fee is payable. 1937-38 Op. Att'y Gen. 241.

### **61-17A-6. Board created; membership. (Effective until July 1, 1999.)**

A. The "board of barbers and cosmetologists" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of nine members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the nine members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] and shall have at least five years' practical experience in their respective occupations. Of those five, two members shall be licensed barbers, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining four members shall be public members. Neither the public members nor their spouses shall have ever been licensed or certified pursuant to the provisions of the Barbers and Cosmetologists Act or similar prior legislation, or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chairman and such other officers as it deems necessary. The board shall meet at the call of the chairman, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board regulation.

**History:** Laws 1993, ch. 171, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Temporary provisions.** - Laws 1993, ch. 171, § 26A, effective June 18, 1993, provides that, effective June 18, 1993, the property, money, files, records and personnel of the board of barber examiners and the board of cosmetologists shall be transferred to the board of barbers and cosmetologists.

**Removal without hearing.** - Members of the former state board of barber examiners were policy-making persons, having no property interest in their positions; they were not statutorily, nor constitutionally, entitled to hearings before removal from their positions. State ex rel. Duran v. Anaya, 102 N.M. 609, 698 P.2d 882 (1985) (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 5.

## **61-17A-7. Board powers and duties. (Effective until July 1, 1999.)**

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978];

(2) establish fees;

(3) provide for the examination, licensure and license renewal of applicants for licensure;

(4) establish standards for and provide for the examination, certification and renewal of certification of manicurists-pedicurists, estheticians and electrologists;

(5) adopt a seal;

(6) furnish copies of rules and regulations and sanitary requirements adopted by the board to each owner or manager of an establishment or school;

(7) keep a record of its proceedings and a register of applicants for certification or licensure;

(8) provide for the licensure of barbers and cosmetologists, the certification of manicurist-pedicurists, estheticians and electrologists and the licensure of instructors, schools and establishments;

(9) establish administrative penalties and fines;

(10) create and establish standards for special licenses; and

(11) hire an executive director and such other staff as is necessary to carry out the provisions of the Barbers and Cosmetologists Act.

B. The board may establish continuing education requirements as requirements for licensure.

C. Any member of the board, its employees or agents may enter and inspect any school or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

**History:** Laws 1993, ch. 171, § 7.

### ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Fee not waivable.** - A barber shop had to pay the establishment license fee in order to be a valid operation and the state board had no authority to waive the requirement that a shop pay the fee. 1951-52 Op. Att'y Gen. No. 5407.

**Inspection fee not chargeable for relocation.** - Inspection fee provision applied only to barber shops which were opening for business for the first time. It did not apply where mere location of shop was changed. 1937-38 Op. Att'y Gen. 142.

**But chargeable for reopening.** - The opening of a barber shop after it was closed for some years constituted the opening or establishment of such shop for which the inspection fee was payable under former 61-17-13 NMSA 1978. 1937-38 Op. Att'y Gen. 241.

**No fee chargeable for certificate transfer.** - The board could pass a rule requiring a transfer of the annual establishment license mentioned in former 61-17-13 NMSA 1978 in the books of the board, or by an exchange of the certificate transferred for a new certificate issued in lieu of the old one and in the name of the vendee, but it could not make any charge for this transfer or exchange of license certificates, since former 61-17-13 NMSA 1978 did not authorize such a charge and the board could not, by rule, require the payment of charges not authorized by this section. 1939-40 Op. Att'y Gen. 91.

**Board deemed state officers for venue purposes.** - The former board of barber examiners was clothed by the legislature with powers and duties of statewide scope, the exercise of which involved some portion of the governmental power. Hence the board itself, as well as its component members, was a state officer for venue purposes. *Tudesque v. New Mexico State Bd. of Barber Exmrs.*, 65 N.M. 42, 331 P.2d 1104 (1958).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 5 et seq.

### **61-17A-8. Requirements for licensure; barbers. (Effective until July 1, 1999.)**

A. A barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

- (1) has an education equivalent to the completion of the second year of high school;
- (2) is at least seventeen years of age;
- (3) has completed a course in barbering of at least twelve hundred hours in a school approved by the board; and
- (4) has passed an examination approved by the board.

B. The holder of a barber license has the right and privilege to use the title "barber" and to use a barber pole, the traditional striped, vertical emblem of the barbering trade.

**History:** Laws 1993, ch. 171, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Paroled felon not barred from applying.** - A convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or any other trade, profession or occupation in this state. 1957-58 Op. Att'y Gen. No. 58-214.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologist §§ 9 to 11.

**61-17A-9. Licensure requirements; cosmetologists. (Effective until July 1, 1999.)**

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

- (1) is at least seventeen years of age;
- (2) has an education equivalent to the completion of the second year of high school;
- (3) has completed a course in cosmetology of at least sixteen hundred hours at a school approved by the board; and
- (4) has passed an examination approved by the board.

B. The holder of a cosmetologist license has the right and privilege to place the initials "R.C." immediately following his name to indicate his licensure as a cosmetologist.

**History:** Laws 1993, ch. 171, § 9.

**ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

**61-17A-10. Certification of manicurists-pedicurists, estheticians and electrologists. (Effective until July 1, 1999.)**

A. The board shall provide for the certification of manicurists-pedicurists. The board shall issue a manicurist-pedicurist certificate to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding a manicurist-pedicurist certificate has the right and privilege to place the initials "R.M." immediately following his name.

B. The board shall provide for the certification of estheticians. The board shall issue a esthetician certification to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding an esthetician certificate has the right and privilege to place the initials "R.F." immediately following his name.

C. The board shall provide for the certification of electrologists. The board shall issue an electrologist certificate to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board. Any person holding an electrologist certificate has the right and privilege to place the initials "R.E." immediately following his name.

**History:** Laws 1993, ch. 171, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-11. Licensure of instructors. (Effective until July 1, 1999.)**

A. A cosmetologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is a licensed cosmetologist;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

B. A barber instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is a licensed barber;

(2) has completed at least a four-year high school course of study or its equivalent as approved by the board;

(3) has met all requirements established by the board; and

(4) has passed an examination approved by the board.

C. An electrologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he complies with all requirements established by the board.

D. The holder of an instructor license has the right and privilege to place the initials "R.I." immediately following his name to designate that he is a licensed instructor.

**History:** Laws 1993, ch. 171, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**College teaching credit not required.** - The New Mexico state barbers board could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957-58 Op. Att'y Gen. No. 57-245 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 4.

### **61-17A-12. Licensure of schools. (Effective until July 1, 1999.)**

A. The board shall provide for the licensure of barber schools. The board shall issue a barber school license to any barber school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

B. The board shall provide for the licensure of cosmetology schools. The board shall issue a cosmetology school license to any cosmetology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum,

instructional and graduation requirements and record-keeping procedures established by the board.

C. The board shall provide for the licensure of electrology schools. The board shall issue an electrology school license to any electrology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

D. The board shall provide for the licensure of specialty schools. The board shall issue a specialty school license to any specialty school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

E. The board shall establish crossover credit standards for training available at either barber schools or cosmetology schools that may be used in meeting licensure requirements in either profession.

F. In providing for licensure of schools, the board shall establish procedures for alternative teaching agreements, or "teach-out" arrangements in the event a school is unable to meet its contracted teaching obligations.

**History:** Laws 1993, ch. 171, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**No upper limit on required hours.** - The language of former 61-17-4 NMSA 1978 used clearly stated the minimum number of hours necessary for graduation and placed no maximum hours upon the course of study. 1957-58 Op. Att'y Gen. No. 57-153.

**Students not required to charge fees.** - Former 61-17-4 NMSA 1978 was silent as to fees to be charged by student barbers, if any. The legislature could authorize a minimum fee to be charged for services performed by student barbers, but in lieu of such specific statutory authorization, student barbers, attending barber school, could refuse to accept or collect any charge for barbering services rendered to the public. 1957-58 Op. Att'y Gen. No. 57-153.

**College teaching credit not required.** - Under former 61-17-4 NMSA 1978, the New Mexico state barbers board could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957-58 Op. Att'y Gen. No. 57-245 (opinion rendered under former law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists §§ 4, 8.

Liability of cosmetology school for injury to patron, 81 A.L.R.4th 444.

### **61-17A-13. Tuition recovery fund created; administration; claims. (Effective until July 1, 1999.)**

A. The "tuition recovery fund" is created in the state treasury. Money in the fund is appropriated to the board for the purpose of paying claims against the tuition recovery fund, including refunds to lending institutions. Money appropriated to the fund or accruing to it shall not be transferred to another fund or encumbered or disbursed in any manner except for the purposes set forth in the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978]; provided that money in the fund shall be invested by the state treasurer in the manner of other state funds. The fund shall not revert at the end of the fiscal year. Disbursements from the fund shall only be made upon warrant drawn by the secretary of finance and administration upon vouchers signed by the executive director of the board.

B. The board shall administer the tuition recovery fund. Money in the fund shall be used to indemnify students damaged as a result of a barber school or cosmetology school ceasing operation or terminating a program prior to students having completed the programs for which they have contracted.

C. Claims against the fund shall be filed with the board on forms approved by the board. Claims shall be filed within twelve months of a licensed school ceasing operation. The board shall by regulation provide for consideration and administration of claims made against the fund. The board is authorized to sue for replenishment of the fund when depletion of the fund is a direct result of a barber school or cosmetology school ceasing operation.

D. The board shall dedicate a portion of the annual licensure fee assessed every barber school and cosmetology school to the tuition recovery fund. When the balance in the fund reaches an amount set by the board, the board shall discontinue dedication of a portion of the fee.

**History:** Laws 1993, ch. 171, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-14. Barbers and cosmetologists fund created (Effective until July 1, 1999.)**

The "barbers and cosmetologists fund" is created in the state treasury. All license fees, charges and fines imposed by the board shall be deposited in the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978]. Any balance remaining in the fund at the end of each fiscal year shall not revert to the general fund.

**History:** Laws 1993, ch. 171, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Temporary provisions.** - Laws 1993, ch. 171, § 26B, effective June 18, 1993, provides that, effective June 18, 1993, all money in the state board of barber examiners fund shall be transferred to the barbers and cosmetologists fund.

### **61-17A-15. Licensure of all establishments. (Effective until July 1, 1999.)**

The board shall provide for the licensure of all establishments. The board shall issue a license to establishments and clinics that submit a completed application, accompanied by the required fees and documentation, and that submit satisfactory evidence of compliance with all requirements established by the board.

**History:** Laws 1993, ch. 171, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective

on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**61-17A-16. Fees. (Effective until July 1, 1999.)**

The board may, by regulation, establish initial license and renewal fees not to exceed the following:

|                              |                     |
|------------------------------|---------------------|
| ..... establishment license  | .....\$125          |
| ..... school license         | .....\$600          |
| ..... relocation of a school | .....\$300          |
| license .....                | cosmetologist ..... |
| .....                        | .....\$25.00        |
| ..... barber license         | .....\$25.00        |
| ..... specialty certificate  | .....\$25.00        |
| ..... instructor license     | .....\$30.00        |
| ..... duplicate license      | .....\$20.00        |
| ..... temporary license      | .....\$20.00        |

|                               |          |
|-------------------------------|----------|
| administrative fee            | \$20.00  |
| limited license fee           | \$100    |
| licensure through reciprocity | \$150    |
| transcript                    | \$20.00  |
| examinations                  | \$50.00. |

**History:** Laws 1993, ch. 171, § 16.

### ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-17. Licensure under prior law; endorsement. (Effective until July 1, 1999.)**

A. Any person licensed or certified as a barber or cosmetologist, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or any person holding an establishment license, clinic license or school owner's license under any prior laws of this state, which license is valid on the effective date of the Barbers and Cosmetologists Act, shall be held to be licensed or certified under the provisions of that act and shall be entitled to the renewal of his license or certificate as provided in that act.

B. The board may grant a license pursuant to the provisions of the Barbers and Cosmetologists Act without an examination, upon payment of the required fee, provided that the applicant submits proof that he:

(1) holds a current license or certification from another state, territory or possession of the United States, or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and

(2) meets all other requirements for reciprocity as determined by regulation of the board.

**History:** Laws 1993, ch. 171, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-17A-18. License or certificate to be displayed; notice of change of place of business. (Effective until July 1, 1999.)**

Every holder of a license shall notify the executive director of his new place of business, and, upon receipt of the notification, the executive director shall make the necessary change in the books. Every holder of a license or certificate shall display it in a conspicuous place at his workplace.

**History:** Laws 1993, ch. 171, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

#### **61-17A-19. License nontransferable. (Effective until July 1, 1999.)**

Each license shall be issued under the authority of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] by the board in the name of the licensee. The license may not be the subject of a sale, transfer, assignment, conveyance, lease, bequest, gift or other means of transfer.

**History:** Laws 1993, ch. 171, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-20. Duration, restoration and renewal of licenses and certificates. (Effective until July 1, 1999.)**

A. The original issuance and renewal of licenses to practice as a barber, cosmetologist or instructor, or the certification as an esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee or certificate holder fails to renew the license or certificate for the next year, his license or certificate is void; provided he may restore his license or certificate at any time during the year following expiration upon paying the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee or certificate holder fails to restore his license or certificate within one year following its expiration, his license or certificate may not be restored, and, in order for such licensee or certificate holder to again obtain a license or certificate, he shall pay the fees and furnish the proofs and submit to such examinations as are required of applicants for original licensure or certification.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew his license within thirty days after the date his license expires, his license is void, and, in order to again obtain a license, he shall be required to submit an application, any required documentation, pay the renewal fee and a late fee not to exceed one hundred dollars (\$100) as set forth by board rules.

C. The board may establish a staggered system of license expiration and a procedure for proration of fees for licenses issued for less than a full year.

**History:** Laws 1993, ch. 171, § 20.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 9.

**61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license. (Effective until July 1, 1999.)**

A. The board shall, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

- (1) the commission of any offense described in the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978];
- (2) the violation of any sanitary regulation promulgated by the board;
- (3) malpractice or incompetency;
- (4) advertising by means of knowingly false or deceptive statements;
- (5) habitual drunkenness or habitual addiction to the use of habit-forming drugs;
- (6) continuing to be employed or practicing in an establishment in which the sanitary regulations of the board, of the department of health or of any other lawfully constituted board, promulgated for the regulation of establishments, schools or electrology clinics, are known by the licensee to be violated;
- (7) notification of a licensee's default on a student loan;
- (8) gross continued negligence in observing the rules and regulations;
- (9) renting, loaning or allowing the use of the license to any unlicensed person under the provisions of the Barbers and Cosmetologists Act;
- (10) dishonesty or unfair or deceptive practices;
- (11) sexual, racial or religious harassment;
- (12) conduct of illegal activities in an establishment or by a licensee;
- (13) conviction of a crime involving moral turpitude; or
- (14) aiding, abetting or conspiring to evade or violate the provisions of the Barbers and Cosmetologists Act.

B. Any license suspended or revoked shall be delivered to the board or any agent of the board upon demand.

**History:** Laws 1993, ch. 171, § 21.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Law reviews.** - For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M. L. Rev. 105 (1973).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 9.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses § 44.

### **61-17A-22. Exemptions. (Effective until July 1, 1999.)**

The following persons are exempt from the provisions of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] while in the discharge of their professional duties:

A. persons licensed by the law of this state to practice medicine and surgery or chiropractic;

B. commissioned medical or surgical officers of the United States army, navy or marine hospital service;

C. registered nurses; and

D. funeral service practitioners.

**History:** Laws 1993, ch. 171, § 22.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 10 Am. Jur. 2d Barbers and Cosmetologists § 10.

### **61-17A-23. Penalties. (Effective until July 1, 1999.)**

Each of the following constitutes a misdemeanor punishable upon conviction by a fine of less than one thousand dollars (\$1,000) or by imprisonment in the county jail for less than one year, or both, in the discretion of the court:

A. the violation of any of the provisions of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] or a violation of any regulation promulgated pursuant to that act;

B. obtaining or attempting to obtain a license for money other than the required fee or for any other thing of value or by fraudulent misrepresentations; or

C. practicing or attempting to practice by fraudulent misrepresentations.

**History:** Laws 1993, ch. 171, § 23.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Bribery §§ 2 to 5.

### **61-17A-24. Criminal offender's character evaluation. (Effective until July 1, 1999.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978].

**History:** Laws 1993, ch. 171, § 24.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see 61-17A-25 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 171 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act, is effective

on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

### **61-17A-25. Termination of agency life; delayed repeal. (Effective until July 1, 1999.)**

The board of barbers and cosmetologists is terminated on July 1, 1998 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978] until July 1, 1999. Effective July 1, 1999, the Barbers and Cosmetologists Act is repealed.

**History:** Laws 1993, ch. 171, § 27.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 171, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, the Barbers and Cosmetologists Act is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature."

## **ARTICLE 18 COLLECTION AGENCIES**

(Repealed by Laws 1987, ch. 252, § 34.)

### **61-18-1 to 61-18-67. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 252, § 34 repeals former 61-18-1 to 61-18-67 NMSA 1978, as enacted by Laws 1957, Chapter 218, Laws 1974, Chapter 78, Laws 1978, Chapter 11, and Laws 1979, Chapter 27 and as amended by Laws 1961, Chapter 49, Laws 1973, Chapter 338, Laws 1974, Chapter 78, Laws 1977, Chapter 245, Laws 1977, Chapter 306, and Laws 1978, Chapter 11, relating to collection agencies, effective July 1, 1987. For provisions of former sections, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-18A-1 to 61-18A-33 NMSA 1978.

Laws 1987, ch. 298, § 10 purported to amend 61-18-61 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

Laws 1987, ch. 292, § 14 purported to amend 61-18-64 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

# ARTICLE 18A

## COLLECTION AGENCIES

### 61-18A-1. Short title.

This act [61-18A-1 to 61-18A-33 NMSA 1978] may be cited as the "Collection Agency Regulatory Act."

**History:** Laws 1987, ch. 252, § 1.

### ANNOTATIONS

**Agency may not practice law directly.** - A collection agency engages in the unauthorized practice of law when it represents parties before judicial bodies, prepares pleadings, manages litigation, gives legal advice, renders services requiring legal skill, or prepares instruments which secure legal rights. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

**Or indirectly.** - Soliciting assignments of claims on a contingent fee basis and filing suit thereon on the same basis constitutes the practice of law. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

**By procuring legal services.** - A collection agency may solicit claims for collection, but it engages in the unauthorized practice of law when it holds out that it can procure or perform legal services in the collection process. 1974 Op. Att'y Gen. No. 74-28.

**Or pro forma assignments.** - Where the agency procures the assignment merely to facilitate filing suit, legal services are in effect offered; this is unauthorized practice. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

Section 61-18A-26 NMSA 1978 does not authorize the practice of taking the assignment of debts from an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the collection agency's own name. Kolker v. Duke City Collection Agency, 750 F. Supp. 468 (D.N.M. 1990).

**Creditor must select attorney freely.** - If nonlitigation methods fail, the agency must refer the claim back to the creditor and must advise him to select an attorney of his own choice. For the agency to take a pro forma interest in the claim to enable it to file suit in its own name is to actually furnish legal services and as such is unauthorized. 1974 Op. Att'y Gen. No. 74-28.

**Agency may not control litigation.** - Where assignment is pro forma, the fact that the agency directs the litigation constitutes the unauthorized practice of law. State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 85 N.M. 521, 514 P.2d 40 (1973).

**Or otherwise interfere with attorney-client relation.** - If the creditor selects an attorney who is also an agency attorney, the agency may not control the litigation or interfere in any way with the attorney-client relationship; such control or interference constitutes the unauthorized practice of law. 1974 Op. Att'y Gen. No. 74-28.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 15A Am. Jur. 2d Collection and Credit Agencies §§ 1 to 10, 15, 16.

Regulation and licensing of collection and commercial agencies or representatives thereof, 54 A.L.R.2d 881.

Liability of collection agency for failure to pursue claim, 76 A.L.R.2d 1155.

Civil liability of attorney for abuse of process, 97 A.L.R.3d 688.

## **61-18A-2. Definitions.**

As used in the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978]:

A. "division" means the financial institutions division of the regulation and licensing department;

B. "director" means the director of the financial institutions division of the regulation and licensing department;

C. "collection agency" means any person engaging in business for the purpose of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, where such person is so engaged by two or more creditors. The term also includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:

(1) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(2) any person while collecting debts for another person, both of whom are related by common ownership or affiliated by corporate control, if the person collects debts only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(3) any officer or employee of the United States, any state or any political subdivision thereof to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(4) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(5) any nonprofit organization which, at the request of debtors, performs bona fide consumer credit counseling and assists debtors in the liquidation of their debts by receiving payments from such debtors and distributing such amounts to creditors;

(6) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

(7) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due to another to the extent such activity:

(a) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;

(b) concerns a debt which was originated by such person;

(c) concerns a debt which was not in default at the time it was obtained by such person;  
or

(d) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor;

D. "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium;

E. "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another;

F. "debt" means any obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment;

G. "debt collector" means a collection agency, a reposessor, a manager, a solicitor and any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;

H. "debtor" means any natural person obligated or allegedly obligated to pay any debt;

I. "location information" means a debtor's place of abode and his telephone number at such place or his place of employment;

J. "manager" means a natural person who qualifies under the Collection Agency Regulatory Act to be in full-time charge of a licensed collection agency, and to whom a manager's license has been issued by the director;

K. "person" means an individual, corporation, partnership, association, joint-stock company, trust where the interests of the beneficiaries are evidenced by a security, unincorporated organization, government or political subdivision of a government;

L. "repossessor" means a person engaged solely in the business of repossessing personal property for others for a fee. The term does not include a duly licensed collection agency; and

M. "solicitor" means a natural person who, through lawful means, communicates with debtors or solicits the payment of debts for a collection agency licensee by the use of telephone, personal contact, letters or other methods of collection conducted from and within the licensee's office.

**History:** Laws 1987, ch. 252, § 2.

### **61-18A-3. Administration and enforcement.**

The administration and enforcement of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] shall be vested in the office of the director as hereinafter set forth.

A. The director shall investigate violations or alleged violations of the Collection Agency Regulatory Act by persons engaged in business as collection agencies or repossessors who fail to obtain licenses.

B. The director may examine the business and the books, accounts, records and files used therein by a collection agency licensee and for such purpose the director shall have free access to the offices, places of business, books, accounts, records, papers, files, safes and vaults of all licensees and other persons engaging or attempting to engage in business as a collection agency.

C. Any examination reports or other documents or information developed in administration of this section are confidential and not subject to subpoena.

**History:** Laws 1987, ch. 252, § 3.

### **61-18A-4. Rules and regulations; violations.**

A. The director shall establish and enforce such rules and regulations as may be reasonable or necessary for the examination and licensing of collection agencies, repossessors, managers and solicitors, for the conduct of such persons and for the general enforcement of the various provisions of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] in the protection of the public.

B. The violation of any provisions of that act or of any rules and regulations established by the director is sufficient ground for revocation of any license or for other disciplinary action.

C. No provision of the Collection Agency Regulatory Act imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the director, notwithstanding that after such act or omission has occurred, such rule or regulation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

**History:** Laws 1987, ch. 252, § 4.

### **61-18A-5. Unlawful to conduct collection agency or engage in the business of a reposessor without license.**

A. No person shall conduct within this state a collection agency, act as a collection agency manager or engage within the state in the business of collecting claims for others or of soliciting the right to collect or receive payment from another of any claim or advertise or solicit either in print, by letter, in person or otherwise, the right to collect or receive payment for another of any claim or seek to make collection or obtain payment of any claim on behalf of another without having first applied for and obtained the licenses required by the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978].

B. No person shall conduct within this state the business of a reposessor without having first applied for and obtained a reposessor's license.

C. No person shall be considered to be engaged in collection activity within this state if that person's activities regarding this state are limited to collecting debts not incurred in New Mexico from debtors located in this state by means of interstate communications, including telephone, mail or facsimile transmission, from the person's location in another state.

**History:** Laws 1987, ch. 252, § 5; 1993, ch. 213, § 1.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, added Subsection C.

### **61-18A-6. Penalty for violations.**

A. In addition to any other penalty, any person or any officer or director of any partnership, corporation or association conducting business as a collection agency or reposessor without first having been licensed pursuant to the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] or who carries on such business

after the revocation or expiration of any license which the director has refused to renew, is guilty of a fourth degree felony.

B. Any person violating any other provision of that act is guilty of a misdemeanor.

**History:** Laws 1987, ch. 252, § 6.

### **61-18A-7. Application for license.**

Application for a collection agency license, reposessor's license or manager's license shall be made to the director in such form as may be required by the director.

**History:** Laws 1987, ch. 252, § 7; 1993, ch. 213, § 2.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, inserted "or" and deleted "and solicitor's license" following "manager's license".

### **61-18A-8. Applications; required information.**

The application for a collection agency license shall state, among other things that may be required, the name of the applicant together with the name under which the applicant will do business and the location by street number and city in this state of the office of the business for which the license is sought.

In the case of an individual, the application shall state the full residence address of the applicant; in the case of a partnership, the application shall state the true names and complete residence addresses of all partners; in the case of a corporation, the application shall state the true names and complete residence addresses of all directors and officers, the true names and residence addresses of all holders of ten percent or more of the corporation's outstanding stock and other securities and the number of shares or units of each and of all classes held by each and the total number of shares or units of each class issued and outstanding; and in the case of a non-stock corporation or an unincorporated association, the true names and complete residence addresses of all officers, directors and trustees.

The application shall state the name of the licensed manager who will be actively in charge of the collection agency for which the license is sought.

**History:** Laws 1987, ch. 252, § 8.

### **61-18A-9. Financial statement.**

The application for a collection agency license shall be accompanied by a financial statement of the applicant up to not more than sixty days prior to date of application for

a new license or renewal, showing the assets and liabilities of the applicant and truly reflecting that that applicant's net worth is not less than the sum of ten thousand dollars (\$10,000), and that its liquid assets are not less than one thousand dollars (\$1,000) available for use in licensee's business. The financial statement shall be sworn to by the applicant, if the applicant is an individual or by a partner, director, manager or trustee in its behalf, if the applicant is a partnership, corporation or unincorporated association. The information contained in the financial statement shall be confidential and not a public record.

**History:** Laws 1987, ch. 252, § 9.

### **61-18A-10. Manager's license and examination.**

A. An applicant for a manager's license shall be examined concerning his competency, experience and knowledge of law and regulations by the director and on such pertinent subjects as the director shall require.

B. Examinations shall be practical in character and of such length, scope and character as the director deems necessary to determine the fitness of applicants to engage in the general collection agency business. Both questions and answers shall be in the English language.

C. The director shall prepare or cause to be prepared all examination material. The number and character of the questions, examination procedure, method of grading and the passing grade to be attained by successful applicants shall be determined by the director.

D. The examination papers of any person shall be kept for a period of one year and may then be destroyed. The examination papers shall be open to inspection during the one-year period only by the director, the staff of the financial institutions division of the regulation and licensing department and by the applicant or by someone appointed by the latter to inspect them, or by a court of competent jurisdiction in a proceeding where the contents of the papers are properly involved.

**History:** Laws 1987, ch. 252, § 10.

### **61-18A-11. Qualification of manager applicants.**

The licensed manager to be actively in charge of a collection agency shall:

A. be a citizen of the United States;

B. have reached the age of majority;

C. not have been convicted of a felony or crime involving moral turpitude;

- D. have been a bona fide resident of this state continuously for at least six months prior to the date of the filing of the application;
- E. be a graduate of a high school or provide proof to the director that he is possessed of the equivalent of a high school education;
- F. pass the examination required;
- G. pay the examination fee to the director;
- H. have been actively and continuously engaged or employed in the collection of accounts receivable for at least two of the five years next preceding the filing of the application; and
- I. have a good credit record.

**History:** Laws 1987, ch. 252, § 11.

### **61-18A-12. Approval of applications.**

No application for license shall be approved by the director unless the applicant has met all requirements of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] and any rules and regulations established thereunder. When said requirements have been met, the director shall grant and issue a license in the form provided by the Collection Agency Regulatory Act.

**History:** Laws 1987, ch. 252, § 12.

### **61-18A-13. Denial of applications.**

The director may deny any license:

- A. if the applicant has ever had a license or its equivalent revoked;
- B. if the applicant is or was a partner, officer, director, trustee, manager or stockholder of any partnership, corporation or unincorporated association the license of which has been revoked;
- C. if the applicant or a partner, officer, director, trustee, stockholder or employee of the applicant has been convicted of a felony or any crime involving moral turpitude; or
- D. if the applicant has violated any provision of the Collection Agency Regulatory Act [61-18A-1 to 61-8A-33 NMSA 1978] or rules and regulations established thereunder.

**History:** Laws 1987, ch. 252, § 13.

## **61-18A-14. License to foreign corporation or partnership.**

No collection agency license shall be issued to any foreign corporation or partnership unless it has fully complied with the laws of the state of New Mexico so as to entitle it to do business within this state, and provided further that such foreign corporation or partnership shall establish and maintain a full time bona fide collection agency in this state at all times during the life of any license issued to it. All records of such local collection agency must be maintained at the principal office in New Mexico of such agency.

**History:** Laws 1987, ch. 252, § 14.

## **61-18A-15. Surety bond.**

A. Prior to the issuance of any collection agency or reposessor's license or renewal thereof a surety bond in the penal sum of five thousand dollars (\$5,000), which may by regulation or order of the director be increased, shall be filed with the division. The bond shall run to the people of the state of New Mexico, shall be executed and acknowledged by the applicant as principal and by a corporation which is licensed by the superintendent of insurance of this state to transact the business of fidelity and surety insurance, as surety.

B. The surety bond shall provide for suit thereon by any person who has a cause of action under the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] or rules and regulations established thereunder.

C. No action shall be brought upon any bond after the expiration of three years from the date of the occurrence of the act upon which a claim is based.

D. The bond shall be continuous in form and remain in full force and effect concurrently with the license and any renewals thereof unless terminated or canceled by action of the surety as provided in the Collection Agency Regulatory Act.

E. Upon the filing of thirty days' written notice with the director by any surety company of its withdrawal as the surety of any licensee, the director shall forthwith give notice to the licensee of the withdrawal which notice shall be by certified mail with request for return receipt and shall be addressed to the licensee at its main office in New Mexico as shown by the records of the director. The license of any licensee shall be void upon the termination of the bond by the surety company unless, prior to termination, a new bond has been filed with the division.

F. Should the license of any company to transact fidelity and surety insurance business in this state be canceled, revoked or otherwise terminated, all collection agency bonds for which such surety company is surety are thereupon and thereby canceled. Upon such cancellation, the license of any licensee having such a bond posted is suspended and shall remain suspended until a new and valid bond is filed, provided however that

failure of any such licensee to file a new bond within thirty days after being advised by the director in writing of the necessity of doing so shall ipso facto revoke the license.

**History:** Laws 1987, ch. 252, § 15.

### **61-18A-16. Information to be included in collection agency license.**

The license when issued shall state:

A. that it is issued pursuant to the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] and the rules and regulations established thereunder and that the licensee is duly authorized to conduct business under the Collection Agency Regulatory Act;

B. the names of the owners of the licensee, if a sole proprietorship or partnership; and if a corporation, the name shall be followed by the words "a corporation";

C. the name under which the licensee is to operate;

D. the location by street number, city, county and state where the licensee is to conduct business; and

E. the number and the date of the license.

**History:** Laws 1987, ch. 252, § 16.

### **61-18A-17. Right granted by license.**

Upon receipt of the license, the licensee has the right to conduct the business of a collection agency, reposessor, manager or solicitor with all the powers and privileges applicable thereto, contained in but subject always to all the provisions of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] and any rules and regulations established thereunder.

**History:** Laws 1987, ch. 252, § 17.

### **61-18A-18. Display of license; duration.**

A. Each license or duplicate or renewal license, if any, shall be conspicuously displayed at the place of business noted in the license at all times.

B. A collection agency or reposessor license shall be effectual until July 1 next ensuing the date of issue unless sooner revoked, canceled or surrendered and is transferable only if the transferee shall first qualify as a licensee under the provisions of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978].

In the event of the loss or destruction of a license, the licensee may file with the director an affidavit explaining such loss or destruction and pay the duplicate license fee prescribed. Thereupon the director shall issue a duplicate license bearing the same date and number of the replaced license.

**History:** Laws 1987, ch. 252, § 18.

### **61-18A-19. Change of location; ownership or name; duplicate license.**

A. Upon any change of street address from that stated in the collection agency or reposessor license or any change of the business name therein shown, the licensee shall, within five days thereafter, deposit the license and written notification of the change of address or name, together with the duplicate license fee with the director.

The director shall thereupon enter the change in his records, retain and file the surrendered license and issue to the licensee a duplicate license setting forth the new name or address, or both, but bearing the same date and number as the surrendered license.

If the license is not deposited with the director within the time prescribed, then upon the lapse of the five-day period the license shall be and remain suspended until so deposited.

B. Upon any change of ownership of a licensee, if a sole proprietorship or partnership, or upon any change of ownership of more than fifty percent of the shares or voting rights, if a corporation, all licenses issued to a licensee are void unless, prior to such change of ownership, the prospective new owners have notified the director of the proposed acquisition have satisfied the director that they qualify to be licensed pursuant to the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978].

C. Every licensed corporation and unincorporated association shall promptly file with the director a written report of any transfer, issuance, cancellation or redemption of stock voting rights or membership amounting to ten percent or more of the total voting stock or memberships then outstanding.

**History:** Laws 1987, ch. 252, § 19.

### **61-18A-20. Temporary license.**

For the purpose of winding up the affairs and discontinuance or sale of the business of a licensee, in the event of death of the licensed manager or dissolution of a partnership, the director shall, upon proper application, issue a temporary license to the personal representative or, to the nominee of the personal representative of the deceased or to a surviving partner in the case of the dissolution of a partnership. The application shall be in writing, subscribed and sworn to by the person to whom the temporary license is to

be issued. The application shall be accompanied by the temporary license fee specified in the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978]. A temporary license shall be effective for a period of one year and shall not thereafter be renewed or continued.

**History:** Laws 1987, ch. 252, § 20.

### **61-18A-21. Branch office.**

Application for a license for a branch office or offices may be made by any licensee. The application shall state the location and address of the branch office and the name and address of the person to be actively in charge. The application shall be accompanied by a rider or endorsement to the licensee's surety bond increasing the penal sum of the bond by five thousand dollars (\$5,000) and a license fee in the same amount as required for the principal office.

**History:** Laws 1987, ch. 252, § 21.

### **61-18A-22. Office management; license.**

A. Every licensed office of a collection agency whether a principal or branch office shall be under the active charge of a licensed manager. Each manager's license shall be issued by the director upon qualification by the applicant for same and shall be renewed annually upon application therefor accompanied by the manager's renewal license fee, which application is to be filed with the division on or before May 31 of each year. Unless so renewed, each manager's license shall expire on June 30, unless previously revoked or canceled.

B. As used in this section, "under the active charge of a licensed manager" means that a licensed manager must be physically present at the licensee's office at least seventy-five percent of the time during which the office is open for business.

**History:** Laws 1987, ch. 252, § 22.

### **61-18A-23. Loss of qualified person.**

Whenever a licensed manager ceases to be in charge of an office, the licensee shall notify the director in writing within ten days from such cessation.

If the notice is given, the collection agency license shall remain in force for a reasonable period to be determined by the rules and regulations. If the licensee fails to give the notice as required at the end of the ten-day period the collection agency license shall be ipso facto suspended, but the license shall be reinstated upon the filing of an affidavit by the licensee to the effect that the person formerly in charge of the office has been replaced by a licensed manager.

**History:** Laws 1987, ch. 252, § 23.

### **61-18A-24. Proceedings in connection with issuance, renewal, suspension, denial or revocation.**

All proceedings in connection with the issuance, renewal, suspension, denial or revocation of licenses shall be as required by the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978].

**History:** Laws 1987, ch. 252, § 24.

### **61-18A-25. Unauthorized practice as collection agency.**

No person, who is not a duly licensed and qualified collection agency, shall print, publish or otherwise prepare for distribution any system of collection letters, demand forms or other printed matter upon his stationery or upon stationery upon which the said person's name appears in such a manner as to indicate that a demand is being made by such person for the payment of any sums due or asserted to be due, where such forms containing such message are to be sold or furnished to anyone by such other person at any address different from the address of the person issuing such system of collection letters, demand forms or other printed material.

**History:** Laws 1987, ch. 252, § 25.

### **61-18A-26. Assignments; right to sue.**

Nothing in the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] shall be construed to prevent collection agencies from taking assignments of claims in their own name as real parties in interest for the purpose of billing and collection and bringing suit in their own names thereon, provided that no suit authorized by this section may be instituted on behalf of a collection agency in any court unless the collection agency appears by a duly authorized and licensed attorney-at-law. In such suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party.

**History:** Laws 1987, ch. 252, § 26.

## **ANNOTATIONS**

**Pro forma assignments.** - This section does not authorize the practice of taking the assignment of debts from an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the collection agency's own name. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468 (D.N.M. 1990).

### **61-18A-27. Renewal of license; fee.**

A licensee desiring renewal of his license shall, on or before May 31 of each year, file with the director an application for renewal on such forms as may be designated by the director. The application shall be accompanied by the renewal fee.

The director shall issue a renewal license which shall be dated July 1 next ensuing and shall bear the date to and including which the license is renewed.

**History:** Laws 1987, ch. 252, § 27.

### **61-18A-28. Remittance of collections to clients.**

All collection agencies shall remit to their clients the proceeds of all collections, after deducting their commission, other lawful expenses and any amounts collected pursuant to Section 61-18A-28.1 NMSA 1978, within forty days of such collection unless otherwise provided by regulation.

**History:** Laws 1987, ch. 252, § 28; 1992, ch. 36, § 1.

#### **ANNOTATIONS**

**The 1992 amendment**, effective May 20, 1992, substituted "shall remit" for "must remit", inserted "and any amounts collected pursuant to Section 61-18A-28.1 NMSA 1978", and made a stylistic change.

### **61-18A-28.1. Additional collection from debtors.**

A. Unless the agreement between the debtor and the creditor or the agreement between the collection agency and the creditor otherwise expressly prohibits, a collection agency may collect from the debtor an amount equal to the gross receipts tax and the local option gross receipts taxes, as those terms are defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], imposed on the receipts of the collection agency that result from the collection of a debt from the debtor.

B. For purposes of this section, a collection agency does not mean a person who collects his own debts using a name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

**History:** 1978 Comp., § 61-18A-28.1, enacted by Laws 1992, ch. 36, § 2.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1992, ch. 36 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-18A-29. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1993, ch. 213, § 4 repeals former 61-18A-29 NMSA 1978, as enacted by Laws 1987, ch. 252, § 29, concerning the issuance of a solicitor's license, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

### **61-18A-30. Fees.**

The director shall charge and collect the following fees:

A. an original license fee for a collection agency or branch thereof, of five hundred dollars (\$500);

B. a renewal fee for a collection agency or branch thereof, of three hundred dollars (\$300);

C. a duplicate license fee of fifteen dollars (\$15.00);

D. a temporary license fee of thirty-five dollars (\$35.00);

E. a delinquency fee of ten dollars (\$10.00) per day for each day of delinquency in filing applications for renewals;

F. a manager's license examination fee of one hundred dollars (\$100);

G. a manager's license renewal fee of fifty dollars (\$50.00);

H. a fee of five dollars (\$5.00) for each copy of any issue or edition of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] and rules and regulations;

I. a fee of five dollars (\$5.00) for each list of licensees in good standing;

J. a fee of two hundred dollars (\$200) per day or fraction thereof for each examiner of the financial institutions division of the regulation and licensing department engaged in an examination or investigation of a licensee, not to exceed five examiner-days per calendar year. If the examination or investigation is an out-of-state examination or investigation, the licensee shall reimburse the financial institutions division the actual travel costs incurred to perform the examination or investigation; and

K. an original license fee or renewal license fee for a reposessor of two hundred fifty dollars (\$250).

**History:** Laws 1987, ch. 252, § 30; 1993, ch. 213, § 3.

## ANNOTATIONS

**The 1993 amendment**, effective June 18, 1993, substituted "five hundred dollars (\$500)" for "two hundred dollars (\$200)" in Subsection A, "three hundred dollars (\$300)" for "two hundred dollars (\$200)" in Subsection B, "one hundred dollars (\$100)" for "fifty dollars (\$50.00)" in Subsection F, and "fifty dollars (\$50.00)" for "thirty-five dollars (\$35.00)" in Subsection G; deleted former Subsections J and K, providing for a solicitor's certificate fee of \$7.50, and a fee of \$100 for examination of a licensee's books, accounts, files and records; inserted present Subsection J; redesignated former Subsection L as present Subsection K; and substituted "two hundred fifty dollars (\$250)" for "one hundred fifty dollars (\$150)" in Subsection K.

### **61-18A-31. Deposit of moneys in general fund.**

All money received under the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] by the director shall be deposited in the office of the state treasurer.

**History:** Laws 1987, ch. 252, § 31.

### **61-18A-32. Judicial review.**

Any person aggrieved by the decision of the director in the enforcement of the Collection Agency Regulatory Act [61-18A-1 to 61-18A-33 NMSA 1978] may obtain judicial review thereof in the manner provided for review of agency decisions by the Administrative Procedures Act [12-8-1 to 12-8-25 NMSA 1978].

**History:** Laws 1987, ch. 252, § 32.

### **61-18A-33. Grandfather clause.**

Any person properly licensed pursuant to the Collection Agency Act [61-18A-1 to 61-18A-33 NMSA 1978] on the effective date of the enactment of the Collection Agency Regulatory Act is eligible to be granted a license under the provisions of the Collection Agency Regulatory Act.

**History:** Laws 1987, ch. 252, § 33.

## **ANNOTATIONS**

**Compiler's note.** - The phrase "effective date of the enactment of the Collection Agency Regulatory Act" means July 1, 1987, the effective date of Laws 1987, ch. 252.

## **ARTICLE 19 COSMETOLOGY**

### **Chapter 61, Article 19 Cosmetology (1993 Repl.)**

(Repealed by Laws 1979, ch. 382, § 35.)

## **61-19-1 to 61-19-47. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 382, § 35 repeals former 61-19-1 to 61-19-47 NMSA 1978, relating to the regulation of cosmetology, effective April 6, 1979. For present provisions, see 61-19A-1 to 61-19A-34 NMSA 1978.

## **ARTICLE 19A COSMETOLOGY**

(Repealed by Laws 1989, ch. 110, § 7; 1993, ch. 171, § 28.)

## **61-19A-1. to 61-19A-34. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 171, § 28 repeals former 61-19A-1 to 61-19A-25 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 1 to 25 and amended by Laws 1982, ch. 106, §§ 1 to 4, Laws 1984, ch. 44, § 1, and Laws 1989, ch. 110, §§ 1 to 4, regulating cosmetology, effective June 18, 1993. For provisions of former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

Laws 1989, ch. 110, § 7 repeals former 61-19A-26 NMSA 1978, as enacted by Laws 1979, ch. 382, § 26, relating to reissue of authority after revocation, effective June 26, 1989. For provisions of former section, see 1987 Replacement Pamphlet.

Laws 1993, ch. 171, § 28 repeals former 61-19A-27 to 61-19A-34 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 27 to 34, and amended by Laws 1989, ch. 110, §§ 5 and 6, concerning exemptions; prohibited acts; sanitary rules; investigations; entry and inspection; remedies; confidentiality; and repeal of the article, effective June 18, 1993. For provisions of former sections, see 1987 Replacement Pamphlet and 1992 Cumulative Supplement. For present comparable provisions, see Chapter 61, Article 17A NMSA 1978.

## **ARTICLES 20 DRY CLEANING INDUSTRY**

(Repealed by Laws 1981, ch. 241, § 35.)

## **61-20-1 to 61-20-14. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1981, ch. 241, § 35, repeals former 61-20-1 to 61-20-14 NMSA 1978, relating to the regulation of the dry cleaning industry, effective April 8, 1981.

## ARTICLE 21 EMBALMERS AND FUNERAL DIRECTORS

(Repealed by Laws 1978, ch. 185, § 26.)

**61-21-1 to 61-21-37. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1978, ch. 185, § 26, repeals former 67-20-1 to 67-20-33, 1953 Comp. (61-21-1 to 61-21-37 NMSA 1978), relating to embalmers and funeral directors, effective July 1, 1978. For provisions of the Thanatopractice Act, see 61-32-1 NMSA 1978 et seq.

## ARTICLE 22 EMPLOYMENT AGENCIES

(Repealed by Laws 1981, ch. 241, § 35.)

**61-22-1 to 61-22-16. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1981, ch. 241, § 35, repeals former 61-22-1 to 61-22-16 NMSA 1978, relating to the regulation of employment agencies, effective April 8, 1981.

## ARTICLE 23 ENGINEERING AND SURVEYING

**61-23-1. Short title. (Effective until July 1, 2000.)**

Chapter 61, Article 23 NMSA 1978 may be cited as the "Engineering and Surveying Practice Act".

**History:** Laws 1987, ch. 336, § 1; 1993, ch. 218, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336, repeals former 61-23-1 NMSA 1978, as amended by Laws 1947, ch. 110, § 2, relating to replacement of reference marks which have been removed or obliterated, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-28 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "Chapter 61, Article 23 NMSA 1978" for "Sections 1 through 32 of this act".

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 69 to 75.

53 C.J.S. Licenses §§ 5, 7, 34 to 40, 50 to 63.

### **61-23-1.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 336, § 34 repeals former 61-23-1.1 NMSA 1978, as enacted by Laws 1979, ch. 156, § 4, relating to standards and procedures for restoration or reestablishment of monuments, effective June 19, 1987. For provisions of former section, see 1981 Replacement Pamphlet.

### **61-23-2. Declaration of policy. (Effective until July 1, 2000.)**

The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that he is qualified to so practice and shall be registered as provided in the Engineering and Surveying Practice Act [this article]. It shall be unlawful for any person to practice or offer to practice in New Mexico or to use in connection with his name or otherwise assume, use or advertise any title or description tending to convey the impression that he is a professional, licensed or registered engineer or surveyor unless that person is registered or exempt under the provisions of the Engineering and Surveying Practice Act. The practice of engineering or surveying shall be deemed a privilege granted by the state board of registration for professional engineers and surveyors based on the qualifications of the individual as evidenced by the registrant's certificate that shall not be transferable.

**History:** Laws 1987, ch. 336, § 2; 1993, ch. 218, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-2 NMSA 1978, as amended by Laws 1947, ch. 110, § 3, relating to right of entry on public and private property, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-30 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, substituted "professional, licensed or registered engineer" for "professional engineer, engineer, professional surveyor" and deleted "which shall be construed in accordance with this declaration of policy" at the end of the third sentence, and added the final sentence.

### **61-23-3. Definitions. (Effective until July 1, 2000.)**

As used in the Engineering and Surveying Practice Act [this article]:

A. "approved" or "approval" means acceptable to the board;

B. "board" means the state board of registration for professional engineers and surveyors;

C. "conviction" or "convicted" means any final adjudication of guilt, whether pursuant to a plea or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

D. "engineer" means a person who is qualified to practice engineering by reason of his intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience;

E. "engineering" or "practice of engineering" means any creative or engineering work, that requires engineering education, training and experience in the application of special knowledge of the mathematical, physical and engineering sciences to such creative work as consultation, investigation, forensic investigation, evaluation, planning and design of engineering works and systems, expert technical testimony, engineering studies and the review of construction for the purpose of assuring substantial compliance with drawings and specifications; any of which embrace such creative work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, chemical, pneumatic, environmental or thermal nature, insofar as they involve safeguarding life, health or property, and including such other professional services as may be necessary to the planning, progress and completion of any engineering work. The practice of engineering does not include responsibility for the supervision of construction, site conditions, operations, equipment, personnel or the maintenance of safety in the work place;

F. "engineering committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of engineering;

G. "engineer intern" means a person who has qualified for, taken and passed an examination in the fundamental engineering subjects as provided in the Engineering and Surveying Practice Act;

H. "incidental practice" means the performance of other professional services that are related to a registrant's work as an engineer;

I. "professional development" means education by a registrant in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge;

J. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is registered by the board to practice the profession of engineering;

K. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to assure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a registrant in that profession and by sealing or signing the documents, the professional engineer or surveyor accepts responsibility for the engineering or surveying work respectively, represented by the documents and that applicable engineering or surveying standards have been met;

L. "surveying" or "practice of surveying" means any service or work, the substantial performance of which involves the application of the principles of mathematics and the related physical and applied sciences for:

(1) the measuring and locating of lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds or bodies of water for the purpose of defining location, areas and volumes;

(2) the monumenting of property boundaries and for the platting and layout of lands and subdivisions thereof;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls for surveys for design, topographic surveys including photogrammetric methods, construction surveys of engineering and architectural public works projects; and

(5) the preparation and perpetuation of maps, records, plats, field notes and property descriptions;

M. "surveying committee" means a committee of the board entrusted to implement all business of the Engineering and Surveying Practice Act as it pertains to the practice of surveying;

N. "surveyor" or "professional surveyor" means a person who is qualified to practice surveying by reason of his intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying including the principles and methods of surveying acquired by education and experience and who is registered by the board to practice surveying;

O. "surveyor intern" means a person who has qualified for, taken and passed an examination in the fundamentals of surveying subjects as provided in the Engineering and Surveying Practice Act; and

P. "surveying work" means the work performed in the practice of surveying. The board recognizes that there may be an overlap between the work of engineers and surveyors in obtaining survey information for the planning and design of an engineering project. A registered professional engineer who has primary engineering responsibility and control of an engineering project may perform an engineering survey. A registered professional engineer may apply photogrammetric methods to derive topographic and other data.

**History:** Laws 1987, ch. 336, § 3; 1993, ch. 218, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-3 NMSA 1978, as enacted by Laws 1933, ch. 130, § 3, relating to violation of reference mark and entry provisions, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

### **61-23-4. Criminal offender's character evaluation. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Engineering and Surveying Practice Act [this article].

**History:** Laws 1987, ch. 336, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-4 NMSA 1978, as amended by Laws 1979, ch. 363, § 1, relating to short title, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-1 NMSA 1978.

### **61-23-5. State board of registration for professional engineers and surveyors; members; terms. (Effective until July 1, 2000.)**

A. There is created the "state board of registration for professional engineers and surveyors" that shall consist of five registered professional engineers, at least one of whom shall be in engineering education, three registered professional surveyors and two public members.

B. The members of the board shall be appointed by the governor for staggered terms of five years. The appointees shall have the qualifications required by Section 61-23-6 NMSA 1978. The appointments shall be made in such a manner that the terms of not more than two members expire in each year. Each member of the board shall receive a certificate of appointment from the governor. Before the beginning of the term of office, the appointee shall file with the secretary of state a written oath or affirmation for the faithful discharge of official duty. A member of the board may be reappointed but may not serve more than two consecutive full terms. A member shall not be reappointed to the board for at least two years after serving two consecutive full terms. The board may designate any former board member to assist it in an advisory capacity.

C. Each member may hold office until the expiration of the term for which appointed or until a successor has been duly qualified and appointed. In the event of a vacancy for any cause that results in an unexpired term, if not filled within three months by official action, the board may appoint a provisional member to serve until the governor acts. Vacancies on the board shall be filled by appointment by the governor for the balance of the unexpired term.

**History:** Laws 1987, ch. 336, § 5; 1993, ch. 218, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-5 NMSA 1978, as amended by Laws 1979, ch. 363, § 2, relating to declaration of policy, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-2 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, in Subsection A, deleted "or surveying" following "engineering" and substituted "two public members" for "one public member"; in Subsection B, substituted "Section 61-23-6 NMSA 1978" for "Section 6 of the Engineering and Surveying Practice Act" in the second sentence, divided the former fourth sentence into the present fourth and fifth sentences by deleting "and", inserted "the appointee" in the fifth sentence, inserted "full" near the end of the sixth sentence, and added the final two sentences; and made minor stylistic changes in Subsections A and C.

### **61-23-6. Board members; qualifications. (Effective until July 1, 2000.)**

A. Each engineer member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of engineering as a professional engineer for at least ten years, including responsible charge of engineering projects for at least five years or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years and shall be a professional engineer registered in New Mexico.

B. Each surveyor member of the board shall be a citizen of the United States and a resident of New Mexico. Each shall have been engaged in the lawful practice of surveying as a professional surveyor for at least ten years, including responsible charge of surveying projects for at least five years and shall be a professional surveyor registered in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico and at least thirty-five years of age, shall not have been registered nor be qualified for registration as an engineer, surveyor, architect or landscape architect and shall not have any significant financial interest, direct or indirect, in the professions regulated.

**History:** Laws 1987, ch. 336, § 6; 1993, ch. 218, § 5.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-6 NMSA 1978, as amended by Laws 1979, ch. 363, § 3, relating to definitions, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-3 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, substituted "engineer" for "engineering" in the first sentence and inserted "or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years" in the second sentence of Subsection A; inserted "architect or landscape architect" and

substituted "professions" for "occupation" in Subsection C; and made minor stylistic changes throughout the section.

### **61-23-7. Reimbursement of board members. (Effective until July 1, 2000.)**

Each member of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Law 1987, ch. 336, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-7 NMSA 1978, as enacted by Laws 1974, ch. 78, § 27, relating to criminal offender's character evaluation, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-4 NMSA 1978.

### **61-23-8. Removal of members of board. (Effective until July 1, 2000.)**

The governor may remove, after notice and hearing, any member of the board for misconduct, incompetency, neglect of duty, malfeasance in office or for any reason prescribed by law for removal of state officials.

**History:** Laws 1987, ch. 336, § 8.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-8 NMSA 1978, as amended by Laws 1979, ch. 363, § 4, relating to state board of registration for professional engineers and land surveyors, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-5 NMSA 1978.

### **61-23-9. Board; organization; meetings. (Effective until July 1, 2000.)**

A. There shall be an engineering committee composed of the five members of the board who serve as registered professional engineers and one of the public members who shall be appointed to the committee by the board. The engineering committee shall meet in conjunction with all board meetings. The bylaws or regulations of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

B. There shall be a surveying committee composed of the three members of the board who serve as registered professional surveyors and one of the public members who shall be appointed to the committee by the board. The surveying committee shall meet in conjunction with all board meetings. The bylaws or regulations of the board shall provide a procedure for giving notice of all meetings and for holding special and emergency meetings. A quorum of the committee shall be a majority of the committee. In the event of a lack of a quorum and at the request of the committee, other qualified board members may serve on this committee. The committee shall elect a chairman and vice chairman from the committee members at the last committee meeting prior to July 1 of each year.

C. All matters that come before the board that pertain exclusively to engineering or exclusively to surveying shall be referred to the respective committee for disposition. The committee action on such matters shall be the action of the board.

D. The board shall hold at least four regular meetings each year. At least one meeting shall be held at the state capitol. The bylaws or regulations of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chairman, a vice chairman and a secretary who shall be members of the board. No member of the board shall be elected to the same office for two consecutive full terms. A quorum of the board shall be a majority of the board. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. The board shall have an official seal.

**History:** Laws 1987, ch. 336, § 9; 1993, ch. 218, § 6.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-9 NMSA 1978, as amended by Laws 1979, ch. 363, § 5, relating to qualifications of board members, effective June 19, 1987, and reenacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-6 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

**61-23-10. Duties and powers of the board. (Effective until July 1, 2000.)**

A. It shall be the duty of the board to administer the provisions of the Engineering and Surveying Practice Act [this article] and to exercise the authority granted the board in that act. The board is authorized to engage such personnel, including an executive director, as it may deem necessary.

B. The board shall have the power to adopt and amend all bylaws and rules of procedure consistent with the constitution and the laws of this state that may be reasonable for the proper performance of its duties and the regulation of its procedures, meeting records, examinations and the conduct thereof. The board also shall adopt and promulgate rules of professional responsibility for professional engineers and professional surveyors. All such bylaws and rules shall be binding upon all persons registered under the Engineering and Surveying Practice Act.

C. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chairperson's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action against a registrant or a person practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued or refuses to testify or produce any books, papers or documents, the board may apply to a court of competent jurisdiction for an order to compel the requisite action. If any person willfully fails to comply with such an order, that person may be held in contempt of court.

D. The board may apply for injunctive relief to enforce the provisions of the Engineering and Surveying Practice Act or to restrain any violation of that act. The members of the board shall not be personally liable under this proceeding.

E. The board may subject an applicant for registration to such examinations as it deems necessary to determine his qualifications.

F. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act done in good faith and in the intended performance of any power or duty granted under the Engineering and Surveying Practice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

G. The board, in cooperation with the board of examiners for architects and the board of landscape architects, shall create a joint standing committee to be known as the "joint practice committee". In order to safeguard life, health and property and to promote the public welfare, the committee shall have as its purpose the promotion and development

of the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

H. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical regulations of the board of registration for professional engineers and surveyors and the board of examiners for architects.

**History:** Laws 1987, ch. 336, § 10; 1993, ch. 218, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-10 NMSA 1978, as amended by Laws 1963, ch. 43, § 25, relating to reimbursement of board members, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-7 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, added the second sentence of Subsection A; deleted "or the Engineering and Surveying Practice Act" following "laws of this state" in the first sentence of Subsection B; substituted "examiners for architects" for "architectural examiners" and " 'joint practice committee' " for " 'architect-engineer-landscape architect joint practice committee', to resolve disputes concerning these professions" in the first sentence and added the second sentence of Subsection G; added Subsection H; and made minor stylistic changes throughout the section.

### **61-23-11. Receipts and disbursements. (Effective until July 1, 2000.)**

A. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act [this article] and shall pay that money to the state treasurer for deposit in a separate fund to be known as the "professional engineers' and surveyors' fund". Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state treasurer, upon itemized vouchers approved by the chairman and attested by the executive director of the board. All money in the professional engineers' and surveyors' fund is appropriated for the use of the board.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the professional engineers' and surveyors' fund.

C. The board may make expenditures of the professional engineers' and surveyors' fund for any purpose which in the opinion of the board is reasonably necessary for the proper performance of its duties under the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose.

**History:** Laws 1987, ch. 336, § 11; 1993, ch. 218, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-11 NMSA 1978, as enacted by Laws 1957, ch. 211, § 7, relating to removal of board members, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-8 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences of Subsection A and in the first sentence of Subsection B; and substituted "examiners for engineering and surveying" for "engineering examiners" near the end of Subsection C.

### **61-23-12. Records and reports. (Effective until July 1, 2000.)**

A. The board shall keep a record of its proceedings and a register of all applications for registration, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and such other information as may be deemed necessary by the board. This record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

- (1) examination material for examinations not yet given;
- (2) file records of examination problem solutions;
- (3) letters of inquiry and reference concerning applicants;
- (4) board inquiry forms concerning applicants;
- (5) investigation files where any investigation is ongoing or is still pending; and

(6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chairman, secretary and executive director.

**History:** Laws 1987, ch. 336, § 12; 1993, ch. 218, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-12 NMSA 1978, as amended by Laws 1979, ch. 363, § 6, relating to organization and meetings of the board, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-9 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, deleted "the date of the application, the place of business of such applicant" following "residence of each applicant" in the first sentence of Subsection A; inserted "ongoing or is" in Subsection B(5); added "and executive director" at the end of Subsection D; and made minor stylistic changes in Subsections A and D.

### **61-23-13. Roster of registered professional engineers and surveyors. (Effective until July 1, 2000.)**

A roster showing the names and addresses of all registered professional engineers and professional surveyors shall be prepared by the executive director of the board prior to September 1 of each even-numbered year. A supplement to the roster shall be prepared by the executive director of the board prior to September 1 of each odd-numbered year. Copies of the roster and supplement shall be mailed to each registrant no later than November 30 of each year, placed on file with the secretary of state and the state commission of public records and may be distributed or sold to the public.

**History:** Laws 1987, ch. 336, § 13; 1993, ch. 218, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-13 NMSA 1978, as amended by Laws 1979, ch. 363, § 7, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-10 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences; and, in the third sentence, substituted "registrant no later than November 30 of each year" for "person so registered" and inserted "and the state commission of public records".

## **61-23-13.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 336, § 34 repeals former 61-23-13.1 NMSA 1978, as enacted by Laws 1981, ch. 336, § 1, relating to surveying rules and regulations, effective June 19, 1987. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see Subsection B of 61-23-10 NMSA 1978 and Subsection I of 61-23-24 NMSA 1978.

## **61-23-14. Certification as an engineer intern; requirements. (Effective until July 1, 2000.)**

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering, related science curriculum or in a board-approved, four-year curriculum in engineering technology that is accredited by the technical accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a registered professional engineer.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as an engineer intern. An applicant who has made three unsuccessful attempts at achieving a passing score on the examination, shall only be eligible to take the examination after waiting a calendar year. Thereafter, the applicant may take the examination no more than once each calendar year.

C. An applicant may be certified as an engineer intern upon successfully completing the examination, provided that he has:

(1) graduated from a board-approved, four-year engineering curriculum; or

(2) graduated from a board-approved, four-year related science curriculum or engineering technology program accredited by the technical accreditation commission of the accreditation board for engineering and technology, augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification of engineer intern does not permit the intern to practice as a professional engineer. Certification as an engineer intern is intended to demonstrate that the intern has obtained certain skills in engineering fundamentals and is pursuing a career in engineering.

**History:** 1978 Comp., § 61-23-14, enacted by Laws 1993, ch. 218, § 11.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repealed a former 61-23-14 NMSA 1978, as amended by Laws 1979, ch. 363, § 8, relating to receipts and disbursements, effective June 19, 1987, and enacted former 61-23-14 NMSA 1978. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-11 NMSA 1978.

Laws 1993, ch. 218, § 11 repeals former 61-23-14 NMSA 1978, as enacted by Laws 1987, ch. 336, § 14, which concerned the requirements for registration as a professional engineer or certification as an engineering intern, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1992 Cumulative Supplement. For present comparable provisions regarding registration as a professional engineer, see 61-23-14.1 NMSA 1978.

### **61-23-14.1. Registration as a professional engineer; requirements. (Effective until July 1, 2000.)**

A. Registration as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as an engineer intern;

(3) has five references, three of whom shall be registrants practicing in the branch of engineering for which the applicant is applying and who have personal knowledge of the applicant's engineering experience and reputation. The use of nonregistered engineer references having personal knowledge of the applicant's engineering experience and reputation other than professional engineers may be accepted by the board provided a satisfactory written explanation is given; and either

(4) has at least four years of approved engineering experience after graduation from a board-approved engineering curriculum; or

(5) has a minimum of six years of approved engineering experience after graduation from a board-approved four-year related science or engineering technology curriculum.

B. After the applicant's application is approved by the board, the applicant shall be allowed to take the appropriate examination for registration as a professional engineer.

C. Upon successfully completing the examination, the applicant shall be eligible to register as a professional engineer upon action of the board.

D. An applicant may be registered by endorsement or comity if:

(1) he is currently registered as an engineer in the District of Columbia, another state, territory or possession of the United States, provided the registration does not conflict with the provisions of the Engineering and Surveying Practice Act [this article] and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; or

(2) he is currently registered as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board his competence in current engineering standards and procedures.

**History:** 1978 Comp., § 61-23-14.1, enacted by Laws 1993, ch. 218, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes the act effective on July 1, 1993.

**61-23-15, 61-23-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 218, § 41 repeals former 61-23-15 and 61-23-16 NMSA 1978, as enacted by Laws 1987, ch. 336, §§ 15 and 16, concerning registration as a professional surveyor and certification as a surveying intern, effective July 1, 1993. For provisions of former sections, see 1987 Replacement Pamphlet. For present comparable provisions, see 61-23-27.1 NMSA 1978 et seq.

## **61-23-17. Application and examination fees. (Effective until July 1, 2000.)**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act [this article] shall apply for examination, registration or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. No fees shall be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude.

**History:** 1987, ch. 336, § 17.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-17 NMSA 1978, as enacted Laws 1979, ch. 363, § 11, relating to general requirements for registration or certification as an engineer, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-14 and 61-23-14.1 NMSA 1978.

## **61-23-17.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1987, ch. 336 repeals former 61-23-17.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 12, concerning general requirements for registration or certification of professional land surveyors, effective June 19, 1987. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-27.1 NMSA 1978 et seq.

## **61-23-18. Engineering; examinations. (Effective until July 1, 2000.)**

The examinations for engineering certification and registration shall be held at least once a year at a time and place the board directs. The engineering committee shall determine the passing grade on examinations.

**History:** Laws 1987, ch. 336, § 18; 1993, ch. 218, § 13.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-18 NMSA 1978, as amended by Laws 1979, ch. 363, § 13, relating to application and examination fees, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-17 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote the section to the extent that a detailed comparison is impracticable.

### **61-23-19. Engineering; certificate; seals. (Effective until July 1, 2000.)**

A. The board shall issue certificates of registration under the provisions of the Engineering and Surveying Practice Act [this article]. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to his work as an engineer, provided the engineer shall not hold himself out to be an architect or as performing architectural services unless duly registered as such.

**History:** Laws 1987, ch. 336, § 19; 1993, ch. 218, § 14.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-19 NMSA 1978, as amended by Laws 1979, ch. 363, § 14, relating to examinations, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-18 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

### **61-23-20. Engineering; registration and renewal fees; expirations. (Effective until July 1, 2000.)**

A. Registrations shall be for a period of two years as prescribed in the regulations and rules of procedure. Initial certificates of registration shall be issued to coincide with the biennial period. The initial registration fee shall be computed proportionately to the amount of time remaining in the biennial registration period.

B. The board shall establish by rule a biennial fee for professional engineers. Registration renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each registrant's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the registration.

D. Each registrant shall have the responsibility to notify the board of any change of address.

E. Upon receipt of a renewal fee, and fulfillment of other requirements, the board shall issue a registration renewal card that shall show the name and registration number of the registrant and shall state that the person named therein has been granted registration to practice as a professional engineer for the biennial period.

F. Every registration shall automatically expire if not renewed on or before the last day of the biennial period. A registrant, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent registrant may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the registrant wish to renew an expired certificate after the twelve-month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for registration, unless the qualifications have changed since the registration has expired.

**History:** Laws 1987, ch. 336, § 20; 1993, ch. 218, § 15.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-20 NMSA 1978, as amended by Laws 1979, ch. 363, § 15, relating to certificates and seals, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-19 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

## **61-23-21. Practice of engineering. (Effective until July 1, 2000.)**

A. No firm, partnership, corporation or joint stock association shall be registered under the Engineering and Surveying Practice Act [this article]. No firm, partnership, corporation or joint stock association shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work under the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations. In the case of an individual, the individual shall be a professional engineer under the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the practice, shall bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through partnership, at least one of the partners shall be a professional engineer under the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for the partnership shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through joint stock association or corporation, services or work involving the practice of engineering may be offered through that joint stock association or corporation; provided the person in responsible charge of the activities of the joint stock association or corporation which constitute such practice is a professional engineer who has authority to bind such joint stock association or corporation by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in such practice, issued by or for such joint stock association or corporation, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice engineering in accordance with the requirements in this section.

**History:** Laws 1987, ch. 336, § 21; 1993, ch. 218, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-21 NMSA 1978, as amended by Laws 1979, ch. 363, § 16, relating to registration and renewal fees and expirations, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-20 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, rewrote the catchline; deleted "or surveying" following "engineering" in the second sentence of Subsection A; in Subsection B, substituted "engage in the practice of engineering and perform engineering work" for "practice" in the first sentence, inserted the second and third sentences, and rewrote the last sentence; deleted former Subsection C, pertaining to professional surveyors; redesignated former Subsection D as present Subsection C; in Subsection C, inserted "individual" in two places, substituted "'registered' or 'licensed' engineer" for "'surveyor', 'professional surveyor' or 'surveying'", and deleted "or surveying" following "practice engineering"; and made minor stylistic changes throughout the section.

## **61-23-22. Engineering; exemptions. (Effective until July 1, 2000.)**

A. A New Mexico licensed architect who has complied with all of the laws of New Mexico relating to the practice of architecture has the right to engage in the incidental practice, as defined by regulation, of activities properly classified as engineering provided that the architect shall not hold himself out to be an engineer or as performing engineering services, and further provided that the architect shall perform only that part of the work for which he is professionally qualified and shall utilize qualified professional engineers or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, regulations and ordinances of the state or its political subdivisions pertaining to all documents bearing his professional seal.

B. Officers and employees of the government of the United States engaged in the practice of engineering insofar that the work involved in said practice is limited and restricted to within federal government property shall be exempt from the provisions of the Engineering and Surveying Practice Act [this article]. Any connection or joining of work to other work outside of the federal property shall require that the connection or joining be specified by engineers registered under the provisions of that act.

C. An engineer employed by a firm, association or corporation who performs only the engineering services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers engineering services to the public.

**History:** 1978 Comp., § 61-23-22, enacted by Laws 1993, ch. 218, § 17.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repealed a former 61-23-32 NMSA 1978, as amended by Laws 1979, ch. 363, § 17, relating to organizations permitted to practice, effective June 19, 1987, and enacted former 61-23-22 NMSA 1978. For

provisions of former section, see 1981 Replacement Pamphlet. For comparable provisions, see 61-23-21 NMSA 1978.

Laws 1993, ch. 218, § 17 repeals former 61-23-22 NMSA 1978, as enacted by Laws 1987, ch. 336, § 22, providing exemptions from the Engineering and Surveying Practice Act, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1987 Replacement Pamphlet.

### **61-23-23. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 218, § 41 repeals former 61-23-23 NMSA 1978, as enacted by Laws 1987, ch. 336, § 23, concerning registration by endorsement, effective July 1, 1993. For provisions of former section, see 1987 Replacement Pamphlet.

### **61-23-24. Engineering; violations; disciplinary action; penalties; reissuance of certificate. (Effective until July 1, 2000.)**

A. The board may suspend, refuse to renew or revoke the certificate of registration, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional engineer who is found by the board to have:

- (1) practiced or offered to practice engineering in New Mexico in violation of the Engineering and Surveying Practice Act [this article];
- (2) attempted to use as his own the certificate of another;
- (3) given false or forged evidence to the board or to any board member for obtaining a certificate of registration;
- (4) falsely impersonated any other registrant of like or different name;
- (5) attempted to use an expired, suspended or revoked certificate of registration;
- (6) falsely presented himself to be a professional engineer by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional engineers adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules and regulations adopted by the board;

(9) been convicted of a felony; or

(10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules and regulations of the board.

B. Nothing in the Engineering and Surveying Practice Act shall prohibit the general use of the word "engineer", "engineered", or "engineering" so long as such words are not used in an offer to the public to perform engineering work as defined in Subsections E and J of Section 61-23-3 NMSA 1978.

C. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. The guidelines may include minimum and maximum fines, periods of probation or conditions of probation or reissuance of a license.

D. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. Any person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against any registrant. The charges shall be in writing and shall be sworn to by the person making the charges and filed with the executive director of the board. All charges shall be referred to the engineering committee, acting for the board. No action that would have any of the effects specified in the Uniform Licensing Act, Subsections D, E, or F of Section 61-1-3, NMSA 1978 may be initiated later than two years after the discovery by the board but in no case shall an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges, unless dismissed as unfounded or trivial or resolved by reprimand, shall be heard in accordance with the provision of the Uniform Licensing Act by the engineering committee acting for the board or by the board.

F. Persons making charges shall not be subject to civil or criminal suits, provided that the charges are made in good faith and are not frivolous or malicious.

G. The board or any board member may initiate proceedings under the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

H. The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the members of the engineering committee, acting for the board, or of the board vote in favor of such reissuance. A new certificate of registration bearing the original registration number to replace any certificate revoked, lost, destroyed or mutilated may

be issued subject to the rules of the board with payment of a fee determined by the board.

I. The board shall prepare and adopt rules of professional responsibility for professional engineers as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every registrant and applicant for registration under that act, and shall be published in the roster. Publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional engineers from time to time and shall notify each registrant in writing of such revisions or amendments.

J. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

K. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonregistrant.

L. The practice of engineering in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance, and may be restrained and abated by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county that the violation occurs.

**History:** 1978 Comp., § 61-23-24, enacted by Laws 1993, ch. 218, § 18.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repealed a former 61-23-24 NMSA 1978, as amended by Laws 1979, ch. 363, § 19, relating to registration by endorsement, effective June 19, 1987, and enacted former 61-23-24 NMSA 1978. For provisions of former section, see 1981 Replacement Pamphlet.

Laws 1993, ch. 218, § 18 repeals former 61-23-24 NMSA 1978, as enacted by Laws 1987, ch. 336, § 24, concerning violations and disciplinary actions, and enacts the above section, effective July 1, 1993. For provisions of former section, see 1987 Replacement Pamphlet.

**61-23-24.1. Engineering; professional development. (Effective until July 1, 2000.)**

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

**History:** 1978 Comp., § 61-23-24.1, enacted by Laws 1993, ch. 218, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes the act effective on July 1, 1993.

#### **61-23-25. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 218, § 41 repeals former 61-23-25 NMSA 1978, as enacted by Laws 1987, ch. 336, § 25, concerning injunctions, effective July 1, 1993. For provisions of former section, see 1987 Replacement Pamphlet.

#### **61-23-26. Engineering; public work. (Effective until July 1, 2000.)**

A. It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving engineering unless the plans and specifications involving engineering have been prepared by and are under the responsible charge of a registered professional engineer and the public work involving professional surveying has been executed under the responsible charge of a registered professional surveyor. Nothing in this section shall be held to apply to any public work wherein the contemplated expenditure for the complete project does not exceed one hundred thousand dollars (\$100,000), except for public work involving structural design, structural modifications or surveying.

B. The Engineering and Surveying Practice Act [this article] shall not apply to construction surveys of engineering and architectural public works projects, the anticipated construction cost of which is less than one hundred thousand dollars (\$100,000).

**History:** Laws 1987, ch. 336, § 26; 1993, ch. 218, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-26 NMSA 1978, as amended by Laws 1979, ch. 363, § 21, relating to violations and penalties, effective June 19, 1987, and enacts the present section. For provisions of former

section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-24 NMSA 1978.

**The 1993 amendment**, effective July 1, 1993, deleted former Subsection A, pertaining to adoption of rules governing the practice of engineering and surveying in public works project; redesignated former Subsections B and C as present Subsections A and B; deleted "professional" preceding "engineering" in two places in Subsection A; and made a minor stylistic change in Subsection A.

### **61-23-27. Engineering; public officer; registration required. (Effective until July 1, 2000.)**

No person except a registered professional engineer shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that includes the performance or responsible charge of engineering work.

**History:** Laws 1987, ch. 336, § 27; 1993, ch. 218, § 21.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-27 NMSA 1978, as amended by Laws 1979, ch. 363, § 22, relating to injunctions, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1981 Replacement Pamphlet.

**The 1993 amendment**, effective July 1, 1993, added "Engineering" at the beginning of the catchline, deleted "or professional surveyor, whichever is applicable" following "professional engineer", substituted "that includes" for "which requires", and deleted "or surveying work" at the end of the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 63A Public Officers and Employees § 37.

67 C.J.S. Officers and Public Employees § 34.

#### **61-23-27.1. Certification as a surveyor intern. (Effective until July 1, 2000.)**

A. An applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has successfully completed forty-five semester hours of a board-approved surveying curriculum;

(3) has four years of combined board approved education, office and field experience in surveying. The forty-five semester hours of surveying curriculum will count as one year of experience; and

(4) have three references, two of whom shall be registered professional surveyors having personal knowledge of the applicant's surveying knowledge and experience.

B. The forty-five semester hours of academic training may be acquired by attendance at a college, university, a technical institute or by completion of a course of home study equivalent to forty-five semester hours from an institute having a curriculum approved by the board. The educational requirements shall be in surveying and associated scientific curriculum.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

D. Upon successfully completing the examination, the applicant may be certified as a surveyor intern by action of the board.

E. The certification of surveyor intern does not permit the registrant to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

**History:** 1978 Comp., § 61-23-27.1, enacted by Laws 1993, ch. 218, § 22.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes the act effective on July 1, 1993.

### **61-23-27.2. Registration of professional surveyor; requirements. (Effective until July 1, 2000.)**

A. Registration as a professional surveyor may be through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) is certified as a surveyor intern;

(3) has eight years of a combination of education and experience approved by the board; and

(4) has five references, three of whom shall be registered professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience shall, as a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a registered professional surveyor.

C. After acceptance of the application by the board, the applicant will be allowed to take the appropriate examination for registration as a professional surveyor.

D. Upon successfully completing the examination, the applicant may be registered as a professional surveyor by action of the board.

E. If otherwise qualified, an applicant may be registered if he is currently registered as a professional surveyor in:

(1) the District of Columbia, another state, territory or possession of the United States, provided that:

(a) registration does not conflict with the provisions of the Engineering and Surveying Practice Act [this article] and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; and

(b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or

(2) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico.

**History:** 1978 Comp., § 61-23-27.2, enacted by Laws 1993, ch. 218, § 23.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes the act effective on July 1, 1993.

**61-23-27.3. Certification of surveyor intern; requirements; effective July 1, 1995. (Effective until July 1, 2000.)**

A. Effective July 1, 1995, an applicant for certification as a surveyor intern shall file the appropriate application where he shall demonstrate that he:

(1) is of good moral character and reputation;

(2) has obtained at least a senior status in a board-approved four-year curriculum in surveying; and

(3) has three references, two of whom shall be registered professional surveyors having personal knowledge of the applicant's knowledge and experience.

B. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for certification as a surveyor intern.

C. Upon successfully completing the examination and an approved four-year surveying curriculum, then by action of the board, the applicant may be certified as a surveyor intern.

D. The certification of surveyor intern does not permit the registrant to practice surveying. Certification as a surveyor intern is intended to demonstrate that the intern has obtained certain skills in surveying fundamentals and is pursuing a career in surveying.

E. If otherwise qualified, a graduate of an unapproved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of four years of combined office and field board-approved surveying experience obtained under the direction of a registered professional surveyor. Time spent in obtaining the unapproved or related curriculum will not be counted in the four years of required experience.

**History:** 1978 Comp., § 61-23-27.3, enacted by Laws 1993, ch. 218, § 24.

**ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1995.

**61-23-27.4. Registration as a professional surveyor; general requirements; effective July 1, 1995. (Effective until July 1, 2000.)**

A. Effective July 1, 1995, registration as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application where he shall demonstrate that he:

- (1) is of good moral character and reputation;
- (2) is certified as a surveyor intern;
- (3) has at least four years of approved surveying experience after graduation; and
- (4) has five references, three of which shall be from registered professional surveyors having personal knowledge of the applicant's surveying experience.

B. The applicant's experience shall, as a minimum, include three years of increasingly responsible experience in boundary surveying and four years of increasingly responsible experience under the direct supervision of a registered professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for registration as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to register as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be registered if he is currently registered as a professional surveyor in:

- (1) the District of Columbia, another state, territory or possession of the United States, provided that:
  - (a) registration does not conflict with the provisions of the Engineering and Surveying Practice Act [this article] and that the standards required by the registration or the applicant's qualifications equaled or exceeded the registration standards in New Mexico at the time the applicant was initially registered; and
  - (b) the applicant has passed examinations the board deems necessary to determine his qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state; or
- (2) a foreign country and can demonstrate to the board's satisfaction:
  - (a) evidence that the registration was based on standards that equal or exceed those presently required for registration by the Engineering and Surveying Practice Act; and

(b) his competence in current surveying standards and procedures by passing examinations the board deems necessary to determine the applicant's qualification including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico.

**History:** 1978 Comp., § 61-23-27.4, enacted by Laws 1993, ch. 218, § 25.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1995.

#### **61-23-27.5. Surveying; application and examination fees. (Effective until July 1, 2000.)**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act [this article] shall apply for examination, registration or certification on forms prescribed and furnished by the board. Applications shall be accompanied by the appropriate fee, any sworn statements the board may require to show the applicant's citizenship and education, a detailed summary of his technical work and appropriate references.

B. All application, reapplication, examination and reexamination fees shall be set by the board and shall not exceed the actual cost of carrying out the provisions of the Engineering and Surveying Practice Act. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude.

**History:** 1978 Comp., § 61-23-27.5, enacted by Laws 1993, ch. 218, § 26.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

#### **61-23-27.6. Surveying; examinations. (Effective until July 1, 2000.)**

The examinations for surveying certification and registration shall be held at least once a year at a time and place the board directs. The surveying committee shall determine the passing grade on examinations.

**History:** 1978 Comp., § 61-23-27.6, enacted by Laws 1993, ch. 218, § 27.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

### **61-23-27.7. Surveying; registration and renewal fees; expirations. (Effective until July 1, 2000.)**

A. Registrations shall be for a period of two years as prescribed in the regulations and rules of procedure. Initial certificates of registration shall be issued to coincide with the biennial period. The initial registration fee shall be computed proportionately to the amount of time remaining in the biennial registration period.

B. The board shall establish by regulation a biennial fee for professional surveyors. Renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director shall send a renewal notice to each registrant's last known address. Notice shall be mailed at least one month in advance of the date of expiration of the registration.

D. It shall be the responsibility of the registrant to notify the board of any change of address and to maintain the certificate of registration current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a registration renewal card that shall show the name and registration number of the registrant and shall state that the person named therein has been granted registration to practice as a professional surveyor for the biennial period.

F. Every certificate of registration shall automatically expire if not renewed on or before the last day of the biennial period. A registrant, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a delinquent registrant may renew a certificate by the payment of twice the biennial renewal fee at any time up to twelve months after the renewal fee became due. Should the registrant wish to renew an expired certificate after the twelve month period has elapsed, he shall submit a formal application and fee as provided in Section 61-23-27.2 NMSA 1978, or if after July 1, 1995 as provided in Section 61-23-27.4 NMSA 1978 of the Engineering and Surveying Practice Act. The board, in considering the reapplication, need not question the applicant's qualifications for registration unless the qualifications have changed since the registration has expired.

**History:** 1978 Comp., § 61-23-27.7, enacted by Laws 1993, ch. 218, § 28.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

### **61-23-27.8. Surveying certificates and seals. (Effective until July 1, 2000.)**

A. The board shall issue certificates of registration under the Engineering and Surveying Practice Act [this article]. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

**History:** 1978 Comp., § 61-23-27.8, enacted by Laws 1993, ch. 218, § 29.

## ANNOTATIONS

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

### **61-23-27.9. Surveying; practice of surveying. (Effective until July 1, 2000.)**

A. No firm, partnership, corporation or joint stock association shall be registered under the Engineering and Surveying Practice Act [this article]. No firm, partnership, corporation or joint stock association shall practice or offer to practice surveying in the state except as provided in that act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work under the Engineering and Surveying Practice Act as individuals, partners or through joint stock associations or corporations.

In the case of an individual, the individual shall be a professional surveyor under the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, issued by or for the practice, shall bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work issued. In the case of practice through a partnership, at least one of the partners shall be a professional surveyor under that act, and in the case of a single professional surveyor partner, all drawings or reports issued by or for the partnership shall bear the seal of the professional surveyor partner who shall be responsible for the work. In the

case of practice through a joint stock association or corporation, services or work involving the practice of surveying may be offered through such joint stock association or corporation provided the person in responsible charge of the activities of the joint stock association or corporation which constitute the practice is a professional surveyor who has authority to bind such joint stock association or corporation by contract; and further provided that all drawings or reports which are involved in such practice, issued by or for the joint stock association or corporation, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. An individual, firm, partnership, corporation or joint stock association may not use or assume a name involving the terms "surveyor", "professional surveyor" or "surveying" or any modification or derivative of those terms unless that individual, firm, partnership, corporation or joint stock association is qualified to practice surveying in accordance with the requirements in this section.

**History:** 1978 Comp., § 61-23-27.9, enacted by Laws 1993, ch. 218, § 30.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

#### **61-23-27.10. Surveying exemptions. (Effective until July 1, 2000.)**

A. Officers and employees of the government of the United States engaged within New Mexico in the practice of surveying for the government, provided that they offer no surveying services to the public, and further provided that services do not affect the public, shall be exempt from the Engineering and Surveying Practice Act [this article].

B. A surveyor employed by a firm, association or corporation who performs only the surveying services involved in the operation of the employer's business shall be exempt from the provisions of the Engineering and Surveying Practice Act, provided that neither the employee nor the employer offers surveying services to the public.

**History:** 1978 Comp., § 61-23-27.10, enacted by Laws 1993, ch. 218, § 31.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

**61-23-27.11. Surveying; violations; disciplinary actions; penalties; reissuance of certificates. (Effective until July 1, 2000.)**

A. The board may suspend, refuse to renew or revoke the certificate of registration, impose a fine not to exceed five thousand dollars (\$5,000), place on probation for a specific period of time with specific conditions or reprimand any professional surveyor who is found by the board to have:

- (1) practiced or offered to practice surveying in New Mexico in violation of the Engineering and Surveying Practice Act [this article];
- (2) attempted to use as his own the certificate of another;
- (3) given false or forged evidence to the board or to any board member for obtaining a certificate of registration;
- (4) falsely impersonated any other registrant of like or different name;
- (5) attempted to use an expired, suspended or revoked certificate of registration;
- (6) falsely presented himself to be a professional surveyor by claim, sign, advertisement or letterhead;
- (7) violated the rules of professional responsibility for professional surveyors adopted and promulgated by the board;
- (8) been disciplined in another state for action that would constitute a violation of either or both the Engineering and Surveying Practice Act or the rules and regulations adopted by the board pursuant to the Engineering and Surveying Practice Act;
- (9) been convicted of a felony; or
- (10) procured, aided or abetted any violation of the provisions of the Engineering and Surveying Practice Act or the rules and regulations adopted by the board.

B. The board may by rule establish the guidelines for the disposition of disciplinary cases involving specific types of violations. Guidelines may include minimum and maximum fines, periods of probation, or conditions of probation or reissuance of a license.

C. Failure to pay any fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the executive director of the board. No action that would have any of the effects specified in the Uniform Licensing Act, Subsection D, E, or F of Section 61-1-3 NMSA 1978 may be initiated later than two years after the discovery by the board but in no case shall such an action be brought more than ten years after the completion of the conduct that constitutes the basis for the action. All charges shall be referred to the surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded or trivial or resolved by reprimand, shall be heard in accordance with the provisions of the Uniform Licensing Act by the surveying committee, acting for the board or by the board.

E. Persons making charges shall not be subject to civil or criminal suits, provided the charges are made in good faith and are not frivolous or malicious.

F. The board or any board member may initiate proceedings under the provisions of this section in accordance with the provisions of the Uniform Licensing Act. Nothing in the Engineering and Surveying Practice Act shall deny the right of appeal from the decision and order of the board in accordance with the provisions of the Uniform Licensing Act.

G. The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the members of the surveying committee, acting for the board, or of the board vote in favor of such reissuance. A new certificate of registration bearing the original registration number to replace any certificate revoked, lost, destroyed or mutilated may be issued subject to the rules of the board with payment of a fee determined by the board.

H. The board shall prepare and adopt rules of professional responsibility for professional surveyors as provided in the Engineering and Surveying Practice Act that shall be made known in writing to every registrant and applicant for registration under that act and shall be published in the roster. Such publication and public notice shall be in accordance with the Uniform Licensing Act. The board may revise and amend these rules of professional responsibility for professional surveyors from time to time and shall notify each registrant in writing of the revisions or amendments.

I. A violation of any provision of the Engineering and Surveying Practice Act is a misdemeanor punishable upon conviction by a fine of not more than five thousand dollars (\$5,000) or by imprisonment of no more than one year, or both.

J. The attorney general or district attorney of the proper district or special prosecutor retained by the board shall prosecute violations of the Engineering and Surveying Practice Act by a nonregistrant.

K. The practice of surveying in violation of the provisions of the Engineering and Surveying Practice Act shall be deemed a nuisance, and may be restrained and abated

by injunction without bond in an action brought in the name of the state by the district attorney or on behalf of the board by the attorney general or the special prosecutor retained by the board. Action shall be brought in the county in which the violation occurs.

**History:** 1978 Comp., § 61-23-27.11, enacted by Laws 1993, ch. 218, § 32.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

#### **61-23-27.12. Surveying; professional development. (Effective until July 1, 2000.)**

The board shall implement and conduct a professional development program. Compliance and exceptions shall be established by the regulations and rules of procedure of the board.

**History:** 1978 Comp., § 61-23-27.12, enacted by Laws 1993, ch. 218, § 33.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

#### **61-23-27.13. Surveying; public work. (Effective until July 1, 2000.)**

It is unlawful for the state or any of its political subdivisions to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a registered professional surveyor.

**History:** 1978 Comp., § 61-23-27.13, enacted by Laws 1993, ch. 218, § 34.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

**61-23-27.14. Surveying; public officer; registration required.  
(Effective until July 1, 2000.)**

No person except a registered professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state which requires the performance or responsible charge of surveying work.

**History:** 1978 Comp., § 61-23-27.14, enacted by Laws 1993, ch. 218, § 35.

**ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

**61-23-28. Reference marks; removal or obliteration; replacement.  
(Effective until July 1, 2000.)**

When it becomes necessary by reason of the construction of public or private works to remove or obliterate any triangulation station, benchmark, corner, monument, stake, witness mark or other reference mark, it shall be the duty of the person in charge of the work to cause to be established by a registered surveyor one or more permanent reference marks which shall be plainly marked as witness corners or reference marks as near as practicable to the original mark, and to record a map, field notes or both with the county clerk and county surveyor of the county wherein located, showing clearly the position of the marks established with reference to the position of the original [original] mark. The surveys or measurements made to connect the reference marks with the original mark shall be of at least the same order of precision as the original survey.

**History:** Laws 1987, ch. 336, § 28.

**ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-28 NMSA 1978, as amended by Laws 1983, ch. 111, § 1, relating to public work, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1986 Cumulative Supplement. For present comparable provisions, see 61-23-26 and 61-23-27.13 NMSA 1978.

**61-23-28.1. Surveying; record of survey. (Effective until July 1,  
2000.)**

A. After the completion of a boundary survey in conformity with the practice of surveying as defined in the Engineering and Surveying Practice Act [this article] and in compliance with the minimum standards for surveying as published by the board, a professional surveyor shall file with the county clerk in the county or counties in which the survey was made a record of survey relating to land boundaries and property lines. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed pursuant to this section shall be filed within thirty calendar days after the completion of the survey or approval by the governing authority.

B. Fees for recording a record of survey will be in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978. The county clerk shall keep a proper index of the record of survey by the name of the owner and by section, township and range or projected section, township and range if the subject tract is in a land grant and with references with other legal subdivisions. These records shall be kept in conformance with Sections 14-8-12 through 14-8-16 NMSA 1978.

**History:** 1978 Comp., § 61-23-28.1, enacted by Laws 1993, ch. 218, § 36.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes this section of the act effective on July 1, 1993.

#### **61-23-29. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 218, § 41 repeals former 61-23-29 NMSA 1978, as enacted by Laws 1987, ch. 336, § 29, concerning the restoration or reestablishment of monuments, effective July 1, 1993. For provisions of former section, see 1987 Replacement Pamphlet.

#### **61-23-29.1. Repealed.**

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-29.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 26, relating to licensure under prior laws, effective June 19, 1987. For provisions of former section, see 1981 Replacement Pamphlet. For present comparable provisions, see 61-23-31 NMSA 1978.

#### **61-23-30. Right of entry on public and private property; responsibility. (Effective until July 1, 2000.)**

The engineers and surveyors of the United States and registered professional engineers and surveyors of the state of New Mexico shall have the right to enter upon the lands and waters of the state and of private persons and of private and public corporations within the state for the purpose of making surveys, inspections, examinations and maps, subject to responsibility for actual damage to crops or other property or for injuries resulting from negligence or malice caused on account of that entry.

**History:** Laws 1987, ch. 336, § 30.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Repeals and reenactments.** - Laws 1987, ch. 336 repeals former 61-23-30 NMSA 1978, as amended by Laws 1983, ch. 111, § 2, relating to termination of agency life and delayed repeal, effective June 19, 1987, and enacts the present section. For provisions of former section, see 1986 Cumulative Supplement. For present comparable provisions, see 61-23-32 NMSA 1978.

**Compiler's note.** - Laws 1987, ch. 333, § 10 purported to amend former 61-23-30 NMSA 1978, as amended by Laws 1981, ch. 241, § 31, relating to termination of agency life, but was not given effect due to the repeal and reenactment by Laws 1987, ch. 336, § 30.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 75 Am. Jur. 2d Tresspass § 103, 104.

87 C.J.S. Trespass §§ 52 to 54.

### **61-23-31. Licensure under prior laws. (Effective until July 1, 2000.)**

Any person holding a valid registration as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern, or surveyor intern granted by the board under any prior law of New Mexico shall not be required to make a new application or to submit to an examination, but shall be entitled to the renewal of such registration upon the terms and conditions of the Engineering and Surveying Practice Act [this article].

**History:** Laws 1987, ch. 336, § 31; 1993, ch. 218, § 37.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**The 1993 amendment,** effective July 1, 1993, substituted "professional surveyor, professional engineer and surveyor or certification as an engineer intern, or surveyor

intern" for "professional land surveyor, land surveyor or professional engineer and land surveyor or certification as an engineering intern, engineer-in-training or land surveying intern".

### **61-23-31.1. Good samaritan. (Effective until July 1, 2000.)**

A. A professional engineer or professional surveyor who voluntarily, without compensation, at the request of a state or local public official acting in an official capacity, provides structural, electrical, mechanical, other engineering services, or surveying at the scene of a declared national, state, or local emergency caused by a major earthquake, hurricane, tornado, fire, explosion, flood, collapse or other similar disaster or catastrophic event, shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by the engineer's or surveyor's acts, errors, or omissions in the performance of any surveying or engineering services for any structure, building, piping or other engineered system, publicly owned.

B. The immunity provided shall apply only to a voluntary engineering or surveying service that occurs within thirty days of the emergency, disaster, or catastrophic event, unless extended by an executive order issued by the governor under the governor's emergency executive powers. Nothing in this section shall provide immunity for wanton, willful or intentional misconduct.

**History:** 1978 Comp., § 61-23-31.1, enacted by Laws 1993, ch. 218, § 38.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-23-32 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 218, § 43 makes the act effective on July 1, 1993.

### **61-23-32. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The state board of registration for professional engineers and surveyors is terminated on July 1, 1999 pursuant to the Sunset Act[12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act [this article] until July 1, 2000. Effective July 1, 2000, the Engineering and Surveying Practice Act is repealed.

**History:** Laws 1987, ch. 336, § 32; 1993, ch. 218, § 39.

#### **ANNOTATIONS**

**The 1993 amendment,** effective July 1, 1993, substituted "1999" for "1993" in the first sentence and "2000" for "1994" in the second and third sentences.

**Severability clauses.** - Laws 1993, ch. 218, § 42 provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 24 HEARING AID DEALERS AND FITTERS**

(Repealed by Laws 1979, ch. 349, § 20.)

**61-24-1 to 61-24-21. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1979, ch. 349, § 20, repeals 61-24-1 to 61-24-21 NMSA 1978, relating to hearing aid dealers and fitters. For present provisions, see 61-24A-1 to 61-24A-18 NMSA 1978.

## **ARTICLE 24A HEARING AID DISPENSERS**

**61-24A-1. Short title. (Effective until July 1, 1996.)**

Sections 1 through 18 [61-24A-1 to 61-24A-20 NMSA 1978] of this act may be cited as the "Hearing Aid Act".

**History:** Laws 1979, ch. 349, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Compiler's note.** - Sections 61-24A-19 and 61-24A-20 were enacted in 1991 as new sections of the Hearing Aid Act.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Validity and construction of state statutes regulating hearing aid fitting or sales, 96 A.L.R.3d 1030.

**61-24A-2. Definitions. (Effective until July 1, 1996.)**

As used in the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978]:

A. "audiologist" means a person holding at least a master's degree in audiology and meeting the academic requirements for certification by the American speech and hearing association;

B. "board" means the hearing aid advisory board;

C. "hearing aid dealer or fitter" means any person other than an audiologist or an otorhinolaryngologist who is licensed to sell, fit and service hearing aids under the Hearing Aid Act and maintains or occupies a permanent physical business location in New Mexico where records can be examined and process can be served;

D. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Hearing Aid Act;

E. "direct supervision" means that the sponsor is present at the hearing aid dispensing site, personally reviews the evaluation performed by the trainee and authorizes the fitting of the appropriate hearing aid before the client leaves the premises;

F. "dispensing audiologist" means an audiologist who practices the dispensing or fitting of hearing aids and maintains or occupies a permanent physical business location in New Mexico where records can be examined and process can be served;

G. "hearing aid" means any wearable instrument or device designed or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including earmolds but excluding batteries and cords;

H. "otorhinolaryngologist" means a licensed physician who has completed a recognized residency in otorhinolaryngology and certified by the American board of otorhinolaryngology;

I. "practice of dispensing or fitting hearing aids" includes the evaluation and measurement of the sensitivity and range of human hearing using an audiometer or additional appropriate means with the object in mind of making selections, adaptations and sales of hearing aids. The term also includes the making of an impression of the ear for an earmold;

J. "sell" or "sale" includes a transfer of title or of the right to use, by lease, bailment or other contract, a hearing aid in exchange for cash or other thing of value, but excludes wholesale transactions with distributors, dealers or audiologists;

K. "sponsor" means an individual who is employed full time in the same physical location in New Mexico where the trainee is being trained and is:

(1) an audiologist licensed under the provisions of the Hearing Aid Act for at least one year; or

(2) a hearing aid dealer or fitter licensed under the provisions of the Hearing Aid Act who has been actively engaged in dispensing or fitting hearing aids during three of the past five years; and

L. "trainee" means a person working toward full licensure as a hearing aid dealer or fitter under the direct supervision of a sponsor.

**History:** Laws 1979, ch. 349, § 2; 1987, ch. 329, § 14; 1991, ch. 46, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, in Subsections C and F, added the language beginning with "and maintains"; inserted present Subsection E and redesignated the subsequent subsections accordingly; in Subsection K, in the introductory paragraph, added the language beginning with "an individual", in Paragraph (2), deleted "and who is employed full time in the same establishment where the trainee is employed" following "five years"; and, in Subsection L, inserted "direct".

#### **61-24A-3. Administration of act. (Effective until July 1, 1996.)**

The department shall, through its designated division, enforce and administer the provisions of the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978].

**History:** Laws 1979, ch. 349, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

#### **61-24A-4. Licensure and regulation of hearing aid dispensing or fitting. (Effective until July 1, 1996.)**

A. No person shall practice dispensing of or fitting hearing aids or hold himself out as being able to dispense or fit hearing aids in this state unless he is licensed in accordance with the provisions of the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978].

B. Any person who violates Subsection A of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1979, ch. 349, § 4; 1991, ch. 46, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, added the subsection designation and inserted "dispensing of or fitting hearing aids"; and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 4; 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 144.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

53 C.J.S. Licenses § 34.

### **61-24A-5. Receipt furnished each client. (Effective until July 1, 1996.)**

Any person who practices the sale or fitting of hearing aids shall deliver to any person supplied with a hearing aid, a receipt which shall contain the licensee's signature, the address of the licensee's regular place of business and the number of his license. It shall also show the make and model of the hearing aid furnished along with the full terms of the sale clearly stated. If the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee. The receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription.

**History:** Laws 1979, ch. 349, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

### **61-24A-6. Persons and practices not affected. (Effective until July 1, 1996.)**

A. The Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] does not apply to any person who does not sell or dispense hearing aids.

B. Nothing in the Hearing Aid Act restricts the activities and services of a graduate student pursuing a course of study leading to a graduate degree in audiology at an accredited or approved college or university or an approved clinical training facility, provided that any activities and services related to the dispensing or fitting of hearing aids are supervised by an audiologist licensed under the Hearing Aid Act and that he is designated by some title clearly indicating the student status appropriate to his level of training.

C. The Hearing Aid Act does not prohibit:

(1) qualified personnel at the New Mexico school for the deaf from making an impression of the ear for an earmold for registered students; or

(2) audiologists or otorhinolaryngologists from making an impression of the ear for an earmold when deemed necessary in hearing aid selection and evaluation or the rehabilitation process so long as hearing aids are not being sold.

**History:** Laws 1979, ch. 349, § 6.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 18.

### **61-24A-7. Advisory board. (Effective until July 1, 1996.)**

A. Before July 1, 1979, the superintendent of regulation and licensing shall appoint the "hearing aid advisory board", consisting of eight members as follows:

(1) two audiologists;

(2) two hearing aid dealers or fitters;

(3) one licensed physician; and

(4) three public members who are residents of New Mexico. The public members shall not have been licensed or have practiced as audiologists, hearing aid dealers or fitters or physicians nor shall the public members have any significant financial interest, whether direct or indirect, in the occupations regulated.

B. The superintendent of regulation and licensing may appoint successor advisory boards, of the same composition as that of the advisory board appointed pursuant to Subsection A of this section, as he deems necessary to assist in carrying out the provisions of the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978]. Such boards shall serve such terms as the superintendent deems necessary, and the members of the boards shall serve at the pleasure of the superintendent.

C. The members of any board created pursuant to this section shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of their duties as members.

**History:** Laws 1979, ch. 349, § 7; 1987, ch. 329, § 15; 1991, ch. 46, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Termination dates.** - Pursuant to 12-9-16.1 NMSA 1978, the hearing aid advisory board shall terminate on July 1, 1995.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, increased the number of board members from six to eight and the number of public members from one to three and made minor stylistic changes; and, in Subsection B, inserted "of regulation and licensing" near the beginning.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses § 37.

### **61-24A-8. Qualifications of applicants for licensure. (Effective until July 1, 1996.)**

Each applicant for licensure under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] shall make application on a written form in such manner as the department prescribes, pay all required fees and furnish evidence satisfactory to the department that the applicant has fulfilled the requirements as stated in the Hearing Aid Act.

**History:** Laws 1979, ch. 349, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

### **61-24A-9. Licensure without examination. (Effective until July 1, 1996.)**

A person shall be immediately issued a license to dispense or fit hearing aids without an examination if he:

A. is currently licensed in another jurisdiction that has requirements for licensure at least equivalent to those contained in the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978];

B. is currently certified in audiology by the American speech-language-hearing association or meets all the requirements for certification and provides evidence

satisfactory to the department of experience in the dispensing or fitting of hearing aids either in a graduate training program or in a work or training experience; or

C. is an otorhinolaryngologist and provides evidence satisfactory to the department of experience in the dispensing or fitting of hearing aids.

**History:** Laws 1979, ch. 349, § 9; 1991, ch. 46, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, deleted former Subsection A, pertaining to prior dispensers, and redesignated the subsequent subsections accordingly; in Subsection B, substituted "speech-language-hearing" for "speech and hearing"; deleted "or knowledge" following "experience" in Subsections B and C; and made minor stylistic changes.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 40.

### **61-24A-10. Licensure by examination. (Effective until July 1, 1996.)**

A. A person may apply for licensure by examination who pays the application fee as set forth in Section 61-24A-15 NMSA 1978 and who:

(1) is an audiologist or otorhinolaryngologist who does not qualify under Section 61-24A-9 NMSA 1978; or

(2) is a person other than an audiologist or an otorhinolaryngologist applying for a license under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] and who:

(a) has reached the age of majority;

(b) has at least a high school education or the equivalent; and

(c) has worked for no less than six months under a training permit.

B. The examination shall be conducted by the department quarterly unless there are no applicants for examination.

**History:** Laws 1979, ch. 349, § 10; 1991, ch. 46, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, in the introductory paragraph, added "pays the application fee as set forth in Section 61-24A-15 NMSA 1978 and who", in Paragraph (1), substituted "Section 61-24A-9 NMSA 1978" for "Section 9 of the Hearing Aid Act", and deleted former Subparagraph (2)(d), pertaining to payment of examination fee; in Subsection B, substituted "quarterly" for "every six months"; and made minor stylistic changes in Subsection A.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 47, 56.

53 C.J.S. Licenses § 40.

### **61-24A-11. Temporary trainee permits; licensure through examination. (Effective until July 1, 1996.)**

A. Any person applying for licensure who does not meet the requirements for licensure without examination as set forth in Section 61-24A-9 NMSA 1978 shall be required to obtain a temporary trainee permit under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] and shall apply for and be granted immediately a temporary trainee permit for one year provided he:

(1) has reached the age of majority;

(2) either:

(a) has a high school education or the equivalent; or

(b) is an audiologist actively engaged in fulfilling the clinical fellowship year requirements for certification in audiology by the American speech-language-hearing association and does not choose to apply under Subsection B of this section;

(3) has identified a sponsor as defined in Section 61-24A-2 NMSA 1978;

(4) pays an application fee as determined by the board pursuant to Section 61-24A-15 NMSA 1978; and

(5) has not failed the licensing examination more than twice.

B. A temporary permit shall be valid for one year from the date of its issuance and is nonrenewable for a period of one year following its expiration.

C. The training period for a trainee to become licensed pursuant to the provisions of the Hearing Aid Act shall be as follows:

(1) for the nonaudiologist, a minimum of three hundred twenty working hours, to be completed within a three-month period of training under the direct supervision of the

sponsor. An additional five continuous months of full-time work is then required in which all sales shall be approved by the sponsor prior to delivery. The sponsor shall also approve all fittings, adjustments or changes to the fitting, modifications to the hearing aid and earmold and repairs;

(2) for the audiologist who is actively engaged in fulfilling the clinical fellowship year requirements for certification in audiology by the American speech-language-hearing association, the training period shall include the dispensing or fitting under the direct supervision of a sponsor who shall also approve all fittings, adjustments or changes to the fitting, modifications to the hearing aid and earmold and repairs:

(a) after six months of fulfilling the requirements of the training permit, the audiologist may apply for licensure by examination; or

(b) after completing the clinical fellowship year, the individual may apply for licensure under Subsection C [B] of Section 61-24A-9 NMSA 1978; or

(3) for the otorhinolaryngologist who is licensed by the New Mexico board of medical examiners, a training period to be approved by the department which shall not exceed that of a hearing aid dealer or fitter trainee.

D. When a trainee has completed the training period as set forth in Subsection C of this section, the trainee may then take the licensing examination as offered and set forth in Section 61-24A-10 NMSA 1978 and specified by the department.

E. The department shall issue the applicant a license upon successfully passing the licensing examination and completing all other requirements set forth in this section.

F. Any person who fails to pass his examination for a license pursuant to the provisions of the Hearing Aid Act shall be required to pay an application fee, as set forth in Section 61-24A-15 NMSA 1978, each time that person applies to take the examination.

**History:** Laws 1979, ch. 349, § 11; 1991, ch. 46, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Bracketed material.** - The bracketed "B" in Subsection C(2)(b) was inserted by the compiler, as Subsection C of 61-24A-9 NMSA 1978 was redesignated as Subsection B in 1991. The bracketed material was not enacted by the legislature and is not part of the law.

**The 1991 amendment,** effective June 14, 1991, in the catchline, added "licensure through examination"; in Subsection A, in the introductory language, substituted "applying for . . . obtain a temporary trainee permit" for "requiring a trainee permit"; in

Subsections A(2)(b) and C(2), substituted "speech-language-hearing" for "speech and hearing"; in Subsection A(4), substituted "an application fee" for "a permit fee" and added "pursuant to Section 61-24A-15 NMSA 1978; and"; inserted Subsection A(5); inserted present Subsection B; redesignated former Subsection B as present Subsection C, inserting in the introductory paragraph thereof "to become licensed pursuant to the provisions of the Hearing Aid Act" and, in the first sentence of Paragraph (1), substituting "three hundred twenty working hours, to be completed within a three-month period of training under the direct supervision of" for "twenty working days, to be completed within a two month period of intensive training working directly with"; added Subsections D through F; and made minor stylistic changes throughout this section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 39.

### **61-24A-12. Scope of examination. (Effective until July 1, 1996.)**

In preparing the examination, the board shall use the following standards for testing knowledge and proficiency:

A. tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

- (1) basic physics of sound;
- (2) anatomy and physiology of the ear; and
- (3) the function of hearing aids; and

B. practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

- (1) pure-tone audiometry, including air conduction and bone conduction testing;
- (2) live voice or recorded voice speech audiometry, including speech reception threshold and speech discrimination tests;
- (3) masking when indicated;
- (4) recording and evaluation of audiograms and speech audiometry for determining proper selection and adjustment of hearing aids; and
- (5) taking earmold impressions.

**History:** Laws 1979, ch. 349, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 56.

53 C.J.S. Licenses § 40.

**61-24A-13. Powers and duties of the department. (Effective until July 1, 1996.)**

The department shall:

- A. evaluate the qualifications of applicants;
- B. prepare and administer examinations to test the knowledge and proficiency of applicants for licensure by examination, and set the time and place for such examinations;
- C. supervise the issuance of licenses and permits and their renewal;
- D. promulgate rules and regulations on accepting referrals from any person to a person licensed under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978];
- E. suspend and revoke licenses and permits when a person is found guilty of a violation of the Hearing Aid Act, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];
- F. appoint or employ personnel necessary to administer the Hearing Aid Act;
- G. maintain a register of all applicants for licenses or permits;
- H. issue subpoenas, examine witnesses, administer oaths, bring actions for contempt and investigate persons engaged in practices which violate the provisions of the Hearing Aid Act;
- I. conduct such hearings and keep such records and minutes as shall be necessary to an orderly dispatch of business; and
- J. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], all rules and regulations for the implementation and enforcement of the provisions of the Hearing Aid Act.

**History:** Laws 1979, ch. 349, § 13.

**ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

### **61-24A-14. Annual renewal of licenses. (Effective until July 1, 1996.)**

A. Each holder of a license under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] shall annually renew the license and shall pay to the department a renewal fee in an amount set by the department. In addition, an application for renewal shall include a statement listing the licensee's professional educational activities of at least twenty hours achieved during the past two years, including but not limited to:

(1) attendance at workshops certified by the national hearing aid society, the hearing instruments institute or the American speech-language-hearing association;

(2) successful completion of a hearing aid fitting school course or seminar, as evidenced by a passing grade at the university where the hearing instruments institute is conducting its hearing aid fitting school;

(3) successful completion of an accredited university audiology course; or

(4) teaching an accredited university audiology course. The department shall be the final judge on acceptance of any educational activity offered by a licensee to meet the continuing education requirement.

B. A six-week grace period shall be allowed after expiration of a license during which time a license may be renewed upon payment of the fee as set by the department, and the licensee shall not be required to reapply for a license. If a license is not renewed during the grace period, the individual shall reapply as a new applicant.

**History:** Laws 1979, ch. 349, § 14; 1991, ch. 46, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "licenses" for "license and permits" in the catchline; in the second sentence of Subsection A, substituted "twenty hours" for "ten hours" and "past two years" for "past year"; in Subsection A(1), substituted "speech-language-hearing" for "speech and hearing"; in Subsection A(2), inserted "of a hearing aid fitting school course or seminar"; in the first sentence of Subsection B, substituted "six-week grace period" for "six-month grace period" and "department" for "division" and made minor stylistic changes.

### **61-24A-15. Fees. (Effective until July 1, 1996.)**

The following is a schedule of fees to be set by and paid to the department under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978]:

A. for the application for any license to sell hearing aids, not to exceed two hundred fifty dollars (\$250);

B. for the annual renewal of the license, not to exceed one hundred fifty dollars (\$150); and

C. for late renewal up to six weeks after expiration of the license, a late charge not to exceed one hundred dollars (\$100), which is in addition to any other fees.

**History:** Laws 1979, ch. 349, § 15; 1991, ch. 46, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**The 1991 amendment**, effective June 14, 1991, in Subsection A, substituted "application for" for "initial issuance of " and increased the fee from \$50.00 to \$250.00; in Subsection B, increased the fee from \$50.00 to \$150.00; deleted former Subsections C and D, pertaining to fees for examinations and temporary trainee permits, and redesignated former Subsection E as present Subsection C, substituting therein "weeks" for "months" and increasing the fee from \$50.00 to \$100.00.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

53 C.J.S. Licenses §§ 41, 43, 64 to 66.

### **61-24A-16. Fund created; disposition of funds. (Effective until July 1, 1996.)**

There is created in the state treasury the "hearing aid dispensers fund". The fund shall consist of all license and application fees and any other money received by the department pursuant to and for the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978]. The state treasurer shall invest the fund as other state funds are invested, and all income derived from the fund shall be credited to the fund. The money in the fund shall only be expended to carry out the provisions of the Hearing Aid Act. All remaining balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

**History:** 1978 Comp., § 61-24A-16, enacted by Laws 1991, ch. 46, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Repeals and reenactments.** - Laws 1991, ch. 46, § 9 repeals former 61-24A-16 NMSA 1978, as enacted by Laws 1979, ch. 349, § 16, and enacts the above section, effective June 14, 1991. For provisions of former section, see 1990 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 71.

**61-24A-17. Suspension or revocation of license. (Effective until July 1, 1996.)**

In accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the division may refuse to issue, suspend for a definite period or revoke the license of an audiologist or a hearing aid dealer or fitter for any of the following causes:

- A. unprofessional conduct, as defined by regulations of the department;
- B. dereliction of any duty imposed by law;
- C. incompetence;
- D. conviction of a felony;
- E. practicing while suffering from a contagious or infectious disease;
- F. practicing under the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] under a false name or alias;
- G. selling or fitting of the first hearing aid of any child under sixteen years of age who has not been examined and cleared for the hearing aid by both an otorhinolaryngologist and an audiologist who is certified competent by the American speech and hearing association or holds equivalent certification;
- H. selling or fitting a hearing aid on any person who has not been tested, utilizing appropriate procedures and instrumentation, except in those cases of replacement with the same make and model within a one-year period of the original purchase in cases of theft or damage beyond repair;
- I. unethical conduct, such as:
  - (1) obtaining any fee or making any sale by fraud or misrepresentation;
  - (2) knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by the Hearing Aid Act;

(3) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, label, warranty, brand, insignia or any other representation, however disseminated or published, which is misleading or untruthful;

(4) advertising a particular model or type of hearing aid for sale when the purchaser or prospective purchaser responding to the advertisement cannot purchase the advertised model or type and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised;

(5) representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance or repair of the hearing aid when that is not true, or using the words "doctor," "clinic" or similar words, abbreviations or symbols in such ways as to connote the medical profession when such is not the case;

(6) being habitually intemperate;

(7) permitting another to use his license; or

(8) directly or indirectly giving or offering to give, or permitting, or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence him or have him influence others to purchase or contract to purchase products sold or offered for sale by a license or permit holder, or to influence persons to refrain from dealing in the products of competitors;

J. failure on the part of a sponsor to reasonably perform the duties of a sponsor as outlined herein. If the sponsor was other than a dealer, the dealer, if qualified, may assume the duties of the sponsor or provide another qualified sponsor; provided the trainee has not been guilty of any infractions of the Hearing Aid Act; provided, further, if the dealer failed to exercise reasonable supervision over the sponsor and trainee and the sponsor's license has been suspended or revoked, the dealer's right to employ and train another trainee may also be suspended. It is not intended to penalize any trainee when no guilt exists on the part of the trainee. Upon a second offense the period of suspension shall be double that of the first offense; or

K. violating any of the provisions of the Hearing Aid Act.

**History:** Laws 1979, ch. 349, § 17.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Generally, as to evidence to determine gross ignorance or inefficiency.** - A determination of gross ignorance or inefficiency can be made only on direct evidence of

the conditions, and not on a mere showing that the licensee had not attended a certain retraining program. 1970 Op. Att'y Gen. No. 70-82.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

Validity of statute providing for revocation of license of physician, surgeon or dentist, 5 A.L.R. 94, 79 A.L.R. 323.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Professional incompetency as ground for disciplinary measure against physician or dentist, 28 A.L.R.3d 487.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action, 59 A.L.R.4th 1102.

53 C.J.S. Licenses § 50 et seq.

### **61-24A-18. Prohibitions; penalty. (Effective until July 1, 1996.)**

A. It is unlawful for any person to:

(1) sell, barter or offer to sell a license or permit;

(2) purchase or procure by barter a license with intent to use it as evidence of the holder's qualifications to practice the sale or fitting of hearing aids as either an audiologist or hearing aid dealer or fitter;

(3) alter a license or permit with fraudulent intent;

(4) use or attempt to use a license or permit which has been purchased, fraudulently obtained, altered or counterfeited;

(5) willfully make any false statement in any application for either a license or permit or the renewal thereof; or

(6) deliver a hearing aid by mail except:

(a) loaner hearing aids;

(b) repaired hearing aids; or

(c) replacement hearing aids of the same make and model in those cases where a hearing aid has been lost, stolen or damaged beyond repair.

B. Any person who violates any provision of Subsection A of this section is guilty of a misdemeanor.

**History:** Laws 1979, ch. 349, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 72.

53 C.J.S. Licenses § 82 et seq.

#### **61-24A-19. License display. (Effective until July 1, 1996.)**

Any person licensed pursuant to the provisions of the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] shall prominently display his license at the physical location of his business where he practices the dispensing or fitting of hearing aids.

**History:** 1978 Comp., § 61-24A-19, enacted by Laws 1991, ch. 46, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

#### **61-24A-20. Notice of change of business address. (Effective until July 1, 1996.)**

Any person licensed pursuant to the provisions of the Hearing Aid Act [61-24A-1 to 61-24A-20 NMSA 1978] shall notify the department in writing within thirty days of his new place of business and upon receipt of this notification the department shall make the necessary changes to the department's records.

**History:** 1978 Comp., § 61-24A-20, enacted by Laws 1991, ch. 46, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24A-21 NMSA 1978.

#### **61-24A-21. Termination of agency life; delayed repeal. (Effective until July 1, 1996.)**

The board of hearing aid dispensers is terminated on July 1, 1995. The board shall continue to operate according to the provisions of Chapter 61, Article 24A NMSA 1978

until July 1, 1996. Effective July 1, 1996 Sections 61-24A-1 through 61-24A-20 (being Laws 1979, Chapter 349, Sections 1 through 15, Section 8 of this act, Laws 1979, Chapter 349, Sections 17 and 18, and Sections 9 and 10 of this act) are repealed.

**History:** Laws 1991, ch. 46, § 12.

## **ARTICLE 24B**

### **LANDSCAPE ARCHITECTS**

#### **61-24B-1. Short title. (Effective until July 1, 1998.)**

This act [61-24B-1 to 61-24B-17 NMSA 1978] may be cited as the "Landscape Architects Act".

**History:** Laws 1985, ch. 151, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 87 to 89.

6 C.J.S. Architects §§ 2, 3, 7.

#### **61-24B-2. Purpose of act. (Effective until July 1, 1998.)**

The purpose of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] is to ensure public safety and to promote quality performance by registration of landscape architects.

**History:** Laws 1985, ch. 151, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-3. Definitions. (Effective until July 1, 1998.)**

As used in the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978]:

A. "board" means the board of landscape architects;

B. "general administration of a construction contract" means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship

and the periodic observation of construction to facilitate consistency with the general intent of the construction documents;

C. "landscape architect" means any individual registered under the Landscape Architects Act to practice landscape architecture; and

D. "landscape architectural services" means the practice of landscape architecture, including but not limited to consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts where the dominant purposes of such services are:

(1) the preservation or enhancement of land uses and natural features;

(2) the location and construction of functional approaches for structures, pathways or walkways; or

(3) the design of trails, plantings and landscape irrigation.

Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined by Sections 61-15-2 and 61-23-6 NMSA 1978.

**History:** Laws 1985, ch. 151, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-4. Registration required. (Effective until July 1, 1998.)**

No person shall practice as a landscape architect or represent himself as a landscape architect unless he has a certificate of registration issued pursuant to the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978].

**History:** Laws 1985, ch. 151, § 4.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-5. Exemptions. (Effective until July 1, 1998.)**

The following shall be exempt from the provisions of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978]:

A. landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a resident landscape architect registered under the provisions of the Landscape Architects Act; provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country;

B. landscape architects acting solely as officers or employees of the United States or any interstate railroad system; and

C. landscape designers, land planners, agriculturalists, soil conservationists, agronomists, horticulturists, foresters, tree experts, arborists, gardeners, contract landscape caretakers, landscape nurserymen, graders or contractors, or cultivators of land and any person making plans for property owned by himself; provided that none of these shall hold themselves out as landscape architects or use the term "landscape architect" without being registered pursuant to the provisions of the Landscape Architects Act.

Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his licensure.

Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent the draftsmen, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the registered landscape architect; or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto; or to prevent such superintendents from acting under the immediate personal supervision of registered landscape architects by whom the plans and specifications of any landscape architectural services were prepared.

**History:** Laws 1985, ch. 151, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

### **61-24B-6. Board created; members; qualifications; terms; vacancies; removal. (Effective until July 1, 1998.)**

A. There is created a "board of landscape architects". The board shall consist of five members, three shall be registered landscape architects having ten years' or more experience in the profession, provided, however, that the initial two landscape architects approved shall be registered within six months of the effective date of the Landscape Architects Act, and two shall represent the public and shall not have been licensed as landscape architects or have any significant financial interest, direct or indirect, in the occupation regulated.

B. Upon enactment of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978], appointments shall be made by the governor. The members of the board shall be appointed for staggered terms of three years and appointments shall be made in such a manner that the terms of board members expire on June 30. The landscape architect members of the board shall be appointed from lists submitted to the governor by the New Mexico chapter of the American society of landscape architects. A vacancy shall be filled by appointment by the governor for the unexpired term and shall be filled by persons having similar qualifications to those of the member being replaced. Board members shall serve until their successors have been appointed and qualified.

C. The board shall meet within sixty days of the effective date of the Landscape Architects Act and elect from its membership a chairman and vice chairman. The board shall meet at such other times as it deems necessary or advisable or as deemed necessary and advisable by the chairman, a majority of its members or the governor, but in no event less than twice a year. Reasonable notice of all meetings shall be given in the manner prescribed by the board. A majority of the board shall constitute a quorum at any meeting or hearing.

D. The governor may remove any member from the board for neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for any reason which would justify the suspension or revocation of his registration to practice landscape architecture.

E. No board member shall serve more than two consecutive full terms, and any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member, unless excused for reasons set forth in board regulations.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1985, ch. 151, § 6; 1991, ch. 189, § 23.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, in the second sentence in Subsection A, substituted "three shall be registered" for "four of whom shall be registered", "two landscape architects" for "four landscape architects", and "two shall represent" for "one of whom shall represent" and made related stylistic changes and, in Subsection B, deleted "in such manner that two members shall be appointed for one-year terms, two members shall be appointed for two-year terms and one member shall be appointed for a three-year term" at the end of the first sentence and deleted "Thereafter" at the beginning of the second sentence.

**Effective date of the Landscape Architects Act.** - The effective date of the Landscape Architects Act, referred to in Subsections A and C, is June 14, 1985, the effective date of Laws 1985, ch. 151.

**61-24B-7. Board; powers and duties. (Effective until July 1, 1998.)**

The board shall:

- A. promulgate rules and regulations necessary to effectuate the provisions of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978];
- B. employ such persons as necessary to carry out the provisions of the Landscape Architects Act;
- C. provide for the examination, registration and reregistration of all applicants;
- D. adopt and use a seal;
- E. administer oaths and take testimony on matters within the board's jurisdiction;
- F. grant, deny, renew, suspend or revoke certificates of registration to practice landscape architecture in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] for any cause stated in the Landscape Architects Act;
- G. conduct hearings upon charges relating to discipline of a registrant or the denial, suspension or revocation of a certificate of registration; and
- H. participate with the state board of examiners for architects and the state board of registration for professional engineers and land surveyors in creating a joint standing committee to be known as the "architect-engineer-landscape architect joint practice committee" to resolve disputes concerning these professions. The composition of this committee and its powers and duties shall be in accordance with identical resolutions adopted by each board.

**History:** Laws 1985, ch. 151, § 7; 1987, ch. 301, § 4.

**ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**Cross-references.** - As to the duties of the state board of examiners for professional architects, see 61-15-4 NMSA 1978.

As to the powers of the state board of registration for professional engineers and land surveyors, see 61-23-10 NMSA 1978.

## **61-24B-8. Qualifications for registration. (Effective until July 1, 1998.)**

Any person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

A. has graduated from an accredited program in landscape architecture at a school, college or university offering an accredited minimum four-year curriculum and has a minimum of three years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect or a person who becomes a registered landscape architect within one year from the effective date of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978]; provided that a master's degree in landscape architecture from an accredited college or university may be accepted in lieu of one year of practical experience;

B. has graduated from a nonaccredited program of landscape architecture or a related field at a school, college or university offering an accredited minimum four-year curriculum and has a minimum of four years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect or a person who becomes a registered landscape architect within one year from the effective date of the Landscape Architects Act; provided that a master's degree from a nonaccredited program of landscape architecture or a related field may be accepted in lieu of one year of practical experience; or

C. has a minimum of ten years of practical experience in landscape architectural work which is acceptable to the board, provided that:

(1) each satisfactorily completed year of study in an accredited program of landscape architecture in an accredited school, college or university may be accepted in lieu of one year of practical experience required under this subsection;

(2) a baccalaureate degree from an accredited college or university may be accepted in lieu of two years of practical experience required under this subsection; or

(3) a master's degree from an accredited school, college or university may be accepted in lieu of three years of practical experience required under this subsection.

**History:** Laws 1985, ch. 151, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**Effective date of the Landscape Architects Act.** - The effective date of the Landscape Architects Act, referred to near the end of Subsections A and B, is June 14, 1985, the effective date of Laws 1985, ch. 151.

**61-24B-9. Registration of landscape architects; examinations; exemptions. (Effective until July 1, 1998.)**

A. Applicants for certificates of registration shall be required to pass the board's examination for landscape architects. An applicant who successfully passes the examination may be issued a certificate of registration to practice as a landscape architect.

B. The board shall conduct examinations of applicants for certificates of registration as landscape architects at least once each year. The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.

C. An applicant who fails to pass the examination may reapply for the examination, provided that the applicant complies with the regulations established by the board.

D. The board may issue a certificate to practice as a landscape architect without an examination to an applicant who holds a current certificate of registration or license as a landscape architect issued by another state, provided that the standards of the other state are as stringent as those established by the board and provided that the applicant meets the qualifications required of a landscape architect in this state.

E. For one year after the effective date of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978], the board shall issue a certificate of registration to practice as a landscape architect without an examination to an applicant who meets the application requirements and pays the application and certificate of registration fees, provided that the practical experience required in Section 7 [Section 8, 61-24B-8 NMSA 1978] of the Landscape Architects Act need not have been under the supervision of a registered landscape architect.

**History:** Laws 1985, ch. 151, § 9.

**ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**Bracketed material.** - The bracketed reference to "Section 8" in Subsection E was inserted by the compiler. The reference to "the practical experience required in Section 7 of the Landscape Architects Act" is apparently erroneous, as that section refers to no such requirement. The apparent intended reference is to Section 8 of that act, which appears as 61-24B-8 NMSA 1978. The bracketed material was not enacted by the legislature and is not part of the law.

**Effective date of the Landscape Architects Act.** - The effective date of the Landscape Architects Act, referred to near the beginning of Subsection E, is June 14, 1985.

**61-24B-10. Other licensing provisions. (Effective until July 1, 1998.)**

A. The board may adopt rules and regulations for continuing education requirements which shall be completed as a condition for renewal of any certificate of registration under the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978].

B. Each registered landscape architect may obtain the seal authorized by the board, bearing the registrant's name and the legend "Registered Landscape Architect - State of New Mexico". All plans, specifications and reports issued by a registrant shall be stamped with his seal.

**History:** Laws 1985, ch. 151, § 10.

**ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**61-24B-11. Fees. (Effective until July 1, 1998.)**

The board shall establish a schedule of reasonable fees for applications, certificates of registration, temporary permits and reregistration as follows:

A. the initial application fee shall be set in an amount not to exceed fifty dollars (\$50.00);

B. the initial certificate of registration fee shall be set in an amount not to exceed one hundred fifty dollars (\$150); and

C. the certificate of registration renewal fee shall be set in an amount not to exceed one hundred dollars (\$100).

**History:** Laws 1985, ch. 151, § 11.

**ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**61-24B-12. Denial, suspension, revocation and reinstatement of certificate of registration. (Effective until July 1, 1998.)**

A. The board may refuse to issue or may deny, suspend or revoke any certificate of registration held or applied for under the Landscape Architects Act [61-24B-1 to 61-24B-

17 NMSA 1978] in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] upon grounds that the registrant or applicant:

- (1) is guilty of fraud or misrepresentation in the procurement of a certificate of registration;
- (2) is subject to the imposition of any disciplinary action by another state which regulates landscape architects, but not to exceed the period or extent of that action;
- (3) is grossly negligent or incompetent in his practice as a landscape architect;
- (4) has failed to maintain registration as a landscape architect;
- (5) has violated or aided or abetted any person to violate any of the provisions of the Landscape Architects Act or any rules or regulations duly adopted under that act; or
- (6) has engaged in unprofessional conduct.

B. The board may modify any order of revocation, suspension or refusal to issue a certificate of registration and has the discretion to require an examination for any such modification.

**History:** Laws 1985, ch. 151, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-13. Criminal offender's character evaluation. (Effective until July 1, 1998.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978].

**History:** Laws 1985, ch. 151, § 13.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-14. Landscape architects fund created; disposition; method of payment. (Effective until July 1, 1998.)**

A. There is created in the state treasury the "landscape architects fund".

B. All funds received by the board and money collected under the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] shall be deposited with the state treasurer, who shall place the money to the credit of the landscape architects fund.

C. All amounts paid into the landscape architects fund shall be subject to the order of the board and shall be used only for the purpose of implementing the provisions of the Landscape Architects Act. All money unexpended or unencumbered at the end of the fiscal year shall remain in the landscape architects fund for use in accordance with the provisions of the Landscape Architects Act.

**History:** Laws 1985, ch. 151, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-15. Board; rules and regulations. (Effective until July 1, 1998.)**

The board shall make rules and regulations necessary to implement the provisions of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1985, ch. 151, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

#### **61-24B-16. Enforcement. (Effective until July 1, 1998.)**

A. Violation of any provision of the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] is a misdemeanor.

B. The board may bring civil action in any district court to enforce any of the provisions of the Landscape Architects Act.

**History:** Laws 1985, ch. 151, § 16.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24B-17 NMSA 1978.

**Cross-references.** - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

## **61-24B-17. Termination of agency life; delayed repeal. (Effective until July 1, 1998.)**

The board of landscape architects is terminated on July 1, 1997, pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Landscape Architects Act until July 1, 1998. Effective July 1, 1998, the Landscape Architects Act [61-24B-1 to 61-24B-17 NMSA 1978] is repealed.

**History:** Laws 1985, ch. 151, § 18; 1991, ch. 189, § 24.

### **ANNOTATIONS**

**The 1991 amendment**, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and substituted "July 1, 1998" for "July 1, 1992" in the second and third sentences.

## **ARTICLE 24C INTERIOR DESIGNERS**

### **61-24C-1. Short title. (Effective until July 1, 2000.)**

This act [61-24C-1 to 61-24C-17 NMSA 1978] may be cited as the "Interior Designers Act".

**History:** Laws 1989, ch. 53, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 34, 35, 39 to 41, 45 to 47, 58 to 62, 70 to 73.

53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 40, 50 to 66, 78, 81, 82.

### **61-24C-2. Findings. (Effective until July 1, 2000.)**

The legislature finds that it will benefit and protect the citizens of the state to require the licensing of interior designers and prohibit the use of the designation "interior designer" by unlicensed persons.

**History:** Laws 1989, ch. 53, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-3. Definitions. (Effective until July 1, 2000.)**

As used in the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978]:

A. "board" means the interior design board;

B. "interior design" means services that do not necessarily require performance by an architect, such as administering contracts for fabrication, procurement or installation in the implementation of designs, drawings and specifications for any interior design project and consultations, studies, drawings and specifications in connection with reflected ceiling plans, space utilization, furnishings or the fabrication of nonstructural elements within and surrounding interior spaces of buildings but specifically excluding mechanical and electrical systems, except for specifications of fixtures and their location within interior spaces;

C. "interior designer" or "designer" means a person licensed pursuant to the Interior Designers Act.

**History:** Laws 1989, ch. 53, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-4. Interior design board created; members; terms; compensation. (Effective until July 1, 2000.)**

A. There is created the "interior design board". The board shall consist of five members appointed by the governor for staggered terms of three years, appointed in such a manner that the term of one member shall expire on December 31, 1990; the terms of two members shall expire on December 31, 1991; and the terms of the last two members shall expire on December 31, 1992. Thereafter, members shall be appointed for terms of three years or less in such a manner that the terms of not more than two members expire on December 31 of each year. A vacancy shall be filled by appointment of the governor for the unexpired term. No board member shall serve consecutive terms.

B. Two members of the board shall be licensed interior designers; and three members shall be chosen to represent the public and shall not have been licensed as an interior designer or have any significant financial interest, direct or indirect, in the occupation regulated. For purposes of this section, the interior designer members of the initial board shall have offered interior design services for at least five years, shall have passed the national council for interior design qualification examination and have become registered by November 1, 1989.

C. Three members of the board shall constitute a quorum for the transaction of business, but no final action shall be taken unless at least three members vote in favor of a proposal.

**History:** Laws 1989, ch. 53, § 4.

## ANNOTATIONS

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-5. Powers and duties of the board. (Effective until July 1, 2000.)**

The board:

A. shall administer, coordinate and enforce the provisions of the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978]. The board may investigate allegations of violations of the provisions of the Interior Designers Act;

B. shall adopt regulations to carry out the purposes and policies of the Interior Designers Act, including regulations relating to professional conduct, standards of performance and professional examination and licensure, reasonable license, application, renewal and late fees and the establishment of ethical standards of practice for persons holding a license to practice as an interior designer in New Mexico;

C. may employ an executive director and other employees and fix their compensation;

D. may contract with the regulation and licensing department to obtain office space and administrative services;

E. shall require a licensee, as a condition of the renewal of his license, to undergo continuing education requirements as set forth in the Interior Designers Act;

F. shall maintain an official roster showing the name, address and license number of each interior designer licensed pursuant to the Interior Designers Act;

G. shall conduct hearings and keep records and minutes necessary to carry out its functions;

H. may adopt a common seal for use by interior designers; and

I. shall do all things reasonable and necessary to carry out the purposes of the Interior Designers Act.

**History:** Laws 1989, ch. 53, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-6. Compensation and expenses. (Effective until July 1, 2000.)**

A. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

B. The board shall fix the compensation of its employees by resolution adopted at a regular meeting of the board.

**History:** Laws 1989, ch. 53, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-7. Board officers. (Effective until July 1, 2000.)**

The board shall meet and organize within sixty days after its appointment and designate one member as president, one as vice president and one as secretary-treasurer. The board may appoint an executive director. The director may not be a member of the board. The executive director may receive reimbursement for necessary expenses incurred in carrying out his duties and may receive compensation set by the board.

**History:** Laws 1989, ch. 53, § 7.

## ANNOTATIONS

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-8. Requirements for licensure. (Effective until July 1, 2000.)**

Each applicant for licensure shall apply to the board. Except as otherwise provided in the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978], each applicant shall take and pass a nationally standardized examination. The board may adopt substantially all or part of the examination and grading procedures of the national council for interior design qualifications. Prior to examination, the applicant shall provide substantial evidence to the board that the applicant:

A. is a graduate of a five-year interior design program from an accredited institution and has completed at least one year of diversified interior design experiences;

B. is a graduate of a four-year interior design program from an accredited institution and has completed at least two years of diversified interior design experience;

C. has completed at least three years of an interior design curriculum from an accredited institution and has completed three years of diversified interior design experience;

D. is a graduate of a two-year interior design program from an accredited institution and has completed four years of diversified interior design experience; or

E. has apprenticed under a designer who has passed the national council for interior design qualification examination or a licensed designer for a minimum of eight years.

**History:** Laws 1989, ch. 53, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-9. License without examination. (Effective until July 1, 2000.)**

A. If any person applies for licensure within one year after the effective date of the Interior Designers Act and that person has successfully completed the national council of interior design qualification examination or has completed at least eight years of full-time, diversified experience in the practice of interior design that person may be issued a license without examination. Licensure pursuant to this subsection shall be subject to the board's discretionary review of the experience qualification.

B. The board may accept, in lieu of examination, satisfactory evidence of licensure in another state or country where the qualifications are equal to or exceed those required by the provisions of the Interior Designers Act [61-24C-1 to 61-24C-16 NMSA 1978], provided that the applicant holds a current license in the other jurisdiction and has complied with all other requirements of the Interior Designers Act.

C. The board may accept, in lieu of examination, satisfactory evidence of licensure or certification by the national council for interior design qualifications.

**History:** Laws 1989, ch. 53, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

**"Effective date of the Interior Designers Act".** - The "effective date of the Interior Designers Act", referred to near the beginning of Subsection A, means the effective date of Laws 1989, ch. 53, which is June 16, 1989.

**61-24C-10. License; issuance; renewal; denial, suspension or revocation. (Effective until July 1, 2000.)**

A. A license shall be issued to every person who presents satisfactory evidence of possessing the qualifications of education, experience and, as appropriate, the examination performance required by the provisions of the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978], provided that the applicant has reached the age of majority and pays the required fees.

B. Each original license shall authorize the holder to use the title of and be known as an interior designer from the date of issuance to the next succeeding December 31 unless the license is suspended or revoked.

C. On or before December 1 of each year, each licensee shall apply for renewal and pay the required fees, after which the license shall be renewed for a period of one year beginning January 1.

D. A license may not be renewed until the licensee submits satisfactory evidence to the board that, during the last year, the licensee has participated in not less than eight hours of continuing education approved by the board. The board shall approve only continuing education that builds upon basic knowledge of interior design. The board may make exceptions from the continuing education requirement in emergency or hardship cases.

E. The holder of any license that has expired through failure to renew may renew the license at any time within two years from the date on which the license expired upon approval of the board.

F. The board may promulgate policies and procedures providing for the establishment of an inactive status for licensees temporarily not engaged in the practice of interior design.

G. In accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, refuse to renew, suspend or revoke a license or impose probationary conditions when the licensee has:

(1) obtained the license by means of fraud, misrepresentation or concealment of material facts;

(2) committed any act of fraud or deceit in his professional conduct or been convicted of a felony;

(3) represented himself as an interior designer prior to being issued a license, except as authorized under the provisions of the Interior Designers Act;

(4) been found by the board to have aided or abetted any unlicensed person in violating any of the provisions of the Interior Designers Act; or

(5) failed to comply with any of the provisions of the Interior Designers Act or any regulations adopted pursuant to that act.

**History:** Laws 1989, ch. 53, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-11. License required; penalty. (Effective until July 1, 2000.)**

A. After the results of the first examination held pursuant to the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978] are announced, no person shall knowingly:

(1) use the name or title of interior designer or interior design when the person is not the holder of a current, valid license issued pursuant to the Interior Designers Act;

(2) use or present as his own the license of another;

(3) give false or forged evidence to the board or a board member for the purpose of obtaining a license;

(4) use or attempt to use an interior design license which has been suspended, revoked or placed on inactive status; or

(5) conceal information relative to violations of the Interior Designers Act.

B. Any person who violates any provision of this section is guilty of a misdemeanor and shall be sentenced under the provisions of the Criminal Sentencing Act [31-18-12 to 31-18-21 NMSA 1978] to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000), or to both such imprisonment or fine, in the discretion of the judge.

**History:** Laws 1989, ch. 53, § 11.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

## **61-24C-12. Penalties levied by the board. (Effective until July 1, 2000.)**

Upon a finding by the board of a violation of the provisions of the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978], the board may:

- A. refuse to approve an application for licensure;
- B. refuse to renew an existing license;
- C. revoke or suspend a license;
- D. impose an administrative fine;
- E. issue a reprimand; or
- F. invoke any combination of the above listed penalties.

**History:** Laws 1989, ch. 53, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

## **61-24C-13. Exemptions. (Effective until July 1, 2000.)**

Nothing in the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978] shall be construed as preventing or restricting the practice, services or activities of:

- A. engineers licensed pursuant to the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978];
- B. architects licensed pursuant to the Architectural Act [Chapter 61, Article 15 NMSA 1978];
- C. contractors licensed pursuant to the Construction Industries Licensing Act;
- D. any interior decorator or individual offering interior decorating services including but not limited to selection of surface materials, window treatments, wall coverings, paint floor coverings and lighting fixtures; and
- E. builders, home furnishings salespersons and similar purveyors of goods and services relating to homemaking.

Nothing contained in the Interior Designers Act shall prevent any person from rendering or offering to render any of the services which constitute the practice of interior design,

provided that such person shall not be permitted to use or be identified by the title "interior designer" or "interior design" unless licensed in accordance with the provisions of that act or as otherwise provided by law. Nothing contained in the Interior Designers Act shall prevent any person from using any words or combination of words other than the combination of words "interior designer" or "interior design", no matter how similar those words or combination of words may be.

Nothing in that act shall be construed to permit a licensed interior designer to engage in the practice of engineering as defined in the Engineering and Surveying Practice Act.

**History:** Laws 1989, ch. 53, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

**Construction Industries Licensing Act.** - See 60-13-1 NMSA 1978 and notes thereto.

### **61-24C-14. License fees. (Effective until July 1, 2000.)**

The fees for an original license, renewal of license, late charges or any other fees authorized by the provisions of the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978] shall be set by regulation of the board. The fee for initial licensure shall not exceed two hundred dollars (\$200).

**History:** Laws 1989, ch. 53, § 14.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

### **61-24C-15. Disclosure requirements. (Effective until July 1, 2000.)**

A. Interior design documents prepared by an interior designer shall contain a statement that the document is not an architectural or engineering study, drawing, specification or design and is not to be used as the basis for construction of any load-bearing framing, wall or structure construction.

B. Before entering into a contract, an interior designer shall clearly determine the scope and nature of the project and the methods of compensation. The interior designer may offer professional services to the client as a consultant, specifier or supplier on the basis of a fee, percentage or mark-up. The interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid.

C. An interior designer shall not accept any form of compensation from a supplier of goods and services in cash or in kind unless the interior designer first informs the client of the compensation.

**History:** Laws 1989, ch. 53, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

#### **61-24C-16. Fund established; disposition; method of payment. (Effective until July 1, 2000.)**

A. There is created the "interior design board fund".

B. All funds received by the board and money collected under the Interior Designers Act [61-24C-1 to 61-24C-17 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall credit the money to the interior design board fund.

C. Payments out of the interior design board fund shall be on vouchers issued by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts paid to the interior design board fund are subject to the order of the board and are to be used only for meeting necessary expenses incurred in executing the provisions and duties of the Interior Designers Act and for promoting interior design education and standards in the state. All money unused at the end of any fiscal year shall remain in the interior design board fund for use in accordance with the provisions of that act.

**History:** Laws 1989, ch. 53, § 16.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-24C-17 NMSA 1978.

#### **61-24C-17. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Interior Designers Act [61-24C-1 to 61-24C-16 NMSA 1978] until July 1, 2000. Effective July 1, 2000, the Interior Designers Act is repealed.

**History:** 1978 Comp., § 61-24C-17, enacted by Laws 1993, ch. 83, § 5.

## ANNOTATIONS

**Effective dates.** - Laws 1993, ch. 83 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature".

## ARTICLE 25 MESSAGE PRACTITIONERS

(Repealed by Laws 1981, ch. 241, § 35.)

**61-25-1 to 61-25-14. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1981, ch. 241, § 35, repeals 61-25-1 to 61-25-14 NMSA 1978, relating to the regulation of massage practitioners, effective April 8, 1981.

## ARTICLE 26 POLYGRAPHERS

(Repealed by Laws 1993, ch. 212, § 23.)

**61-26-1 to 61-26-15. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1993, ch. 212, § 23A repeals 61-26-1 to 61-26-15 NMSA 1978, as enacted or amended by Laws 1973, ch. 28, §§ 1 to 11 Laws 1974, ch. 78, § 32, and Laws 1989, ch. 152, § 1 to 12, regulating polygraphers, effective July 1, 1993. For former provisions, see 1990 replacement pamphlet. For present comparable provisions, see Chapter 61, Article 27A NMSA 1978.

Laws 1989, ch. 152, § 13 had previously repealed 61-26-13 NMSA 1978, as enacted by Laws 1979, ch. 75, § 7, relating to transfer of appropriations and property of former polygraphy board, effective June 16, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

## ARTICLE 27 PRIVATE INVESTIGATORS

(Repealed by Laws 1993, ch. 212, § 23.)

## **61-27-1 to 61-27-49. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 212, § 23B repeals 61-27-1 to 61-27-49 NMSA 1978, as enacted by Laws 1965, ch. 247, §§ 1 to 49 and amended by Laws 1971, ch. 226 §§ 1 to 7 and Laws 1973, ch. 55, § 1, regulating private investigators, effective July 1, 1993. For former provisions, see 1990 replacement pamphlet. For present comparable provisions, see Chapter 61, Article 27A NMSA 1978.

## **ARTICLE 27A PRIVATE INVESTIGATORS AND POLYGRAPHERS**

### **61-27A-1. Short title. (Effective until July 1, 2000.)**

This act [61-27A-1 to 61-27A-20 NMSA 1978] may be cited as the "Private Investigators and Polygraphers Act".

**History:** Laws 1993, ch. 212, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - Laws 1993, ch. 212, § 22, effective July 1, 1993, provides that the Private Investigators and Polygraphers Act is repealed on July 1, 2000 pursuant to the Sunset Act.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Prerequisites to admissibility at trial.** - Stipulation by the parties to a polygraph test or the absence of objection thereto at trial are not prerequisites to the admission into evidence of the results of such tests. *State v. Dorsey*, 88 N.M. 184, 539 P.2d 204 (1975).

**Law reviews.** - For article, "The Admissibility of Scientific Evidence Under the New Mexico and Federal Rules of Evidence," see 6 N.M.L. Rev. 187 (1976).

For article, "Survey of New Mexico Law, 1982-83: Evidence," see 14 N.M.L. Rev. 161 (1984).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Physiological or psychological truth and deception tests, 23 A.L.R.2d 1306, 53 A.L.R.3d 1005, 47 A.L.R.4th 1202, 77 A.L.R.4th 927.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

Validity and construction of statute prohibiting employers from suggesting or requiring polygraph or similar tests as condition of employment or continued employment, 23 A.L.R.4th 187.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding, 79 A.L.R.4th 576.

## **61-27A-2. Definitions. (Effective until July 1, 2000.)**

As used in the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978]:

- A. "alarm company" means a company that installs burglar or security alarms in a facility and responds with guards when the alarm is sounded;
- B. "armored car company" means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;
- C. "bodyguard" means a person who physically performs the mission of personal security of another individual;
- D. "branch office" means an office physically located in New Mexico and managed, controlled or directed by a manager;
- E. "client" means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;
- F. "conviction" means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- G. "department" means the regulation and licensing department;
- H. "licensee" means a person licensed as a:
  - (1) private investigator;
  - (2) private patrol operator; or
  - (3) polygraph examiner;
- I. "manager" means an individual who:

(1) is a resident of New Mexico;

(2) has the qualifications required of a licensee; and

(3) directs, controls or manages a private investigator or private patrol operator business for the owner of the business when the owner:

(a) is a nonresident licensee; or

(b) does not qualify for a license under the Private Investigators and Polygraphers Act;

J. "person" means any individual, firm, company, association, organization, partnership or corporation;

K. "polygraphy" means the employment of an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results;

L. "private investigator" means a person who for any consideration whatsoever engages in business or accepts employment to conduct an investigation for the purpose of obtaining information with reference to:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliation, association, transactions, acts, reputation or character of any person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties; or

(5) the securing of evidence to be used before any court, board, officer or investigating committee;

M. "private investigator employee" means an individual who is working under the license and bond of a private investigator;

N. "private patrol operator" or "operator of a private patrol service" means a person who for any consideration whatsoever agrees to:

(1) furnish or furnishes a uniformed or nonuniformed watchman, guard, patrolman or other person to protect property and any persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the service of a security guard, armored car company or security dog company. A private patrol operator may not make any investigation except those that are incidental to the theft, loss, embezzlement, misappropriation or concealment of any property or any other item enumerated in the Private Investigators and Polygraphers Act that he has been hired or engaged to protect, guard or watch;

O. "security dog company" means a company that uses trained dogs with handlers to perform a security mission at a location; and

P. "security guard" means any individual who is an employee of a private patrol operator and employed to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts.

**History:** Laws 1993, ch. 212, § 2.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Standard of care.** - Polygraphers are professionals subject to a malpractice standard of care, not just a "reasonable man" standard. *Lewis v. Rodriguez*, 107 N.M. 430, 759 P.2d 1012 (Ct. App. 1988).

### **61-27A-3. License required. (Effective until July 1, 2000.)**

It is unlawful for any person to:

A. act as a private investigator, a private patrol operator or a manager or to represent himself to be a licensee or a manager unless he is licensed under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978];

B. render physical protection for remuneration as a bodyguard unless he is licensed as a private investigator;

C. continue to act as a private investigator, private patrol operator or manager if his license issued pursuant to that act has expired;

D. falsely represent that he is employed by a licensee; or

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigators and Polygraphers Act.

**History:** Laws 1993, ch. 212, § 3.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Law reviews.** - For note, "Lie Detector Evidence - New Mexico Court of Appeals Holds Voice-Stress Lie Detector Evidence Conditionally Admissible: Simon Neustadt Family Center, Inc. v. Blutworth," see 13 N.M.L. Rev. 703 (1983).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 4.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

53 C.J.S. Licenses § 34.

### **61-27A-4. Persons exempted. (Effective until July 1, 2000.)**

The Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] does not apply to:

A. attorneys;

B. a person employed exclusively and regularly by one employer in connection with the affairs of such employer only where there exists an employer-employee relationship;

C. an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of his official duties;

D. a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

E. a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

F. a licensed collection agency or an employee thereof while acting within the scope of his employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property;

G. admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

H. any institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

**History:** Laws 1993, ch. 212, § 4.

### ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Engineer investigating speed of cars in accident is exempt.** - Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978) and therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

**As are full-time public school guards.** - A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87.

**But not part-time off-duty police officer checking identification.** - An off-duty municipal police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38.

53 C.J.S. Licenses §§ 35, 36.

**61-27A-5. Administration of act; rules and regulations. (Effective until July 1, 2000.)**

A. The department shall enforce and administer the provisions of the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978].

B. The department shall appoint an advisory board to assist in the conduct of the examination process for licensure and in any other manner to aid in the administration of that act. The advisory board shall consist of two licensed private investigators, one licensed private patrol operator, one licensed polygraph examiner and one member of the public. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978].

C. The department shall keep a record of each licensee and each employee of a private investigator or private patrol operator.

D. The department shall adopt and enforce rules and regulations necessary to carry out the provisions of the Private Investigators and Polygraphers Act, including requirements for continuing education.

**History:** Laws 1993, ch. 212, § 5.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Temporary provisions.** - Laws 1993, ch. 212, § 21, effective July 1, 1993, provides that all appropriations and property related to licensing of private investigators in the possession of the attorney general and all existing rules, regulations, contracts and agreements relating to licensing private investigators regarding the office of attorney general shall be transferred to and binding and effective on the department; that all fees received by the department under the Private Investigators and Polygraphers Act shall be used only for administration of the act; and that all references to the office of the attorney general or the department of justice relating to licensing of private investigators and private patrol operators shall be construed to be references to the department.

**Cities prohibited from regulating certain investigative businesses and occupations.** - With the exception provided by former 61-27-11 NMSA 1978, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 65-177.

**61-27A-6. Requirements for licensure. (Effective until July 1, 2000.)**

A. The department shall issue a license for a private investigator to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

B. The department shall issue a license for a private investigator manager to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is a resident of New Mexico;

(2) is at least eighteen years of age;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in investigative work or a level of experience determined to be sufficient by the department;

(5) is of good moral character; and

(6) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

C. The department shall issue a license for a private patrol operator to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) is of good moral character;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department; and

(5) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

D. The department shall issue a license for a private patrol operator manager to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is a resident of New Mexico;

(2) is at least eighteen years of age;

(3) has passed a written examination as prescribed by the department;

(4) has at least three years' experience within the last five years in security work or a level of experience determined to be sufficient by the department;

(5) is of good moral character; and

(6) has not been convicted of a felony offense or any other criminal offense involving moral turpitude or the illegal use or possession of a deadly weapon.

E. A manager's license is required when the owner of a private investigator or private patrol operator business:

(1) is a nonresident licensee; or

(2) does not qualify for a license under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978].

F. The department shall issue a security guard pocket card to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age; and

(2) is of good moral character.

G. The department shall issue a license for polygrapher to any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) possesses a high school diploma or its equivalent;

(3) has not been convicted of a felony or misdemeanor involving moral turpitude; and

(4) has graduated from a polygraph examiners course approved by the department; and

(a) has completed a probationary operational competency period and passed an examination of ability to practice polygraphy; or

(b) has submitted proof of holding, for a minimum of two years immediately prior to the date of application, a current license to practice polygraphy in another jurisdiction whose standards equal or surpass those of New Mexico.

**History:** Laws 1993, ch. 212, § 6.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Engineer investigating speed of cars in accident is exempt.** - Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his own opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978) and therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 80 N.M. 564, 458 P.2d 816 (Ct. App.), cert. denied, 80 N.M. 608, 458 P.2d 860 (1969).

**As are full-time public school guards.** - A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87.

**But not part-time off-duty police officer checking identification.** - An off-duty police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 27.

Regulation of private detectives, private investigators, and security agencies, 86 A.L.R.3d 691.

53 C.J.S. Licenses §§ 26, 27.

### **61-27A-7. License fees. (Effective until July 1, 2000.)**

Each applicant for licensure shall pay a fee set by the department not to exceed the following:

- A. private investigator, initial license or renewal, two hundred dollars (\$200);
- B. private investigator manager, initial license or renewal, one hundred dollars (\$100);
- C. private investigator employee, initial registration or renewal, fifty dollars (\$50.00);
- D. private patrol operator, initial license or renewal, two hundred dollars (\$200);
- E. private patrol operator manager, initial license or renewal, one hundred dollars (\$100);
- F. private patrol operator employee, initial registration or renewal, twenty-five dollars (\$25.00);
- G. branch office, initial license or renewal fee, seventy-five dollars (\$75.00);
- H. change in license status, one hundred dollars (\$100);
- I. polygraph examiner, initial license or renewal, three hundred dollars (\$300);
- J. polygraph applicant examination, fifty dollars (\$50.00); and
- K. late fee for failure to renew a license within the allotted time period, fifty dollars (\$50.00).

**History:** Laws 1993, ch. 212, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-8. License renewal. (Effective until July 1, 2000.)**

On or before June 30 of each odd-numbered year, every person licensed or registered under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] shall remit to the department together with the prescribed fee for the class of license desired an application for license or registration renewal on a form that is

prescribed and furnished by the department. Information required on the renewal form shall include the licensee's current address, state tax identification number and proof of compliance with continuing education requirements promulgated by the department. Failure to renew a license by June 30 of each renewal year shall cause the license to be suspended until a late fee together with the unpaid renewal fee is received by the department. Any license that is not renewed within one year from the date the license expired shall be automatically revoked.

**History:** Laws 1993, ch. 212, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-9. Display of license; notification of changes. (Effective until July 1, 2000.)**

A. A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

B. A licensee shall notify the department within thirty days after any change in his address, in the name under which he does business or in the officers or partners of the business.

**History:** Laws 1993, ch. 212, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-10. Operation of business; manager required. (Effective until July 1, 2000.)**

A. Each business providing private investigator or private patrol operator services in New Mexico shall be operated under the direction, control, charge or management of a licensee; provided that the business shall be under the direction, control, charge or management of a manager if the owner of the business:

(1) is a nonresident licensee; or

(2) does not qualify for a license under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978].

B. Any nonresident licensee who wishes to engage in a private investigator or private patrol operator business in New Mexico shall have a branch office located in New Mexico operated under the direction, control, charge or management of a manager licensed under the Private Investigators and Polygraphers Act.

C. A licensee shall not conduct a business under a fictitious name until he has obtained the written authorization of the department. The department shall not authorize the use of a fictitious name that is so similar to the name of a public officer or agency or to the name used by another licensee that the public may be confused or misled by it.

D. A licensee shall at all times be legally responsible for the good business conduct of each of his employees, including his manager.

E. Each licensee shall maintain a record containing information relative to his employees as may be prescribed by the department and the records may be subject to inspection.

F. Except as otherwise provided by the Private Investigators and Polygraphers Act, every employee of a licensee shall be registered by the licensee with the department within seven days of employment; provided, however, that a licensee may hire temporary employees for periods of time not to exceed five days for special celebrations, parades or similar events without those employees being registered. The provisions of this subsection shall not be used to circumvent the registration of long-term employees.

G. A person registered under the Private Investigators and Polygraphers Act shall notify the department in writing within thirty days of each change in his employment. If a person ceases to be employed by a licensee, the person shall notify the department in writing within thirty days and shall surrender his registration card to the department.

H. A manager duly licensed under the Private Investigators and Polygraphers Act need not register as an employee.

I. Employees of a licensee who are engaged exclusively in stenographic, typing, filing, clerical or other activities that do not constitute the work of a private investigator or private patrol officer are not required to register.

J. Each nonresident licensee shall file in writing with the department the address of each branch office and within ten days after the establishment, closing or changing of location of a branch office shall notify the department in writing.

K. A person shall not act as a manager until he is licensed under the Private Investigators and Polygraphers Act. If a manager ceases to be connected with a licensee, the licensee shall notify the department in writing within thirty days from such cessation. If the licensee fails to notify the department within the thirty-day period, his license shall be subject to suspension or revocation and may be reinstated only upon the filing of an application for reinstatement and payment of the reinstatement fee.

**History:** Laws 1993, ch. 212, § 10.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-11. Bond required. (Effective until July 1, 2000.)**

A. A license, except a manager's license and polygraph examiner's license, shall not be issued under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] unless the applicant files with the department:

(1) a surety bond executed by a surety company authorized to do business in this state; or

(2) a certificate of deposit in the sum of two thousand dollars (\$2,000), conditioned for the faithful and lawful conduct of business by the applicant.

The form of bond, its execution and the sufficiency of the surety shall be verified by the department.

B. A licensee shall maintain the surety bond, and, upon failure to do so, the license of the licensee shall be suspended and shall not be reinstated until an application in the form prescribed by the department is filed together with a proper surety bond. The department may deny the application notwithstanding the applicant's compliance with this section:

(1) for any reason that would justify a refusal to issue or a suspension or a revocation of a license; or

(2) for the performance by the applicant of any practice while under suspension for failure to keep his bond in force for which a license under the Private Investigators and Polygraphers Act is required.

C. Bonds executed and filed with the department pursuant to the Private Investigators and Polygraphers Act shall remain in force until the surety company has terminated future liability by thirty-day notice to the department.

**History:** Laws 1993, ch. 212, § 11.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Face amount of bond represents total liability of surety** regardless of the number of claims which may be filed against the licensee. 1965 Op. Att'y Gen. No. 65-187.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 48, 49, 55.

53 C.J.S. Licenses § 42.

### **61-27A-12. Prohibited acts. (Effective until July 1, 2000.)**

A. Any licensee or manager for the licensee may divulge to any law enforcement officer or district attorney, the attorney general or his representatives any information he acquires concerning any criminal offense, but he shall not divulge to any other person, except as he is required by law, any information acquired by him except at the direction of his employer or the client for whom the information was obtained.

B. No licensee, manager or employee of a licensee shall knowingly make any false report to his employer or the client for whom the information was being obtained.

C. No written report shall be submitted to a client except by the licensee, the manager or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether the facts and information of the report are true and correct.

D. No licensee, manager or employee of a private investigator shall use a badge in connection with the official activities of the licensee's business.

E. No licensee, manager or employee of a licensee shall use a title or wear a uniform, use an insignia, use an identification card or make any statement with the intent to give an impression that he is connected in any way with the federal or state government or any political subdivision of either.

F. No private patrol operator licensee, manager or employee of a private patrol operator licensee shall use a badge except when engaged in guard or patrol work and while wearing a uniform.

G. No licensee shall appear as an assignee party in any proceeding involving claim and delivery, replevin or other possessory action or action for foreclosing a chattel mortgage, mechanic's lien, materialman's lien or any other lien.

H. A polygraph examiner shall not ask questions during the course of a polygraph examination relative to sexual affairs of an examinee, the examinee's race, creed, religion or union affiliation or any activity not previously and specifically agreed to by written consent.

**History:** Laws 1993, ch. 212, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Liability for malicious prosecution.** - Since a defendant cannot be held liable for malicious prosecution unless he takes some active part in instigating or encouraging prosecution, a private investigator's submission of a copy of his report concerning the plaintiff's activities to the district attorney's office for possible further investigation, which he is authorized to do under this section, does not amount to the institution of criminal proceedings. *Zamora v. Creamland Dairies, Inc.*, 106 N.M. 628, 747 P.2d 923 (Ct. App. 1987).

### **61-27A-13. Denial, suspension or revocation of license or registration. (Effective until July 1, 2000.)**

In accordance with procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the department may deny, suspend or revoke any license or registration held or applied for under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] upon grounds that the licensee, registrant or applicant:

A. made a false statement or gave false information in connection with an application for a license or renewal or reinstatement of a license;

B. violated any provision of the Private Investigators and Polygraphers Act;

C. violated any rule of the department adopted pursuant to that act;

D. has been convicted of a felony or any crime involving moral turpitude or illegally using, carrying or possessing a deadly weapon;

E. impersonated, or permitted or aided and abetted an employee to impersonate, a law enforcement officer or employee of the United States or of any state or political subdivision of either;

F. committed or permitted any employee to commit any act while the license was expired that would be cause for the suspension or revocation of a license or grounds for the denial of an application for a license;

G. willfully failed or refused to render to a client services or a report as agreed between the parties for which compensation has been paid or tendered in accordance with the agreement of the parties;

H. committed assault, battery or kidnapping or used force or violence on any person without proper justification;

I. knowingly violated, or advised, encouraged or assisted the violation of, any court order or injunction in the course of business of the licensee;

J. knowingly issued a worthless or otherwise fraudulent payroll check that is not redeemed within two days of denial of payment of any bank;

K. has been chronically or persistently inebriated or addicted to the illegal use of dangerous or narcotic drugs;

L. has been adjudged mentally incompetent or insane by regularly constituted authorities; or

M. while unlicensed, committed or aided and abetted the commission of any act for which a license is required under the Private Investigators and Polygraphers Act.

**History:** Laws 1993, ch. 212, § 13.

## **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Effect of gubernatorial pardon on eligibility for license.** - An unconditional gubernatorial pardon allows a person convicted of a felony to be eligible for licensure as a private investigator. However, if authorized by statute or regulation, a pardoned felon's

character in the acts underlined the conviction maybe considered in certification or licensing. 1992 Op. Att'y Gen. No. 92-09.

### **61-27A-14. Hearing. (Effective until July 1, 2000.)**

Every person who is denied a license or employee registration or who has his license or employee registration suspended or revoked shall be entitled to a hearing before the department if within twenty days after the denial, suspension or revocation a request for a hearing is served on the department. The procedures outlined in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be followed pertaining to the hearing insofar as they do not conflict with the provisions of the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978].

**History:** Laws 1993, ch. 212, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-15. Appeal; review of record. (Effective until July 1, 2000.)**

Any person aggrieved by the decision of the department as a consequence of the hearing may appeal the decision to the district court of the first judicial district. Upon appeal, the review by the court shall be limited to the record taken at the hearing and no new evidence may be considered by the court.

**History:** Laws 1993, ch. 212, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-16. License not transferable. (Effective until July 1, 2000.)**

A license issued under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] is not transferable or reassignable.

**History:** Laws 1993, ch. 212, § 16.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

### **61-27A-17. Local regulations. (Effective until July 1, 2000.)**

The provisions of the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] shall not prevent the local authorities of any city, county or city and county by ordinance and within the exercise of the police power of such city, county or city and county from imposing local ordinances upon any street patrol special officer or upon any person licensed within the scope of the Private Investigators and Polygraphers Act if the ordinances are consistent with that act.

**History:** Laws 1993, ch. 212, § 17.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

**Cities prohibited from regulating certain investigative businesses and occupations.** - With the exception of this section, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 176.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 130.

53 C.J.S. Licenses §§ 9 to 12.

### **61-27A-18. Fund established. (Effective until July 1, 2000.)**

There is created in the state treasury the "private investigator and polygrapher fund". All license fees received by the department pursuant to the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] shall be deposited in the fund and shall be used for the administration of that act. The state treasurer shall invest the fund as other state funds are invested, and all income derived from the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall not revert to the general fund.

**History:** Laws 1993, ch. 212, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

#### **61-27A-19. Deadly weapons. (Effective until July 1, 2000.)**

Licensed private patrol operators and their registered employees, when in uniform and in the performance of their duties, may carry firearms and other deadly weapons; provided, however, nothing in the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] shall be construed as granting to polygraph examiners, private investigators, private patrol operators or their employees the right to carry concealed weapons.

**History:** Laws 1993, ch. 212, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

#### **61-27A-20. Penalties. (Effective until July 1, 2000.)**

A. A person who engages in a business regulated under the Private Investigators and Polygraphers Act [61-27A-1 to 61-27A-20 NMSA 1978] who fraudulently represents himself to be a licensee or registered employee is guilty of a misdemeanor and shall be punished by a term of imprisonment less than one year or a fine of not more than one thousand dollars (\$1,000) or both. A person who fraudulently represents that he is employed by a licensee is guilty of a misdemeanor and shall be punished by a term of imprisonment less than six months or a fine of not more than five hundred dollars (\$500) or both.

B. A person who violates a provision of the Private Investigators and Polygraphers Act, except as provided for in Subsection A of this section, is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months or both.

**History:** Laws 1993, ch. 212, § 20.

## ANNOTATIONS

**Delayed repeals.** - For delayed repeal of this section, see the note under 61-27A-1 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 212, § 24 makes the Private Investigators and Polygraphers Act effective on July 1, 1993.

## ARTICLE 28 PUBLIC ACCOUNTANTS

(Repealed by Laws 1992, ch. 10, § 30.)

**61-28-1 to 61-28-34. Repealed.**

## ANNOTATIONS

**Repeals.** - Laws 1992, ch. 10, § 30 repeals 61-28-1 to 61-28-34, as enacted by Laws 1947, ch. 115, § 20; Laws 1963, ch. 43, § 27; and as amended by Laws 1983, ch. 15, §§ 5, 7, 10; Laws 1987, ch. 236, §§ 1-29; Laws 1987, ch. 333, § 11; and Laws 1988, ch. 23, § 1, relating to public accountants, effective May 20, 1992. For present comparable provisions, see 61-28A-1 NMSA 1978 et seq.

## ARTICLE 28A PUBLIC ACCOUNTANCY

**61-28A-1. Short title. (Effective until July 1, 2000.)**

Sections 1 through 26, 28 and 29 [61-28A-1 to 61-28A-28 NMSA 1978] of this act may be cited as the "Public Accountancy Act".

**History:** Laws 1992, ch. 10, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Funds collected to be deposited with state treasurer.** - All funds collected by the state board of public accountancy under authority of this article (now Chapter 61, Article 28, NMSA 1978) are public funds which must be deposited with the state treasurer.

New Mexico State Bd. of Pub. Accountancy v. Grant, 61 N.M. 287, 299 P.2d 464 (1956) (decided under prior law).

**And withdrawn only through appropriations by legislature upon warrants. -**

Although there may be no language in any statute conferring upon the state board of public accountancy authority to solicit members of its profession to make voluntary contributions, once such contributions are deposited in the state treasury, where they become commingled with other funds of the board, they can only be withdrawn through appropriations made by the legislature upon warrants drawn by the proper officer. New Mexico State Bd. of Pub. Accountancy v. Grant, 61 N.M. 287, 299 P.2d 464 (1956) (decided under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references. -** 1 Am. Jur. 2d Accountants § 1 et seq.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 A.L.R.5th 852.

1 C.J.S. Accountants § 4 et seq.

**61-28A-2. Purpose. (Effective until July 1, 2000.)**

The purpose of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] is to promote the reliability of information used for guidance in financial transactions or for assessing the financial status or the performance of commercial, noncommercial or governmental entities by requiring that standards for examination, education and experience be met by individuals wishing to be identified as public accountants and by providing a mechanism to regulate the professional quality, competence and conduct of practitioners of public accountancy.

**History:** Laws 1992, ch. 10, § 2.

**ANNOTATIONS**

**Delayed repeals. -** See 61-28A-28 NMSA 1978.

**Effective dates. -** Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**61-28A-3. Definitions. (Effective until July 1, 2000.)**

As used in the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978]:

A. "board" means the New Mexico state board of public accountancy;

B. "certified public accountant" means an individual who has successfully met the certification requirements for certified public accountant set forth in the Public Accountancy Act and who has been granted a certificate by the board;

C. "continuing professional education" means courses in accounting, auditing, tax or other functions of public accountancy identified and approved by the board and provided to individuals seeking to maintain a valid permit to practice;

D. "firm" means a sole proprietorship, a professional corporation or a partnership;

E. "fund" means the public accountancy fund;

F. "person" means an individual or firm;

G. "practice" means the performance of public accountancy or the offering to perform public accountancy for a client or potential client by a person holding himself out to the public as a permit holder or registered firm;

H. "practitioner" means a registered firm or an individual engaged in the practice of public accountancy holding a valid certificate and permit;

I. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

J. "quality review" means a study, appraisal or review of one or more aspects of the accounting and auditing work of a practitioner by a practitioner who is not affiliated with the person being reviewed;

K. "reciprocal jurisdiction" means a state or foreign country identified by the board by rule as having standards for authorizing a person to practice public accountancy equivalent to those prescribed in New Mexico law and by board rule;

L. "registered firm" means a firm that has been granted a registration by the board pursuant to the Public Accountancy Act;

M. "registered public accountant" means an individual who, prior to December 31, 1990, successfully met the certification requirements for registered public accountant set forth in the Public Accountancy Act or in prior law and who has been granted a certificate by the board;

N. "report" means an opinion or other writing that:

(1) states or implies assurance as to the reliability of any financial statements;

(2) includes or is accompanied by any statement or implication that the person issuing it has special knowledge or competency in accounting or auditing indicated by the use of names, titles or abbreviations likely to be understood to identify the author of the report as a practitioner; and

(3) includes the following types of reports as they are defined by board rule:

(a) a compilation report;

(b) a review report; or

(c) an audit report;

O. "rule" means any written directive of general application duly adopted by the board; and

P. "state" means any state or insular possession of the United States including the District of Columbia, Puerto Rico, the United States Virgin Islands and Guam.

**History:** Laws 1992, ch. 10, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Generally, as to public accountant.** - A public accountant is one who provides accounting or auditing, as opposed to bookkeeping, services on a fee basis, per diem or otherwise, for more than one employer. 1947-48 Op. Att'y Gen. No. 5050.

**Providing auditing services for credit union league members.** - An individual not registered or licensed as an accountant, who is employed by the New Mexico credit union league, and provides auditing services on behalf of the league for member credit unions, does not hold himself out to the public as a public accountant, nor does he violate the public accountancy provisions. 1969 Op. Att'y Gen. No. 69-124.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Accountants § 1 et seq.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

1 C.J.S. Accountants § 2.

**61-28A-4. Three-tiered system of authorization; exemptions. (Effective until July 1, 2000.)**

A. No person shall identify himself as a certified or registered public accountant unless he holds a certificate granted by the board or falls within an exemption pursuant to the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978]. No certified or registered public accountant shall engage in practice unless he has been granted a permit by the board and his firm is registered with the board.

B. Nothing in the Public Accountancy Act shall be construed to apply to licensed attorneys in the lawful practice of their profession.

C. Nothing in the Public Accountancy Act shall prohibit a certified or registered public accountant authorized to practice in another state or foreign jurisdiction and lawfully practicing therein from temporarily practicing public accountancy in New Mexico, provided his activities are limited to provision of professional services to persons who are residents or governmental or business entities of the foreign jurisdiction in which he is authorized to practice.

**History:** Laws 1992, ch. 10, § 4.

**ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**61-28A-5. Registered public accountants. (Effective until July 1, 2000.)**

All registered public accountants shall renew their certificates on an annual basis pursuant to Section 12 [61-28A-12 NMSA 1978] of the Public Accountancy Act. An individual who has submitted an application for certification as a registered public accountant prior to the effective date of the Public Accountancy Act but who has not completed the requirements of certification pursuant to prior law by that date may be granted a certificate of registered public accountant by the board upon completion of the requirements. To practice, a registered public accountant must be granted a permit and the firm at which he works must be registered with the board. Permits and firm registrations must be renewed on an annual basis according to the provisions of Sections 14 and 15 [61-28A-14 and 61-28A-15 NMSA 1978] of the Public Accountancy Act.

**History:** Laws 1992, ch. 10, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-6. Board created; terms. (Effective until July 1, 2000.)**

A. There is hereby created the "New Mexico state board of public accountancy". The board shall consist of seven members appointed by the governor, all of whom shall be citizens of the United States and residents of New Mexico. Four of the members shall be New Mexico practitioners who have practiced for no fewer than the three calendar years immediately preceding their appointments to the board. Three members shall represent the public and shall not have been a certificate or permit holder, shall not have had any similar occupation in this state or any other jurisdiction and shall not have ever had any significant financial interest, direct or indirect, in the public accountancy profession or in any public accounting firm.

B. The term of each member of the board shall be three years or less, staggered in such a manner that the terms of not more than three members expire on January 1 of any year; except that the members of the board appointed and serving under prior law at the effective date of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] shall serve out the terms for which they were appointed as members of the board created by this section. Vacancies shall be filled for the balance of the unexpired term within sixty days of the vacancy by appointment by the governor. Upon the expiration of his term of office, a member shall continue to serve until his successor is appointed and takes office. Any member of the board whose permit is revoked or suspended shall automatically cease to be a member of the board, and the governor may, after a hearing, remove any member of the board for neglect of duty or other just cause. Appointment to fill an unexpired term shall not be considered a complete term.

**History:** Laws 1992, ch. 10, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 C.J.S. Accountants § 4.

### **61-28A-7. Board; officers; meetings; reimbursement. (Effective until July 1, 2000.)**

A. The board shall elect annually from among its members a chairman and a secretary-treasurer. Surety bond coverage shall be in accordance with the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978].

B. The board shall meet at such times and places as may be fixed by the board. A majority of the board members then in office shall constitute a quorum at any meeting duly called. Meetings of the board shall be open to the public as required by the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

C. Each member of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

D. The limit and extent of immunity provided to members of the board shall be defined by the Tort Claims Act [41-4-1 to 41-4-27 NMSA 1978].

**History:** Laws 1992, ch. 10, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-8. Board; powers and duties. (Effective until July 1, 2000.)**

A. The board shall retain or arrange for the retention of all applications, all documents under oath that are filed with the board and all records of its proceedings, and it shall maintain a registry of the names and addresses of all certificate and permit holders and registered firms.

B. The board may employ an executive director as an exempt employee and such other personnel as it deems necessary for its administration and enforcement of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978].

C. The board may retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the attorney general.

D. The board may sue and be sued in its official name as an agency of New Mexico. To promote fair and complete investigations and hearings, the board may issue subpoenas to compel the attendance of witnesses and the production of documents, administer oaths, take testimony and receive evidence concerning all matters within its jurisdiction according to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and pursuant to rules adopted by the board.

E. The board shall adopt rules governing its administration and enforcement of the Public Accountancy Act. All rule making activities shall be carried out pursuant to the provisions of the Uniform Licensing Act.

F. The board may conduct investigations and hearings upon its own motion or after receiving notice from any person of an alleged violation of the Public Accountancy Act. All hearings regarding alleged violations of that act shall be conducted pursuant to the provisions of the Uniform Licensing Act. Injunctions and appeals from board orders or decisions shall be pursued according to the provisions of the Uniform Licensing Act and the rules of civil procedure in the district courts.

G. The board shall promulgate rules governing the professional and ethical conduct of practitioners.

H. The board shall exercise such powers as are necessary to carry out the provisions of the Public Accountancy Act.

I. The board shall establish by rule the standards and means by which a practitioner may use a title, designation or abbreviation that indicates he is a specialist or has special expertise in conjunction with the practice of public accountancy.

**History:** Laws 1992, ch. 10, § 8; 1993, ch. 340, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, inserted "as an exempt employee" in Subsection B, and added Subsection I.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 C.J.S. Accountants § 4.

### **61-28A-9. Certification; general. (Effective until July 1, 2000.)**

The board shall grant a certificate to any person who:

A. has reached the age of majority;

B. meets the examination, education and experience requirements of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978]; and

C. pays the fees prescribed in the Public Accountancy Act.

**History:** Laws 1992, ch. 10, § 9; 1993, ch. 340, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, deleted former Subsection A, which read: "is a resident of New Mexico", and redesignated the remaining subsections accordingly.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-10. Certification; certified public accountant. (Effective until July 1, 2000.)**

A. Each applicant for certification as a certified public accountant shall complete the following education requirements:

(1) prior to July 1, 1997, a baccalaureate degree or its equivalent conferred by a post-secondary institution recognized by the board with no fewer than twenty-four semester hours of accounting, as determined by the board, either included in the semester hours comprising the baccalaureate degree or in addition to those hours;

(2) effective July 1, 1997, a baccalaureate degree or its equivalent conferred by a post-secondary institution recognized by the board, with no fewer than thirty semester hours of accounting, as determined by the board, either included in the semester hours comprising the baccalaureate degree or in addition to those hours; and

(3) effective July 1, 1997, for any applicant who prior to that date had been given and has retained a conditional credit as prescribed by board rule, a baccalaureate degree or its equivalent conferred by a post-secondary institution recognized by the board, with no fewer than twenty-four hours of accounting, as defined by board rule, either included in the semester hours comprising the baccalaureate degree or in addition to those hours.

B. Each applicant for certification as a certified public accountant shall complete the following examination requirements:

(1) submit an application to the board documenting that he will have completed the education requirements that apply to him not more than sixty days following the first scheduled day of the examination for which he is applying;

(2) receive a score of at least seventy-five percent on each part of the uniform certified public accountant examination prepared pursuant to the standards adopted by the board and based on the standards established by the American institute of certified public accountants; and

(3) take and pass an examination on ethics, the form of which is to be prescribed by board rule.

C. Conditional credits shall be granted by the board to applicants who receive scores of seventy-five percent or greater on no fewer than two parts of the uniform certified public accountant examination. The applicant shall be given a credit for those parts that he has passed and need not sit for reexamination in those parts; provided that, subject to the discretion of the board in unusual circumstances, the applicant passes the remaining parts of the examination within six consecutive examinations given after the examination at which the first parts were passed.

D. An applicant for certification shall be given credit for any and all parts of an examination passed in another state if credit would have been given under applicable requirements in effect in New Mexico at the time of the examination, had the applicant taken the examination in New Mexico.

E. The board may collect or provide for a third party to collect from each examination applicant a fee not to exceed one hundred fifty dollars (\$150) per application for the examination.

F. Each applicant for certification as a certified public accountant shall have completed the following experience requirements:

(1) one year of public accounting experience in the employ of and under the direct supervision of a practitioner; or

(2) out of the six years immediately preceding the application for a certificate, three years of full-time private or governmental accounting experience in New Mexico or any jurisdiction recognized by the board under the direct supervision of or subject to the review of a permit holder in any jurisdiction recognized by the board. The applicant shall have been primarily engaged in acquiring or reviewing all of the following:

(a) applying a variety of auditing procedures and techniques to the usual and customary financial transactions recorded in accounting records;

(b) preparing audit working papers covering the examination of the accounts usually found in accounting records;

(c) planning the program of audit work, including the selection of the procedures to be followed;

(d) preparing written explanations and comments on the findings of the examination and on the content of the accounting records; and

(e) analyzing financial statements together with explanations and notes of the analysis.

G. A combination of the experience required in Paragraphs (1) and (2) of Subsection F of this section may be accepted by the board on a case-by-case basis.

H. For applicants completing all parts of the examination prior to the effective date of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978], only two years of the three years of experience required by Paragraph (2) of Subsection F of this section must be acquired under the direct supervision of or subject to the review of a practitioner in New Mexico or any other jurisdiction provided that all other requirements of that paragraph are met.

I. Individuals who have served in the armed forces of the United States and immediately prior to entering such service were acquiring experience under the Public Accountancy Act shall be credited with the experience required by this section for the number of months, not to exceed twelve, of service in the armed forces of the United States provided that the experience obtained in the service is determined by the board to be substantially similar to the experience requirements prescribed in Subsection F of this section. An individual who upon entering the service has an unexpired period for compliance with any provision of the Public Accountancy Act shall have after discharge from the service twelve months or that unexpired period, whichever is greater, to complete compliance with that act.

**History:** Laws 1992, ch. 10, § 10.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-11. Conversion from registered to certified public accountant. (Effective until July 1, 2000.)**

The board shall grant a certificate of certified public accountant to those applicants who, as of January 1, 1988:

A. had received a conditional credit for passing two or more subjects of the registered public accountant examination and who pass the remaining subjects of the uniform certified public accountant examination; however, if one of the conditional credits is the audit portion of the registered public accountant examination, the applicant shall satisfactorily complete within forty-two months of being granted conditional credits by the board one hundred twenty hours of continuing professional education in the review or audit function of public accountancy; or

B. had passed the registered public accountant examination and have not yet been issued a certificate as a registered public accountant due to the failure of the applicant

to meet the experience requirement of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] and who satisfactorily complete one hundred twenty hours of continuing professional education in review or audit functions of public accountancy within forty-two months of the date that the experience requirement is satisfied.

**History:** Laws 1992, ch. 10, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

#### **61-28A-12. Certification; renewal. (Effective until July 1, 2000.)**

A. All certificates must be renewed on an annual basis. Failure to pay renewal fees shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. Any certificate holder whose certificate has been cancelled for failure to pay the annual renewal fee may secure reinstatement of his certificate at any time within three months subsequent to June 30 of the year of the delinquent payment upon payment of the annual renewal fee and a delinquency fee not to exceed fifty dollars (\$50.00) to be set by board rule. After the three-month period, no certificate shall be reinstated except upon application and examination satisfactory to the board.

C. The board may collect from each applicant for renewal for a certificate a fee not to exceed one hundred dollars (\$100) prescribed by board rule.

**History:** Laws 1992, ch. 10, § 12.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

#### **61-28A-13. Certification by reciprocity. (Effective until July 1, 2000.)**

A. The board shall grant a certificate by reciprocity to an individual seeking to practice in New Mexico after the applicant furnishes satisfactory evidence to the board that:

(1) the applicant holds a valid certificate from a reciprocal jurisdiction and has completed education, examination and experience requirements acceptable to the board; or

(2) the applicant meets all current requirements in New Mexico for issuance of a certificate at the time the application is made or that the applicant has:

(a) held a valid permit to practice public accountancy in the reciprocal jurisdiction for at least one year immediately preceding his application; and

(b) after passing the examination upon which his certificate was based and within ten years immediately preceding his application, had three years of experience in the practice of public accountancy or equivalent experience that meets requirements set forth in the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] and in board rule.

B. A certified public accountant from a reciprocal jurisdiction who is authorized to practice in that jurisdiction and who applies for a certificate by reciprocity in New Mexico shall, from the date of filing a completed application that satisfies all requirements of the board, be deemed qualified to apply for a permit to practice and may practice public accountancy in New Mexico on a temporary permit until the board has acted upon his application; however, temporary authority to practice under this subsection shall not prevent the board from refusing, after complying with the provisions of the Uniform Licensing Act, to issue a certificate or permit if the applicant otherwise fails to qualify for a certificate under the Public Accountancy Act.

C. No certificate of registered public accountant shall be granted by reciprocity.

D. The board may collect from each applicant for a certificate by reciprocity a fee in an amount prescribed by board rule not to exceed one hundred fifty dollars (\$150).

**History:** Laws 1992, ch. 10, § 13; 1993, ch. 340, § 3.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, substituted "holds a valid certificate from" for "comes from or is a resident of" and "or" for "and" in Subsection A(1).

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**61-28A-14. Permits; individual. (Effective until July 1, 2000.)**

A. The board shall grant or renew permits to practice public accountancy to individuals who make application and demonstrate their qualifications in accordance with Subsections B through G of this section. Failure to pay renewal fees shall be cause for the board to withhold renewal of a permit without prior hearing pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. Permits shall be initially issued and renewed for a period of no more than one year and shall expire on June 30 following issuance or renewal. Applications for such permits shall be made on a form and, in the case of applications for renewal, between dates specified by board rule. The board shall approve or deny an application no later than ninety days after the application is filed in proper form.

C. An applicant for initial issuance of a permit under this section shall show:

(1) that he holds a current New Mexico certificate; and

(2) if the applicant's certificate was initially issued more than four years prior to his application for issuance of an initial permit under this section, that he has fulfilled the requirements of continuing professional education that would have been applicable under Subsection D of this section if he had secured his initial permit within four years of issuance of his certificate and was now applying for renewal of his permit under Subsection A of this section.

D. An applicant for renewal of a permit under this section shall show that he has fulfilled both the general and the specific requirements of continuing professional education as prescribed by board rule. Beginning in 1993, each applicant for permit renewal shall have completed no fewer than one hundred twenty hours, as defined by the board, of continuing professional education acceptable to the board, in any three-year period ending on December 31. The board may provide that fulfillment of continuing professional education requirements of other states will be accepted in lieu of the foregoing requirements for those applicants seeking a permit to practice in New Mexico who hold a permit from another state. The board may provide for prorated continuing professional education requirements to be met by applicants seeking permit renewal in the following cases:

(1) when the applicant's original permit was issued within the eighteen months immediately prior to the date of the application for renewal;

(2) when the applicant's original or prior permit lapsed one year or more before the date of application for renewal of his permit, and the applicant has not practiced in New Mexico during the period in which he held no valid New Mexico permit to practice public accountancy; or

(3) in any case in which the board determines full compliance with the continuing professional education requirements of this section would be inequitable or impossible due to circumstances beyond the control of the applicant.

E. An applicant for initial issuance or renewal of a permit under this section shall list in his application each state in which he has applied for or holds a certificate or an authorization to practice public accountancy, and each holder of or applicant for a permit under this section shall notify the board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a certificate or an authorization to practice public accountancy by another state.

F. The board may collect from each applicant for initial issuance or renewal of a permit under this section a fee prescribed by board rule not to exceed one hundred dollars (\$100).

G. Any individual whose permit has been cancelled for failure to pay the annual renewal fee may secure reinstatement of his permit at any time within three months after June 30 of the year of the delinquent payment upon payment of the annual renewal fee and of a delinquency fee prescribed by board rule not to exceed fifty dollars (\$50.00). After the three-month period, no permit shall be reinstated except upon application and examination satisfactory to the board.

**History:** Laws 1992, ch. 10, § 14.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-15. Registration; firms. (Effective until July 1, 2000.)**

A. All firms that are engaged in the practice of public accountancy in New Mexico shall register annually with the board.

B. Registration of firms shall require that:

(1) a sole practitioner shall be a holder of a current permit;

(2) any partnership desiring registration as a firm shall be composed solely of partners who hold current permits;

(3) any corporation shall be organized under the Professional Corporation Act [53-6-1 to 53-6-13 NMSA 1978] or similar provisions of the laws of another state, and all shareholders shall hold current permits;

(4) if any partner, shareholder or member is a partnership, corporation or other form of business entity permitted by state law, that partnership, corporation or other form of business entity permitted by state law shall be a registered firm; and

(5) any partnership, corporation or other form of business entity permitted by state law seeking registration as a firm to allow it to engage in the practice of public accountancy in New Mexico shall provide documentation to the board that all partners, shareholders or members practicing in New Mexico hold current permits and that all partners, shareholders or members in the firm not practicing in New Mexico are duly authorized to practice public accountancy in a reciprocal jurisdiction.

C. Application for registration under this section shall be made upon affidavit of individuals and in a form specified by the board.

D. Registration shall be denied to any firm that has failed to comply with any provision of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978].

E. Failure of a firm practicing public accountancy in this state to file an annual application for registration renewal is cause for suspension or revocation of the right of the firm to practice in New Mexico.

F. The board may collect a registration fee prescribed by board rule not to exceed fifty dollars (\$50.00) from firms required to register under this section.

G. Any registered firm whose registration has been cancelled for failure to pay the annual renewal fee may secure reinstatement of its registration at any time within three months following June 30 of the year of the delinquent payment upon payment of the annual renewal fee and of a delinquency fee prescribed by board rule not to exceed fifty dollars (\$50.00). After the three-month period, no registration shall be reinstated except upon application and examination satisfactory to the board.

**History:** Laws 1992, ch. 10, § 15; 1993, ch. 340, § 4.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, in Subsection B, substituted "shareholders" for "stockholders" in Paragraph (3), rewrote Paragraph (4), and substituted "partnership, corporation or other form of business entity permitted by state law" for "partnership or corporation" and "partners, shareholders or members" for "partners or shareholders" in two places in Paragraph (5).

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**61-28A-16. Practice; single act evidence. (Effective until July 1, 2000.)**

In any legal action brought under the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978], evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

**History:** Laws 1992, ch. 10, § 16.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 A.L.R.5th 852.

### **61-28A-17. Enforcement; unlawful acts. (Effective until July 1, 2000.)**

A. Except as provided in Subsection C of this section and in Section 61-28A-18 NMSA 1978, it is unlawful for any person to engage in practice in New Mexico unless he is the holder of a current permit to practice issued by the board.

B. Except as provided in Subsection C of this section and in Section 61-28A-18 NMSA 1978, no person or accountant shall issue a report or financial statement of any individual, firm, organization or governmental unit, or issue a report using any form of language conventionally used respecting a compilation or review of financial statements, unless he holds a current permit or firm registration issued under the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978]. The state auditor and his auditing staff are considered to be in the practice of public accountancy.

C. With the exception of those individuals cited in Section 61-28A-18 NMSA 1978, any person or accountant who prepares any financial accounting and related statements and who is not the holder of a certificate or of a permit or registration under the provisions of the Public Accountancy Act shall include the following statement prominently on each page of any financial accounting, related statement and accompanying compilation or review transmittal letter: " The preparer of this statement is not the holder of a certificate or of a permit or registration under the Public Accountancy Act."

D. No person or accountant shall indicate by title, designation, abbreviation, sign, card or device that he is a certified public accountant, a registered public accountant or a public accountant unless he is currently certified by the board pursuant to the Public Accountancy Act or if he is a firm currently registered with the board pursuant to that act. Unless he is a holder of a current certificate or permit, no person or accountant

shall utilize any title, initials or designation intended to or substantially likely to indicate to the public that he is a certified public accountant, registered public accountant or public accountant.

E. No individual holding a certificate shall engage in practice unless:

(1) he also holds a valid permit issued under the Public Accountancy Act; or

(2) he is an employee, and not a partner, officer, shareholder, or member of a firm registered with the board pursuant to that act.

F. No person holding a permit or registered with the board under the Public Accountancy Act shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit of a certified public accountant or registered public accountant or a firm registration, nor shall he fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a permit or registration as provided in the Public Accountancy Act.

H. A practitioner shall not pay a commission to obtain a client, nor accept a commission for a referral to a client of products or services of others; provided, however, that this subsection shall not prohibit payments for the purchase of all, or a material part, of an accounting practice, or retirement payments to persons formerly engaged in the practice of public accountancy, or payment to the heirs or estates of such persons.

I. A practitioner shall not offer or perform professional services for a fee that is contingent upon the findings or results of such services; provided, however, that this subsection shall not apply to professional services involving federal, state or other taxes in which the findings are those of the tax authorities and not those of the practitioner or to professional services for which the fees are to be fixed by courts or other public authorities and which are therefore indeterminate in amount at the time the professional services are undertaken.

J. No practitioner shall sign or certify any financial statements if he knows the same to be materially false or fraudulent.

**History:** Laws 1992, ch. 10, § 17; 1993, ch. 340, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment**, effective April 8, 1993, changed the style of the statutory reference in Subsections A and C, and in the first sentence of Subsection B; and substituted "holder of a current certificate or permit" for "practitioner" in the second sentence of Subsection D, "officer, shareholder, or member" for "officer or shareholder" in Subsection E(22), and "partners, shareholders or members" for "partners or shareholders" in Subsection F.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Accountants § 2 et seq.

Failure of accountant to procure license as affecting validity or enforceability of contract, 118 A.L.R. 651.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

1 C.J.S. Accountants § 5.

### **61-28A-18. Exemptions; unlawful acts. (Effective until July 1, 2000.)**

A. Subsection B of Section 61-28A-17 NMSA 1978 does not prohibit:

(1) an officer, partner, shareholder, member or employee of any firm or organization from affixing his own signature to any statement or report in reference to the financial affairs of his firm or organization with any wording designating the position, title or office that he holds within the firm or organization;

(2) any act of a public official or employee in the performance of his duties; or

(3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, and the preparation of financial statements without the issuance of reports thereon.

B. Nothing contained in the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] shall prevent any individual from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm engaged in practice; provided that such employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a permit issued pursuant to that act.

**History:** Laws 1992, ch. 10, § 18; 1993, ch. 340, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment**, effective April 8, 1993, in Subsection A, changed the style of the statutory reference in the introductory language, and inserted "shareholder, member" near the beginning of Paragraph (1).

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-19. Business names; prohibitions. (Effective until July 1, 2000.)**

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person is a registered firm pursuant to the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply to, affect or limit the right of the remaining partner, shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member.

**History:** Laws 1992, ch. 10, § 19; 1993, ch. 340, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment**, effective April 8, 1993, substituted "shareholder or member" and "shareholders or members" for "or stockholder" and "or stockholders" throughout the section.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Accountants § 9.

Validity, construction and application of statute or regulation restricting use of terms such as "accountant," "public accountant" or "certified public accountant," 4 A.L.R.4th 1201.

**61-28A-20. Enforcement; administrative violations and remedies.  
(Effective until July 1, 2000.)**

A. The board may take, after providing any person due process pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], corrective action identified in Subsection B of this section following a finding that an applicant, certificate holder or practitioner has:

- (1) committed fraud or deceit in obtaining a certificate, permit or firm registration;
- (2) lost a certificate, license, permit or registration through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;
- (3) failed to maintain compliance with the requirements of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] and board rules for issuance or renewal of a certificate, permit or registration or failed to report material changes to the board, as required by board rule;
- (4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;
- (5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file his own income or other federal, state or local tax returns;
- (6) violated any provision of the Public Accountancy Act or any rule or regulation promulgated by the board pursuant to that act;
- (7) violated any rule of professional conduct promulgated by the board pursuant to the Public Accountancy Act;
- (8) been convicted of a felony or of any crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, if the acts involved would have constituted a crime under the laws of New Mexico;
- (9) performed any fraudulent act while holding a certificate, permit or firm registration issued pursuant to the Public Accountancy Act or prior law; or
- (10) participated in any conduct reflecting adversely upon the practitioner's fitness to engage in practice.

B. After a finding by the board that an applicant, certificate holder or practitioner has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

(1) deny an application or revoke any certificate, permit or firm registration issued under the Public Accountancy Act or corresponding provisions of prior law;

(2) suspend any certificate, permit or firm registration for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of any certificate holder, permit holder or registered firm;

(4) impose an administrative fine not exceeding one thousand dollars (\$1,000); or

(5) place the holder of a certificate, registration or permit on probation.

C. In lieu of or in addition to any remedy specifically provided in Subsection B of this section, the board may require of a practitioner:

(1) a quality review conducted in such a fashion as the board may specify;

(2) satisfactory completion of such continuing professional education programs as the board may specify;

(3) correction of the violation identified; and

(4) any other suitable remedial action as determined by the board.

D. In any proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

**History:** Laws 1992, ch. 10, § 20.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 1 Am. Jur. 2d Accountants § 7.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Regulation of public accountants, 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders, 35 A.L.R.4th 225.

1 C.J.S. Accountants §§ 6 to 9.

## **61-28A-21. Reinstatement. (Effective until July 1, 2000.)**

A. In any case in which the board has suspended or revoked a certificate, permit or firm registration or refused to renew the same, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate, permit or registration.

B. The board shall specify by rule the manner in which such applications shall be made, the times within which they shall be made and the circumstances in which hearings shall be held thereon.

C. Before reissuing or terminating the suspension of a permit under this section and as a condition thereto, the board may require the applicant to show successful completion of specified continuing professional education or may require a quality review or both.

**History:** Laws 1992, ch. 10, § 21.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **61-28A-22. Fund established. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "public accountancy fund".

B. All money received by the board and money collected under the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] shall be deposited with the state treasurer. The state treasurer shall credit the money to the fund.

C. Payment out of the fund shall be on vouchers issued and signed by the designee of the board upon warrants as specified by the state treasurer.

D. All amounts paid into the fund are appropriated for expenditure by the board for the necessary expenses of the board for execution of the provisions of the Public Accountancy Act. The balance remaining in the fund at the end of each fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

E. All funds created under prior law that accumulate to the credit of prior boards are appropriated to and shall be merged with the public accountancy fund and used by the board for its necessary administrative expenses.

**History:** Laws 1992, ch. 10, § 22.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-23. Criminal penalties. (Effective until July 1, 2000.)**

A. Whenever, by reason of an investigation pursuant to the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] or from other reliable sources, the board has reason to believe that any person has knowingly engaged in acts or practices that constitute a violation of Section 17 [61-28A-17 NMSA 1978] of that act, the board may bring its information to the attention of the attorney general, or to the district attorney of the district in which the alleged violation occurred, who may, in his discretion, cause appropriate criminal proceedings to be brought against the person so charged.

B. Any person who knowingly violates the provisions of Subsections A through I of Section 17 of the Public Accountancy Act shall be guilty of a misdemeanor and, upon conviction thereof, subject to a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than six months, or to both.

C. Any person or firm who knowingly violates the provisions of Subsection J of Section 17 of the Public Accountancy Act shall be guilty of a fourth degree felony and, upon conviction, shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**History:** Laws 1992, ch. 10, § 23.

## ANNOTATIONS

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

### **61-28A-24. Papers; client's records; confidential communications. (Effective until July 1, 2000.)**

A. All statements, records, schedules, working papers and memoranda in practice by a practitioner or under the supervision of a practitioner incident to or in the course of rendering services to a client, except the reports submitted by the practitioner to the client and except for records that are part of the client's records, shall remain the property of the practitioner in the absence of an express agreement to the contrary.

B. A practitioner shall furnish to his client or former client, upon request with reasonable notice and reimbursement to the practitioner for the costs of providing such copies and information:

(1) a copy of the practitioner's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) any accounting or other records belonging to or obtained from or on behalf of the client that the practitioner removed from the client's premises or received for the client's account; the practitioner may make and retain copies of such documents of the client when they form the basis for work done by him.

C. Except by permission of the client engaging a practitioner, or the heirs, successors or personal representatives of that client, a practitioner or any partner, officer, shareholder, member or employee of a practitioner shall not voluntarily disclose information communicated to him by the client relating to and in connection with services rendered to the client by the practitioner in the practice of public accountancy. All information communicated to a practitioner in his official capacity by his client shall be deemed confidential; provided, however, that nothing in this section shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the audit, review or compilation of financial statements or as prohibiting disclosures in court proceedings, in investigations of an official nature, in proceedings pursuant to provisions of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978], in ethical investigations conducted by private professional organizations or in the course of quality reviews. All financial statements, working papers or other documents utilized in connection with a quality review shall be confidential.

D. Nothing in this section shall be construed either to limit or expand the legal doctrines of discovery, privilege or confidentiality as recognized by the courts in New Mexico or the United States.

**History:** Laws 1992, ch. 10, § 24; 1993, ch. 340, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**The 1993 amendment,** effective April 8, 1993, in Subsection C, inserted "member" near the middle of the first sentence and substituted "in this section" for "herein" near the beginning of the proviso in the second sentence.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **61-28A-25. Criminal offender eligibility. (Effective until July 1, 2000.)**

Except as otherwise provided in the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978], the provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Public Accountancy Act.

**History:** Laws 1992, ch. 10, § 25.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **61-28A-26. Transition provisions from prior law. (Effective until July 1, 2000.)**

A. Action on violations under the New Mexico Public Accountancy Act [Chapter 61, Article 28 NMSA 1978] of 1987 must be brought before the board within two years of the date the violation took place. Action under that act may be brought before the board and considered according to the provisions of that act and the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. All certificates, permits or firm registrations issued under the New Mexico Public Accountancy Act of 1987 that are current at the time of enactment of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] shall remain current until June 30 following the date of enactment of the Public Accountancy Act.

C. Any disciplinary actions taken by the board and any delinquency fees or penalties owed under the New Mexico Public Accountancy Act of 1987 shall remain in effect and due unless reviewed and forgiven by the board pursuant to procedures provided in the Uniform Licensing Act and the Public Accountancy Act.

**History:** Laws 1992, ch. 10, § 26.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **61-28A-27. Construction; severability. (Effective until July 1, 2000.)**

If any provision of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] or the application thereof to any person or entity or in any circumstances is held invalid, the remainder of that act and the application of such provision to others or in other circumstances shall not be affected thereby.

**History:** Laws 1992, ch. 10, § 28.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-28A-28 NMSA 1978.

**Effective dates.** - Laws 1992, ch. 10 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1992.

#### **61-28A-28. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board is terminated on July 1, 1999 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Public Accountancy Act [61-28A-1 to 61-28A-28 NMSA 1978] until July 1, 2000. Effective July 1, 2000 the Public Accountancy Act is repealed.

**History:** 1978 Comp., § 61-28A-28, enacted by Laws 1993, ch. 83, § 6.

#### **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1993, ch. 83, § 6 repeals former 61-28A-28 NMSA 1978, as enacted by Laws 1992, ch. 10, § 29, relating to termination of agency life, and enacts the above section, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

## **ARTICLE 29**

### **REAL ESTATE BROKERS AND SALESMEN**

#### **61-29-1. Prohibition. (Effective until July 1, 2000.)**

It is unlawful for any person, business association or corporation to engage in the business, act in the capacity of, advertise or display in any manner, or otherwise assume to engage in the business of, or act as, a real estate broker or real estate salesman within this state without a license issued by the New Mexico real estate commission.

**History:** 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Generally, as to advertisements violating section.** - It is a violation of this section for a person, business firm or corporation to advertise the disposition of real estate using the terms "Real Estate Agency," "Realty," "Agency" or "Broker" without first being licensed as a real estate broker as is defined in 61-29-2 NMSA 1978. It is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency," "Realty," "Agency" or "Broker." The real question is: have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman? 1966 Op. Att'y Gen. No. 66-16.

**Brokerage can encompass sale of interest in real estate contract.** - Commission had jurisdiction over real estate broker's sale of an interest in a real estate contract since broker was a real estate broker as defined in 61-29-2A NMSA 1978 and represented himself as such and acted in that capacity. *Elliott v. New Mexico Real Estate Comm'n*, 103 N.M. 273, 705 P.2d 679 (1985).

**Law reviews.** - For note, "Vendor and Purchaser - Increased Risks of Forfeiture and Malpractice Resulting from the Use of Real Estate Contracts: *Albuquerque National Bank v. Albuquerque Ranch Estates, Inc.*," see 15 N.M.L. Rev. 99 (1985).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers §§ 6 to 11.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 A.L.R.2d 606.

Application of state antitrust laws to activities or practices of real estate agents or associations, 22 A.L.R.4th 103.

Attorney's right to act as real estate broker without having been licensed as such, 23 A.L.R.4th 230.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

Real estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

12 C.J.S. Brokers §§ 14, 18.

### **61-29-1.1. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - Former 61-29-1.1 NMSA 1978, relating to registration of time share projects and licensing of salespersons, enacted by Laws 1986, ch. 97, § 2, has been recompiled as 47-11-2.1 NMSA 1978.

### **61-29-2. Definitions and exceptions. (Effective until July 1, 2000.)**

A. A real estate "broker", within the meaning of Chapter 61, Article 29 NMSA 1978, is a person, business association or corporation who for a salary, fee, commission or valuable consideration lists, sells or offers for sale, buys or offers to buy or negotiates the purchase or sale or exchange of real estate or who leases or offers to lease or rents or offers for rent or auctions or offers or attempts or agrees to auction real estate or who buys or offers to buy, sell or offers to sell or otherwise deals in options on real estate or advertises or holds himself out as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on any real estate or the improvement thereon for others, as a whole or partial vocation. The term "broker" also includes any person employed by or on behalf of the owner of real estate to conduct the sale, leasing or other disposition thereof at a salary or fee, commission or any other consideration. It also includes any person who engages in the business of charging an advance fee or contracting for collection of a fee in connection with any contract whereby he undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for such purpose or for referral of information concerning such real estate to brokers, or both. The term "real estate", as used in Chapter 61, Article 29 NMSA 1978, shall include leaseholds and other interest less than leaseholds, including rights to use property. Resident managers of apartment buildings are not required to be licensed, provided they do not carry on any other real estate activity and do not serve as a resident manager for more than one employer.

B. A real estate "salesperson", within the meaning of Chapter 61, Article 29 NMSA 1978, is any person who for a compensation or valuable consideration is associated with or engaged under contract either directly or indirectly by or on behalf of a licensed broker to participate in any activity included in Subsection A of this section or in the pursuance of such broker's business, as a whole or partial vocation.

C. Any one act of a person, business association or corporation in performing or attempting to perform an activity set forth in this section shall constitute the person, business association or corporation a real estate broker or real estate salesperson.

D. The provisions of Chapter 61, Article 29 NMSA 1978 shall not apply to, be construed to include, held to include or apply to:

(1) any person, business association or corporation who as owner or lessor performs any of the activities included in this section with reference to property owned or leased by him, the employees of the owner or lessor or the employees of a real estate broker acting on behalf of the owner or lessor, with respect to the property owned or leased, where the acts are performed in the regular course of or incident to the management of the property and the investments, except where the sale or offering for sale or the lease or offering for lease of the property constitutes a subdivision containing one hundred or more parcels;

(2) isolated or sporadic transactions not exceeding two transactions annually where a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact have not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(3) transactions where a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact, by up to the fourth degree of consanguinity, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(4) the services rendered by an attorney at law in the performance of his duties as an attorney at law;

(5) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court, or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(6) the activities of a salaried employee of a governmental agency acting within the scope of his employment; or

(7) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction.

**History:** 1953 Comp., § 67-24-20, enacted by Laws 1959, ch. 226, § 2; 1965, ch. 304, § 2; 1977, ch. 182, § 1; 1981, ch. 148, § 10; 1987, ch. 90, § 1; 1993, ch. 192, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, rewrote Subsection D; and deleted former Subsection E, which contained essentially the same language as contained in present Subsection D(7).

**Broker buying or selling property for himself.** - The commission lacks jurisdiction over a real estate broker who is buying or selling property for himself, unless he holds himself out as a broker. *Vihstadt v. Real Estate Comm'n*, 106 N.M. 641, 748 P.2d 14 (1988).

**Burden on broker when acting for himself.** - A licensed broker has the burden of showing that there is no possibility of misunderstanding or confusion as to his status when he purports to act for himself. *Poorbaugh v. New Mexico Real Estate Comm'n*, 91 N.M. 622, 578 P.2d 323 (1978).

**Hiring of note broker for sale of real estate contract.** - Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 106 N.M. 641, 748 P.2d 14 (1988).

**Whether landowner made representation as to being real estate broker is factual determination** to be made by the trier of fact. *Poorbaugh v. New Mexico Real Estate Comm'n*, 91 N.M. 622, 578 P.2d 323 (1978).

**Broker to supervise salespeople.** - This section and 61-29-11 NMSA 1978 express a clear legislative mandate that brokers, as the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

**Fiduciary duties of salesperson extended to broker.** - Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, N.M. , 858 P.2d 854 (1993).

**The exemption contained in Subsection D applies only** to those persons holding the power of attorney and who are not engaged in business as real estate brokers. 1965 Op. Att'y Gen. No. 65-122.

**Broker status not changed by power of attorney.** - Where a real estate broker entered into a real estate transaction as a broker, he was not exempt from the jurisdiction of the commission under the "attorney in fact" exception in Subsection D, even though he was given the power of attorney to enable him to complete the transaction without the owners being present. *Elliott v. New Mexico Real Estate Comm'n*, 103 N.M. 273, 705 P.2d 679 (1985).

**Activities not excepted.** - Activities did not fall within exception provided for in Subsection D. See *Bosque Farms Home Center, Inc. v. Tabet Lumber Co.*, 107 N.M. 115, 753 P.2d 894 (1988).

**No license required for arranging investments.** - Arranging investments in real estate contracts is not a transaction for which a real estate broker's or salesperson's license is required. *Garcia v. New Mexico Real Estate Comm'n*, 108 N.M. 591, 775 P.2d 1308 (Ct. App. 1989).

**Law reviews.** - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 1.

Who is real estate broker within meaning of statute, 167 A.L.R. 774.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, 17 A.L.R.2d 904.

Duty of real estate broker to disclose that prospective purchaser is a relative, 26 A.L.R.2d 1307.

Payment to broker authorized to sell real property as payment to principal, 30 A.L.R.2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 A.L.R.2d 1014.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Power of real estate broker to bind principal by representations as to character, condition, location, quantity or title of property, 58 A.L.R.2d 10.

Liability of real estate broker for accepting note, check or property, rather than cash, as earnest money, 59 A.L.R.2d 1455.

Misrepresentation as basis of real estate broker's liability for damages or losses sustained by vendor responsible to vendee on account thereof, 61 A.L.R.2d 1237.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 A.L.R.4th 230.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

12 C.J.S. Brokers § 2.

### **61-29-3. Criminal offender's character evaluation. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

**History:** 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Criminal Offender Employment Act to be followed in suspension or revocation action.** - The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-2.

**Convicted felon, while on parole, is under no disqualification** that would prevent him from applying for a license to practice barbering or to practice as a real estate broker or any other trade, profession or occupation in this state. 1957-58 Op. Att'y Gen. No. 58-214 (opinion rendered under former law).

### **61-29-4. Creation of commission; powers and duties. (Effective until July 1, 2000.)**

There is created the New Mexico real estate commission, called "the commission" in Chapter 61, Article 29 NMSA 1978. The commission shall be appointed by the governor and shall consist of five members who shall have been residents of the state for three consecutive years immediately prior to their appointment, four of whom shall have been

real estate brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as a real estate broker or salesperson; provided not more than one member shall be from any one county within the state. The members of the commission shall serve for a period of five years or until their successors are appointed and qualified. Members to fill vacancies shall be appointed for any unexpired term. The governor may remove any member for cause. The commission shall possess all the powers and perform all the duties prescribed by Chapter 61, Article 29 NMSA 1978 and as otherwise provided by law, and it is expressly vested with power and authority to make and enforce any rules and regulations to carry out the provisions of that article. Prior to any final action on any proposed changes or amendments to the rules and regulations of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to any proposed final action. Any changes or amendments to the rules and regulations shall be filed in accordance with the procedures of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments. The commission may employ any staff it deems necessary to assist in carrying out its duties and in keeping its records.

**History:** 1953 Comp., § 67-24-21, enacted by Laws 1959, ch. 226, § 3; 1978, ch. 203, § 1; 1983, ch. 261, § 1; 1987, ch. 90, § 2; 1990, ch. 75, § 25.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Cross-references.** - For Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, inserted "and as otherwise provided by law" following "Chapter 61, Article 29 NMSA 1978" in the sixth sentence.

**Commission members subject to discretionary removal.** - Since the governor may remove any person appointed by him or his predecessor, he can remove any member of the real estate commission at any time without notice or hearing. 1963-64 Op. Att'y Gen. No. 63-134.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses § 9.

**61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements. (Effective until July 1, 2000.)**

In addition to the powers and duties granted the commission under the provisions of Section 61-29-4 NMSA 1978, the commission shall adopt regulations providing for continuing educational programs that offer courses in selling, leasing or managing residential, commercial and industrial property as well as courses reviewing basic real estate law and practice. The regulations shall require that every licensee except licensees who are sixty-five years of age or older and who have a minimum of twenty years' continuously licensed experience in the selling, leasing or managing of real property, as a condition of his license renewal, shall successfully complete thirty classroom hours of instruction every three years in courses approved by the commission. The regulations shall prescribe areas of specialty or expertise and may require that a certain part of the thirty hours of classroom instruction be devoted to courses in the area of a licensee's specialty or expertise.

**History:** 1978 Comp., § 61-29-4.1, enacted by Laws 1985, ch. 89, § 1; 1993, ch. 253, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, deleted the A designation from the beginning of the section.

### **61-29-5. Organization of commission. (Effective until July 1, 2000.)**

The commission shall organize by electing a president, vice president and secretary from its members. A majority of the commission shall constitute a quorum and may exercise all powers and duties devolving upon it and do all things necessary to carry into effect the provisions of this act. The secretary of the commission shall keep a record of its proceedings, a register of persons licensed as real estate brokers and as real estate salesmen, showing the name, place of business of each and the date and number of his or her certificate and a record of all licenses or certificates issued, refused, removed, suspended or revoked. This record shall be open to public inspection at all reasonable times.

**History:** 1953 Comp., § 67-24-22, enacted by Laws 1959, ch. 226, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Meaning of "this act".** - The term "this act" refers to Laws 1959, ch. 226, the provisions of which are presently compiled as 61-29-1, 61-29-2, 61-29-4 to 61-29-16, 61-29-18 NMSA 1978.

### **61-29-5.1. Recompiled.**

## ANNOTATIONS

**Recompilations.** - Former 61-29-5.1 NMSA 1978, relating to a register of time share projects and applicants for certificates of registration, enacted by Laws 1986, ch. 97, § 13, has been recompiled as 47-11-11.1 NMSA 1978.

### **61-29-6. Meeting of the commission. (Effective until July 1, 2000.)**

The commission shall meet at least once each quarter-year at such time and place as may be designated by the president thereof, and special meetings may be held upon five days' written notice to each of the commission members by the president of the commission.

**History:** 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

### **61-29-7. Reimbursement and expenses. (Effective until July 1, 2000.)**

Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and shall receive no other compensation, perquisite or allowance. The commission may select and appoint an administrator, who shall serve as executive secretary to the commission on annual salary, to perform the duties prescribed by this act and such additional duties as the commission may determine. The commission may employ subordinate officers, stenographers, clerks, an attorney and such other assistance as may be needed, and fix their compensation to be paid from the real estate commission fund, and to [sic] purchase such supplies, equipment and records and to [sic] incur such other expenses as may be necessary to carry out the provisions of this act.

**History:** 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 61-29-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 53 C.J.S. Licenses § 37.

### **61-29-8. License fees; disposition. (Effective until July 1, 2000.)**

A. The following fees shall be charged by the commission and paid into the real estate commission fund:

- (1) for each examination, a fee of sixty dollars (\$60.00);
- (2) for each broker's license issued, a fee of sixty dollars (\$60.00), and for each annual renewal thereof, a fee of sixty dollars (\$60.00);
- (3) for each salesperson's license issued, a fee of sixty dollars (\$60.00), and for each annual renewal thereof, a fee of sixty dollars (\$60.00);
- (4) for each change of place of business or change of employer or contractual associate, a fee of twenty dollars (\$20.00);
- (5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee of twenty dollars (\$20.00);
- (6) for each license history, a fee of twenty-five dollars (\$25.00);
- (7) for copying of documents by the commission, a fee set by the commission, not to exceed one dollar (\$1.00) per copy;
- (8) for each additional license law and rules and regulations booklet, a fee set by the commission not to exceed ten dollars (\$10.00) per booklet;
- (9) for each additional directory of licensed real estate brokers and salespersons, a fee set by the commission not to exceed twenty dollars (\$20.00); and
- (10) for each supplement to the directory of licensed real estate brokers and salespersons, a fee set by the commission not to exceed twenty dollars (\$20.00).

B. All fees set by the commission shall be set by rule or regulation and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules and regulations shall be filed in accordance with the provisions of the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978].

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated for the purpose of carrying out the provisions of Chapter 61, Article 29 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] and shall be paid out of the fund upon the vouchers of the president and secretary of the commission; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978.

**History:** 1953 Comp., § 67-24-25, enacted by Laws 1959, ch. 226, § 7; 1977, ch. 295, § 1; 1983, ch. 261, § 2; 1987, ch. 90, § 3; 1990, ch. 75, § 26; 1992, ch. 21, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, in Subsection B, divided the subsection into four sentences, deleted "special" before "fund" in the present second sentence and substituted "or as otherwise provided by law" for "and shall be paid out of the fund in the state treasury" at the end thereof and, in the present third sentence, added "Expenditures shall be made from the fund" at the beginning and deleted "provided that" at the end.

**The 1992 amendment,** effective May 20, 1992, substituted the present section catchline for "License fees and disposition thereof "; substituted "sixty dollars (\$60.00)" for "thirty dollars (\$30.00)" in Subsection A(1); substituted "sixty dollars (\$60.00)" for "forty dollars (\$40.00)" in Subsections A(2) and A(3); substituted "twenty dollars (\$20.00)" for "ten dollars (\$10.00)" in Subsections A(4) and A(5); added Subsections A(6) to A(10); added present Subsection B; redesignated former Subsection B as present Subsection C; and in Subsection C, restructured the former four sentences as a single sentence, substituted "carrying out the provisions" for "paying the expenses of the commission incurred under the provisions" near the middle of the subsection, and made stylistic changes throughout the subsection.

**Temporary provisions.** - Laws 1990, ch. 75, § 27, effective May 16, 1990, provides that money in the real estate commission fund may be used for paying the initial costs incurred in implementing the Real Estate Appraisers Act [61-30-1 to 61-30-23 NMSA 1978], provided, however, the real estate commission fund shall be reimbursed from the appraiser fund by the fees charged and collected by the commission for licensing and certification of real estate appraisers in New Mexico.

**Cash balances not to revert to general fund.** - Any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to this section as the result of the collection of license fees and examination fees, should not revert to the general fund at the end of the licensing year. 1959-60 Op. Att'y Gen. No. 60-124.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 7.

Validity of statute or ordinance requiring real estate broker to procure license, 39 A.L.R.2d 606.

53 C.J.S. Licenses §§ 22, 71.

**61-29-9. Qualifications for license. (Effective until July 1, 2000.)**

A. Licenses shall be granted only to persons who are deemed by the commission to be of good repute and competent to transact the business of a real estate broker or salesperson in such a manner as to safeguard the interests of the public.

B. Each applicant for a broker's license shall be a legal resident of the United States, have reached the age of majority and have been an actual bona fide resident of New Mexico for six months next preceding the filing of application. Each applicant for a real estate broker's license shall:

(1) have performed actively as a real estate salesperson in New Mexico for at least twenty-four months out of the preceding thirty-six months immediately prior to filing application and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission;

(2) furnish the commission a certificate that he has completed successfully one hundred eighty classroom hours of instruction in basic real estate courses approved by the commission;

(3) furnish the commission a certificate that he is a duly licensed real estate broker in good standing in another state, providing he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission; or

(4) furnish the commission satisfactory proof of his equivalent experience in an activity closely related to or associated with real estate and furnish the commission a certificate that he has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission.

C. Each applicant for a salesperson's license shall be a legal resident of the United States, have reached the age of majority and be a resident of New Mexico preceding the filing of application and shall furnish the commission a certificate that he has completed successfully sixty classroom hours of instruction in basic real estate courses approved by the commission.

D. The commission shall require such information as it may deem necessary from every applicant to determine his honesty, trustworthiness and competency. Corporations, partnerships or associations shall be entitled to hold a broker's license issued in the name of the corporation, partnership or association, provided at least one member of the partnership or association or one officer or employee of a corporation who actively engages in the real estate business first secures a broker's license. Such license shall be issued in the name of the corporation, partnership or association, naming the partner, associate, officer or employee as qualifying broker for the corporation, partnership or association.

**History:** 1953 Comp., § 67-24-26, enacted by Laws 1959, ch. 226, § 8; 1965, ch. 304, § 4; 1973, ch. 40, § 1; 1977, ch. 295, § 2; 1979, ch. 94, § 1; 1983, ch. 261, § 3.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

**Section expressly authorizes broker to hold more than one license,** provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party. The statute does not authorize an individual to have more than one license in an individual capacity. 1980 Op. Att'y Gen. No. 80-22.

**Persons of "good repute".** - The "good repute" requirement is interpreted to relate to honesty and trustworthiness. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

**Suit for commission to be in name of licensed broker.** - As an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, or that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. The corporation itself must be licensed to bring suit. *Star Realty Co. v. Sellers*, 73 N.M. 207, 387 P.2d 319 (1963).

**Apprenticeship not necessary.** - There is nowhere in 61-29-1 to 61-29-17 NMSA 1978, a requirement that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, 61-29-10 NMSA 1978 specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963-64 Op. Att'y Gen. No. 63-110.

**When license under Mobile Housing Act required.** - When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under the Mobile Housing Act. 1982 Op. Att'y Gen. No. 82-12.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 11.

12 C.J.S. Brokers § 19.

**61-29-10. Application for license and examination. (Effective until July 1, 2000.)**

A. All applications for licenses to act as real estate brokers and real estate salesmen shall be made in writing to the New Mexico real estate commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. Such applications shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides or has his place of business, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the annual license fee prescribed by the commission, which shall not be refunded in any event.

B. In addition to proof of honesty, trustworthiness and good reputation, each applicant shall pass satisfactorily a written examination prepared by or under the supervision of the commission. The examination shall be given at such time and such places within the state as the commission shall prescribe; however, the examination for brokers shall be given not less than two times during each calendar year and the examination for salesmen shall be given not less than six times during each calendar year. The examination for a broker's license shall include business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisals, a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency and brokerage and the provisions of Sections 61-29-1 through 61-29-18 NMSA 1978. The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

C. No applicant is permitted to engage in the real estate business either as a broker or salesman until he has satisfactorily passed the examination, complied with the other requirements of Sections 61-29-1 through 61-29-18 NMSA 1978, and until a license has been issued to him.

D. Notice of passing or failing to pass the examination shall be given by the commission to each applicant not later than three weeks following the date of the examination.

E. The commission may establish educational programs and procure qualified personnel, facilities and materials for the instruction of persons desiring to become real estate brokers or salesmen or desiring to improve their proficiency as real estate brokers or salesmen. The commission may inspect and accredit educational programs and courses of study and may establish standards of accreditation for educational programs conducted in this state. The expenses incurred by the commission in activities enabled under the provisions of this subsection shall not exceed the total revenues received and accumulated by the commission.

**History:** 1953 Comp., § 67-24-27, enacted by Laws 1959, ch. 226, § 9; 1965, ch. 304, § 5; 1979, ch. 94, § 2; 1981, ch. 22, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

**License required to sue for commission.** - A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 98 N.M. 404, 649 P.2d 472 (1982).

**Apprenticeship not necessary.** - There is nowhere in 61-29-1 to 61-29-17 NMSA 1978, a requirement that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, this section specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963-64 Op. Att'y Gen. No. 63-110.

**Relicensing of out-of-state broker returning to state.** - An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1957-58 Op. Att'y Gen. No. 58-186.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 11.

12 C.J.S. Brokers § 19.

### **61-29-11. Issuance, renewal and surrender of licenses. (Effective until July 1, 2000.)**

A. The commission shall issue to each qualified applicant a permanent license in such form and size as shall be prescribed by the commission.

B. This license shall show the name and address of the licensee and, in the case of a real estate salesperson's license, shall show the name of the real estate broker by whom he is engaged. The license of each real estate salesperson shall be delivered or mailed to the real estate broker by whom such real estate salesperson is engaged and shall be kept in the custody and control of that broker.

C. Every license shall be subject to annual renewal on the last day of the licensee's month of birth. The commission shall certify renewal of each license annually, in the absence of any reason or condition that might warrant the refusal of the renewal of a license, upon written request for renewal by the licensee, proof of compliance with continuing education requirements and receipt of the annual renewal fee. In the event

any licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the annual renewal fee for the current year within thirty days of his license renewal date of any given year, the license shall expire. The commission may, in its discretion, require the person whose license has expired to apply for a license as if he had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that he be re-examined. The commission shall require the person whose license has expired to pay when he applies for a license, in addition to any other fee, a late fee of one hundred dollars (\$100). If, during a period of one year from the date the license expires, the person or his spouse is either absent from this state on active duty military service or the person is suffering from an illness or injury of such severity that the person is physically or mentally incapable of making application for a license, payment of the late fee and re-examination shall not be required by the commission if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the commission for a license. A copy of that person or his spouse's military orders or a certificate from the applicant's physician shall accompany the application. Any person excused by reason of active duty military service, illness or injury as provided for in this subsection may make application for a license without imposition of the late fee. All fees collected pursuant to this subsection shall be disposed of in accordance with the provisions of Section 61-29-8 NMSA 1978. The revocation of a broker's license shall automatically suspend every real estate salesperson's license granted to any person by virtue of his association with the broker whose license has been revoked, pending a change of broker and the issuance of a new license. Such new license shall be issued without charge if granted during the same year in which the license was granted.

D. Each resident licensed broker shall maintain a fixed office within this state, which shall be so located as to conform with local regulations. Every office operated by a licensed broker under Chapter 61, Article 29 NMSA 1978 shall have a licensed broker in charge. The license of the broker and the license of each salesperson associated with or under contract to that broker shall be prominently displayed in the office. The address of the office shall be designated in the broker's license, and no license issued shall authorize the licensee to transact real estate business at any other address, except a licensed branch office. In case of removal from the designated address, the licensee shall make application to the commission before such removal or within ten days thereafter, designating the new location of his office and paying the required fee, whereupon the commission shall issue a license for the new location if the new location complies with the terms of Chapter 61, Article 29 NMSA 1978. Each licensed broker shall maintain a sign on his office of such size and content as the commission shall prescribe. In making application for a license or for a change of address, the licensee shall verify that his office conforms with local regulations.

E. When any real estate salesperson is discharged or terminates his association employment with the real estate broker with whom he is associated, it is the duty of that real estate broker to immediately deliver or mail to the commission that real estate salesperson's license. The commission shall hold the license on inactive status. It is

unlawful for any real estate salesperson to perform any of the acts contemplated by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of such license after his association has been terminated and his license as salesperson has been returned to the commission as provided in that article until the appropriate fee has been paid and the license has been reissued by the commission.

**History:** 1953 Comp., § 67-24-28, enacted by Laws 1959, ch. 226, § 10; 1965, ch. 304, § 6; 1977, ch. 295, § 3; 1979, ch. 94, § 3; 1980, ch. 82, § 11; 1981, ch. 22, § 2; 1983, ch. 261, § 4; 1985, ch. 89, § 2; 1987, ch. 90, § 4; 1993, ch. 253, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, inserted "or his spouse" and "the person" preceding "is suffering" in the sixth sentence and substituted "that person or his spouse's" for "the person's" in the seventh sentence, in Subsection C; deleted "for cancellation" from the end of the first sentence, inserted the second sentence, and substituted "to the commission" for "for a cancellation" in the last sentence, in Subsection E; and made stylistic changes in Subsections C and D.

**Applicability.** - Laws 1983, ch. 261, § 8, makes the provisions of § 4 of the act applicable to real estate broker and salesperson licenses issued on or after January 1, 1984.

**Brokers must supervise their salespeople.** - Section 61-29-2 NMSA 1978 and this section express a clear legislative mandate that brokers, the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

**Fiduciary duties of salesperson extended to broker.** - Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, N.M. , 858 P.2d 854 (1993).

**Relicensing of out-of-state broker returning to state.** - An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee

and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1957-58 Op. Att'y Gen. No. 58-186.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 19.

12 C.J.S. Brokers §§ 16, 20.

### **61-29-12. Refusal, suspension or revocation of license for causes enumerated. (Effective until July 1, 2000.)**

The commission shall have the power to refuse a license for cause or to suspend or revoke a license at any time where the licensee has by false or fraudulent representations obtained a license or where the licensee in performing or attempting to perform any of the actions mentioned in Chapter 61, Article 29 NMSA 1978 is deemed to be guilty of:

A. making a substantial misrepresentation;

B. pursuing a continued and flagrant course of misrepresentation; making false promises through agents, salespersons, advertising or otherwise; or using any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

C. paying or receiving any rebate, profit, compensation or commission to or from any unlicensed person, except his principal or other party to the transaction, and then only with his principal's written consent;

D. representing or attempting to represent a real estate broker other than the broker with whom he is licensed without the express knowledge and consent of the broker;

E. failing, within a reasonable time, to account for or to remit any money coming into his possession that belongs to others, commingling funds of others with his own or failing to keep such funds of others in an escrow or trustee account or failing to furnish legible copies of all listing and sales contracts to all parties executing them;

F. conviction in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

G. employing or compensating directly or indirectly any person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed broker or licensed salesperson; provided, however, that a licensed broker may pay a commission to a licensed broker of another state; provided further that the nonresident broker does not conduct in this state any of the negotiations for which a fee, compensation or commission is paid except in cooperation with a licensed broker of this state;

H. failing, if a broker, to place as soon after receipt as is practicably possible any deposit money or other money received by him in a real estate transaction in a custodial, trust or escrow account maintained by him in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the broker. Records relative to the deposit, maintenance and withdrawal of such funds shall contain information as may be prescribed by the rules and regulations of the commission. Nothing in this subsection shall prohibit any broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. This minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This subsection, however, shall not prohibit a broker from depositing any deposit money or other money received by him in a real estate transaction with another cooperating broker who shall in turn comply with this subsection;

I. failing, if a salesperson, to place as soon after receipt as is practicably possible in the custody of his registered broker any deposit money or other money entrusted to him by any person dealing with him as the representative of his registered broker;

J. violating any provisions of Chapter 61, Article 29 NMSA 1978 or any reasonable rule or regulation promulgated by the commission in the interests of the public and in conformance with the provisions of Chapter 61, Article 29 NMSA 1978; or

K. any other conduct, whether of the same or different character from that specified in this section, that is related to dealings as a real estate broker or real estate salesperson and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act.

Any unlawful act or violation of any of the provisions of Chapter 61, Article 29 NMSA 1978 by any real estate salesperson, employee, partner or associate of a licensed real estate broker shall not be cause for the revocation of a license of any real estate broker unless it appears to the satisfaction of the commission that the real estate broker had guilty knowledge of the unlawful act or violation.

**History:** 1953 Comp., § 67-24-29, enacted by Laws 1959, ch. 226, § 11; 1965, ch. 304, § 7; 1981, ch. 22, § 3; 1983, ch. 261, § 5; 1984, ch. 56, § 1; 1987, ch. 90, § 5; 1991, ch. 13, § 1.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "in Chapter 61, Article 29 NMSA 1978" for "herein" in the introductory paragraph; substituted the language

beginning with "unlicensed person" for "person other than his principal" at the end of Subsection C; and made minor stylistic changes in Subsections E and K.

**Revocation for "substantial misrepresentations".** - The commission may suspend a license on the grounds that the licensee misrepresented to prospective buyers both the size of the property in question and the age of the roof. *Wolfley v. Real Estate Comm'n*, 100 N.M. 187, 668 P.2d 303 (1983).

If the subjects of misrepresentations on application forms are material, i.e., "substantial misrepresentations", the real estate commission can, absent intervening equities, revoke the license even though there is no actual or intentional fraud. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

The test of whether a misrepresentation is substantial is if it operates as an inducement to the real estate commission to do that which it should not otherwise have done. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause was remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 106 N.M. 96, 739 P.2d 965 (1987).

**Applicability of Subsection C prohibition.** - The prohibition of Subsection C is applicable to a broker or salesman representing the seller of real estate giving the purchaser trading stamps, free down payments on the property, moving costs, etc., when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving the purchase and sale of the property. 1963-64 Op. Att'y Gen. No. 63-28 (rendered prior to 1991 amendment).

**Payment of commission to buyer who is not principal prohibited.** - Subsection C precludes a licensed salesman or broker from paying any portion of his commission to a buyer who is not his principal, regardless of disclosure to the principal of the arrangement. 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

In order to properly make sense of the reference in Subsection C to "paying," and to give effect to the legislative intent indicated by that reference, the words "to or" may be read into that subsection preceding "from any person." 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

**Substantial evidence to support commission's suspension of broker's license based on Subsection E.** - See Elliott v. New Mexico Real Estate Comm'n, 103 N.M. 273, 705 P.2d 679 (1985).

**Criminal Offender Employment Act to be followed in suspension or revocation action.** - The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-2.

**Broker to have knowledge of building code and zoning ordinances.** - It is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased. Amato v. Rathbun Realty, Inc., 98 N.M. 231, 647 P.2d 433 (Ct. App. 1982).

**Nonresident broker may share in commission.** - This section modifies 61-29-1 and 61-29-16 NMSA 1978 to the extent that a nonresident broker may, in a limited situation, share in a commission. He may only do so, however, through cooperation with a New Mexico licensed broker. Hayes v. Reeves, 91 N.M. 174, 571 P.2d 1177 (1977).

**Generally, as to establishing custodial, trust or escrow accounts.** - No regulation of the real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. McCaughtry v. New Mexico Real Estate Comm'n, 82 N.M. 116, 477 P.2d 292 (1970).

**Jurisdiction where landowner claims acting as broker.** - Under 61-29-2 NMSA 1978 if a landowner represents to either the buyer or seller that he is acting as a broker, the real estate commission has jurisdiction over the transaction. Poorbaugh v. New Mexico Real Estate Comm'n, 91 N.M. 622, 578 P.2d 323 (1978).

**Hiring of note broker for sale of real estate contract.** - Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. Vihstadt v. Real Estate Comm'n, 106 N.M. 641, 748 P.2d 14 (1988).

**Law reviews.** - For article, "' To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Resources J. 299 (1965).

For 1984-88 survey of New Mexico administrative law, 19 N.M.L. Rev. 575 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers §§ 9, 19 to 22.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from, or earnings of, property, 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker, 17 A.L.R.4th 763.

Real-estate broker's rights and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser, 17 A.L.R.4th 788.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker, 22 A.L.R.4th 136.

Real estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

12 C.J.S. Brokers §§ 16, 19, 21 to 24.

### **61-29-13. Provision for hearing before suspension or revocation of license. (Effective until July 1, 2000.)**

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses § 50 et seq.

## **61-29-14. Nonresident brokers. (Effective until July 1, 2000.)**

No application for issuance of a license or renewal of an existing broker's license shall be accepted from any nonresident applicant who is not a broker licensed in another state which other state extends the privilege of licensure to real estate brokers licensed in New Mexico. A qualifying nonresident may become a real estate broker by conforming to all the conditions of Chapter 61, Article 29 NMSA 1978.

In its discretion, the commission may recognize, in lieu of the recommendations and certificates required to accompany an application for a broker's license, the broker's license issued to a nonresident in another state, provided the other state extends the privilege of licensure to real estate brokers licensed in New Mexico. The license shall be issued upon payment of the license fee, verification that the applicant has complied with his resident state's current education requirements, of which ninety classroom hours for a nonresident broker must be approved by the New Mexico real estate commission, and the filing by the applicant with the commission of a certified copy of the applicant's license issued by the other state, provided that:

A. the applicant shall have maintained an active place of business in the state by which he is licensed, shall establish and maintain an active place of business in this state and shall pass the written examination required by Section 61-29-10 NMSA 1978;

B. the applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleadings authorized by the laws of this state on the commission, the consent stipulating and agreeing that such service of process or pleadings on the commission shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. The instrument containing the consent shall be duly acknowledged and, if [the applicant is] a corporation or association, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute the instrument. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which the process or pleadings are directed; and

C. the applicant shall file a bond in form and content the same as is required of resident applicants under Chapter 61, Article 29 NMSA 1978.

**History:** 1953 Comp., § 67-24-31, enacted by Laws 1959, ch. 226, § 13; 1973, ch. 142, § 1; 1979, ch. 94, § 5; 1981, ch. 22, § 4; 1983, ch. 261, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Bracketed material.** - The bracketed material in Subsection B was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

**Law reviews.** - For article, "Attachment in New Mexico - Part I," see 1 Nat. Resources J. 303 (1961).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers § 17, 23.

Application and effect of statute relating to real estate brokers as regards broker from out of state, 86 A.L.R. 640, 159 A.L.R. 274.

12 C.J.S. Brokers §§ 8 to 10, 17 to 20.

### **61-29-15. Publication of list of licensees. (Effective until July 1, 2000.)**

The commission shall at least annually publish a list of the names and addresses of all licensees licensed by it under the provisions of this act, and of all persons whose license has been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of this act as it may deem of interest to the public. The commission shall also prepare a statement of all funds received and statement of all disbursements, and copies of such statements shall be mailed by the commission to any person in this state upon request.

**History:** 1953 Comp., § 67-24-32, enacted by Laws 1959, ch. 226, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 61-29-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 C.J.S. Brokers § 14.

### **61-29-16. Suit by broker or salesman. (Effective until July 1, 2000.)**

No action for the collection of commission or compensation earned by any person as a real estate broker or salesman required to be licensed under the provisions of this act shall be maintained in the courts of the state unless such person was a duly licensed broker or salesman at the time the alleged cause of action arose. In any event suit against a member of the public as distinguished from any person licensed under this act shall be maintained only in the name of the broker.

**History:** 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Meaning of "this act".** - See same catchline in notes to 61-29-5 NMSA 1978.

**Section upholds legislative intent that brokers be licensed.** - A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 98 N.M. 404, 649 P.2d 472 (1982).

**Meaning of "arose".** - The word "arose" used in this statute is used in its usual and ordinary meaning and denotes past completed action, not past continuing action. *Lakeview Invs., Inc. v. Alamogordo Lake Village, Inc.*, 86 N.M. 151, 520 P.2d 1096 (1974).

**Person claiming commission must prove license.** - The statute casts no burden upon a defendant to prove absence of a license but does place upon one claiming a real estate commission the burden of establishing that he was duly licensed when the alleged cause of action arose and the inadvertent statement relative to the burden of proof in *Southwest Motel Brokers, Inc. v. Alamo Hotels, Inc.* 72 N.M. 227, 382 P.2d 707 (1963), is overruled. *Star Realty Co. v. Sellers*, 73 N.M. 207, 387 P.2d 319 (1963).

**Finding that plaintiff held license required.** - A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous. *Watts v. Andrews*, 98 N.M. 404, 649 P.2d 472 (1982).

**Section prohibits action in quantum meruit to recover value of services** rendered by person who is required to have license, in the absence of such license. *Bank of N.M. v. Freedom Homes, Inc.*, 94 N.M. 532, 612 P.2d 1343 (Ct. App. 1980).

An unlicensed real estate broker or salesperson cannot recover a commission in an action in quantum meruit. *Watts v. Andrews*, 98 N.M. 404, 649 P.2d 472 (1982).

**Suit by corporation.** - Since an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, and that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. *Star Realty Co. v. Sellers*, 73 N.M. 207, 387 P.2d 319 (1963).

**Action for breach of contract.** - This section did not prevent real estate broker from maintaining action for breach of contract where broker was not licensed at time he entered into exclusive sales representation agreement with defendant but became licensed prior to breach of this agreement by defendant. *Lakeview Invs., Inc. v. Alamogordo Lake Village, Inc.*, 86 N.M. 151, 520 P.2d 1096 (1974).

**In estimating the commission** on an exchange of real estate the actual and not the trade value of the property received in exchange should be taken as the basis, unless the contract of employment provides for some other basis, such as a fixed and agreed valuation of the property given in exchange. *Maine v. Garvin*, 76 N.M. 546, 417 P.2d 40 (1966).

**Allegation of licensing effective against motion to dismiss.** - Allegation that the party seeking relief was licensed at the time the work or service was performed satisfies the requirements of this section as against a motion to dismiss. *Lakeview Invs., Inc. v. Alamogordo Lake Village, Inc.*, 86 N.M. 151, 520 P.2d 1096 (1974).

In order to satisfy the requirements of this section as against a motion to dismiss, the party seeking relief must allege that he was licensed at the time the work or service was performed. *Bosque Farms Home Center, Inc. v. Tabet Lumber Co.*, 107 N.M. 115, 753 P.2d 894 (1988).

**Parol evidence rule is fully applicable** together with all the exceptions recognized in connection with any other writing in connection with written listing agreements. Parol evidence may not be received when its purpose and effect is to contradict, vary, modify or add to a written agreement, but is generally admissible to supply terms not in the written contract, to explain ambiguities in the written agreement, or to show fraud, misrepresentations or mistake. *Maine v. Garvin*, 76 N.M. 546, 417 P.2d 40 (1966).

**Compensation rule distinguished from that in fraud.** - The rule applicable in determining the right of an agent to recover compensation from his principal differs from that which is applied when fraud is claimed as between a vendor and purchaser. *Maine v. Garvin*, 76 N.M. 546, 417 P.2d 40 (1966).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers §§ 178 to 181.

Failure, when refusing offer to purchase land, to state, as ground therefor, broker's failure to introduce or disclose name of customer, as affecting right to assert such ground in defense of broker's action for compensation, 156 A.L.R. 605.

Rights and obligations of real estate broker employed to sell property as affected by option to purchase for himself, 164 A.L.R. 1378.

Real estate broker's right to commission on sale, exchange or lease of property listed without statement of price or other terms, 169 A.L.R. 380.

Want of license as affecting broker's recovery of compensation for services, 169 A.L.R. 767.

Condemnation of property as affecting broker's right to compensation, 170 A.L.R. 1422.

Subagent, right of broker as against employer to commission on sale by, 3 A.L.R.2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 A.L.R.2d 495.

Real estate broker's right to commission where purchaser refuses to go through with the executory contract because of reckless misrepresentation made to him by broker respecting property, 9 A.L.R.2d 504.

Right of real estate broker to commission where customer repudiates or fails to complete contract or promise which is oral or not specifically enforceable, 12 A.L.R.2d 1410.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 A.L.R.2d 904.

What deviation in prospective vendee's proposal from vendor's terms precludes broker from recovering commission for producing a ready, willing, and able vendee, 18 A.L.R.2d 376.

Broker's right to commission on sales consummated after termination of employment, 27 A.L.R.2d 1348.

Nondisclosure or misrepresentation of sale price of other property as affecting broker's rights as against principal, 32 A.L.R.2d 728.

Liability of broker to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 A.L.R.2d 1382.

Broker's right to commission where owner sells property to broker's customer at less than stipulated price, 46 A.L.R.2d 848.

Conveyance of real property to mortgagee or lien holder as constituting "sale or exchange" rendering owner liable for commissions to broker having exclusive agency or exclusive right to sell, 46 A.L.R.2d 1116.

Broker's right to commission for selling part of property, 47 A.L.R.2d 680.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Broker's return of deposit to purchaser as waiver of right to demand commission from seller, 69 A.L.R.2d 1244.

Commission on sale rejected by principal because of buyer's fraud or misrepresentation, 79 A.L.R.2d 1055.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, co-adventurers, employees, or other associates, 8 A.L.R.3d 523.

Real estate broker's right to compensation as affected by failure or refusal of principal's spouse to join in contract of sale, 10 A.L.R.3d 665.

Broker's right to commission from principal upon procuring third party taking an option, 32 A.L.R.3d 321.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 A.L.R.3d 1430.

Construction of provision in real estate broker's listing contract that broker shall receive commission on sale after expiration of listing period to one with whom broker has "negotiated" during listing period, 51 A.L.R.3d 1149.

Real estate broker's right to commission for procuring lessee where lease terminates before contemplated term, 54 A.L.R.3d 1171.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 A.L.R.3d 1139.

Right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Real estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title - modern cases, 28 A.L.R.4th 1007.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 A.L.R.4th 11.

12 C.J.S. Brokers §§ 132 to 135.

### **61-29-17. Penalty; injunctive relief. (Effective until July 1, 2000.)**

A. Any person who violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months or both; any corporation or

business association which violates any provision of Chapter 61, Article 29 NMSA 1978 shall be punished by a fine of not more than one thousand dollars (\$1,000).

B. In the event any person, business association or corporation has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring shall upon petition to the court recover on behalf of the state of New Mexico a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorneys' fees and costs.

**History:** 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Repeals and reenactments.** - Laws 1965, ch. 304, § 8, repeals 67-24-34, 1953 Comp., relating to penalties for violations by brokers, and enacts the above section.

**The 1993 amendment,** effective June 18, 1993, substituted "Chapter 61, Article 29 NMSA 1978" for "Sections 67-24-19 through 67-24-35 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection A and in Subsection B; and added Subsection C.

**Severability clauses.** - Laws 1965, ch. 304, § 9, provides for the severability of the act if any part or application thereof is held invalid.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 72, 73.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

53 C.J.S. Licenses § 82.

**61-29-17.1. Recompiled.**

## ANNOTATIONS

**Recompilations.** - Former 61-29-17.1 NMSA 1978, relating to disciplinary action by the New Mexico real estate commission concerning time share projects, enacted by Laws 1986, ch. 97, § 14, has been recompiled as 47-11-11.2 NMSA 1978.

### **61-29-18. Interpretation of act. (Effective until July 1, 2000.)**

Nothing in this act contained shall affect the power of cities and villages to tax, license and regulate real estate brokers. The requirements hereof shall be in addition to the requirements of an existing or future ordinance of any city or village so taxing, licensing or regulating real estate brokers.

**History:** 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Severability clauses.** - Laws 1959, ch. 226, § 19, provides for the severability of the act if any part or application thereof is held invalid.

**Meaning of "this act".** - See same catchline in notes to 61-29-5 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 Am. Jur. 2d Brokers §§ 6, 7.

53 C.J.S. Licenses §§ 10, 11.

### **61-29-19. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The New Mexico real estate commission is terminated on July 1, 1999 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2000. Effective July 1, 2000, Chapter 61, Article 29 NMSA 1978 is repealed.

**History:** 1953 Comp., § 67-24-36, enacted by Laws 1978, ch. 203, § 2; 1981, ch. 241, § 33; 1983, ch. 261, § 7; 1987, ch. 333, § 12; 1993, ch. 83, § 7; 1993, ch. 253, § 3.

## ANNOTATIONS

**The 1993 amendments.** - Identical amendments to this section were enacted by Laws 1993, ch. 83, § 7, approved March 20, 1993, and Laws 1993, ch. 253, § 3, approved April 6, 1993, both effective June 18, 1993, which substituted "July 1, 1999" for "July 1, 1993" in the first sentence, and "July 1, 2000" for "July 1, 1994" in the second and third

sentences; and changed the style of the statutory reference in the third sentence. The section is set out as amended by Laws 1993, ch. 253, § 3. See 12-1-8 NMSA 1978.

### **61-29-20. Short title. (Effective until July 1, 2000.)**

Sections 1 through 10 [61-29-20 to 61-29-29 NMSA 1978] of this act may be cited as the "Real Estate Recovery Fund Act."

**History:** Laws 1980, ch. 82, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Law reviews.** - For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M. L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 12 C.J.S. Brokers §§ 11, 12.

### **61-29-21. Fund created. (Effective until July 1, 2000.)**

There is created in the state treasury a fund which shall be known as the "real estate recovery fund" to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

**History:** Laws 1980, ch. 82, § 2.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

### **61-29-22. Additional fees. (Effective until July 1, 2000.)**

A. On and after the effective date of the Real Estate Recovery Fund Act, the commission shall collect an annual fee not in excess of ten dollars (\$10.00) from each real estate licensee prior to the issuance of the next license.

B. On and after the effective date of the Real Estate Recovery Fund Act, the commission shall collect from each successful applicant for an original real estate license, in addition to his original license fee, a fee not in excess of ten dollars (\$10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at two hundred fifty thousand dollars (\$250,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section.

**History:** Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, purported to amend this section but made no change.

**Compiler's note.** - The phrase "effective date of the Real Estate Recovery Fund Act", referred to in Subsections A and B, means May 14, 1980, the effective date of Laws 1980, Chapter 82.

### **61-29-23. Judgment against broker or salesperson; petition; requirements; recovery limitations. (Effective until July 1, 2000.)**

A. When any aggrieved person claims a pecuniary loss caused by a state-licensed real estate broker or salesperson based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to him, which loss arose out of any transaction for which a real estate broker's or salesperson's license is required and arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate, where the cause of action arose on or after July 1, 1980, that person may, within one year after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to him and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment from the real estate recovery fund for the actual damages included in the judgment and unpaid, but not more than ten thousand dollars (\$10,000) per judgment regardless of the number of persons aggrieved or parcels of real estate involved in the transaction. The aggregate amount recoverable by all claimants for losses caused by any one licensee shall not exceed thirty thousand dollars (\$30,000).

B. A copy of the petition shall be served upon the commission in the manner provided by law for service of a civil summons.

C. The commission shall conduct a hearing on the petition after service of the petition upon the commission. At the hearing, the petitioner shall be required to show that he:

(1) is not the spouse of the judgment debtor, the personal representative of the spouse or related to the third degree of consanguinity or affinity to the licensee whose conduct is alleged to have caused the loss;

(2) has complied with all the requirements of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978];

(3) has obtained a judgment of the kind described in Subsection A of this section, the amount awarded and the amount owing at the date of the petition;

(4) has had execution issued upon the judgment and that the officer executing the writ has made a return showing that the judgment debtor has no property within the state subject to execution. If execution is levied against the property of the judgment debtor, the petitioner must show that the amount realized on the sale was insufficient to satisfy the judgment and must set forth the amount realized from the sale and the balance remaining due on the judgment after application of the amount realized;

(5) has made reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment, including partnership assets, licensee's estate or any bond or insurance, and that he has exercised reasonable diligence to secure payment of the judgment from the assets of the judgment debtor; and

(6) has a judgment that is not:

(a) covered by any bond, insurance, surety agreement or indemnity agreement;

(b) a loss incurred by a partner, joint venturer, employer, employee or associate of the licensee whose conduct is alleged to have caused the loss; or a corporate officer or director of a corporation in which the judgment debtor is also an officer, director or employee; or

(c) a loss incurred by any business or other entity in which the licensee whose conduct is alleged to have caused the loss has any interest at the time of the conduct alleged to have caused the loss.

**History:** Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

**61-29-24. Commission; review; compromise. (Effective until July 1, 2000.)**

Upon receipt of a petition as required by Section 61-29-23 NMSA 1978, the commission shall conduct a hearing in substantially the same manner as set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978. The commission may compromise a claim based upon the application of a petitioner.

**History:** Laws 1980, ch. 82, § 5; 1987, ch. 90, § 8.

**ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**61-29-25. Commission finding. (Effective until July 1, 2000.)**

If the commission makes a specific finding of the items enumerated in Section 61-29-23 NMSA 1978 and determines that a claim should be levied against the real estate recovery fund, the commission shall enter an order requiring payment from the fund of that portion of the petitioner's claim that is payable from the fund pursuant to the provisions of and in accordance with the limitations contained in Section 61-29-23 NMSA 1978.

**History:** Laws 1980, ch. 82, § 6; 1987, ch. 90, § 9.

**ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**61-29-26. Insufficient funds. (Effective until July 1, 2000.)**

If at any time the money deposited in the real estate recovery fund is insufficient to satisfy any authorized claim for payment from the fund, the real estate commission shall, when sufficient money has been deposited in the fund, satisfy such unpaid claims in the order that they were originally filed, together with accumulated interest at the rate of eight percent per year.

**History:** Laws 1980, ch. 82, § 7.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

#### **61-29-27. Subrogation. (Effective until July 1, 2000.)**

When the commission makes any payment from the real estate recovery fund to a judgment creditor, the commission shall be subrogated to all rights of the judgment creditor for the amounts paid out of the fund and any amount and interest so recovered by the commission shall be deposited in the fund. The commission may, pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], revoke, suspend or refuse to renew the license of any real estate broker or salesperson for whom payment from the fund has been made in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. Further, the commission [commission] may refuse to issue or renew the license of any person for whom payment from the real estate recovery refund has been made, until that person reimburses the fund for all payments made on his behalf.

**History:** Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

#### **61-29-28. Waiver. (Effective until July 1, 2000.)**

The failure of any person to comply with all of the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall constitute a waiver of any rights pursuant to that act.

**History:** Laws 1980, ch. 82, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

#### **61-29-29. Disciplinary action not limited. (Effective until July 1, 2000.)**

Nothing contained in the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978] shall limit the authority of the real estate commission to take disciplinary action against a licensee for a violation of any of the provisions of Section 61-29-12 NMSA 1978 or of the rules and regulations of the real estate commission, nor shall the

repayment in full of all obligations to the real estate recovery fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought pursuant to the provisions of Section 61-29-12 NMSA 1978 or the rules and regulations promulgated by the commission.

**History:** Laws 1980, ch. 82, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-29-19 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

## **ARTICLE 29A THANATOPRACTICE**

Recompiled.

**61-29A-1 to 61-29A-25. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** - Former Chapter 61, Article 29A NMSA 1978, relating to Thanatopractice License Law, was recompiled as Chapter 61, Article 32 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

## **ARTICLE 30 REAL ESTATE APPRAISERS**

#### **ANNOTATIONS**

**Recompilations.** - Former Chapter 61, Article 30 NMSA 1978, relating to Utility Operators Certification Act, was recompiled as Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article heading.

**61-30-1. Short title. (Effective until July 1, 2000.)**

Chapter 61, Article 30 NMSA 1978 may be cited as the "Real Estate Appraisers Act".

**History:** Laws 1990, ch. 75, § 1; 1992, ch. 54, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, substituted "Chapter 61, Article 30 NMSA 1978" for "Sections 1 through 23 and Section 28 of this Act".

### **61-30-2. Purpose and legislative intent. (Effective until July 1, 2000.)**

A. The purpose of the Real Estate Appraisers Act [this article] is to provide a comprehensive body of law for the effective regulation and active supervision of the business of developing and communicating real estate appraisals in response to the federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3301, et seq., as amended by Title XI, Real Estate Appraisal Reform Amendments, 12 U.S.C. 3331 through 3351.

B. The legislature intends that persons developing and communicating real estate appraisals be regulated by the state for the protection of those persons relying upon real estate appraisals.

**History:** Laws 1990, ch. 75, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

### **61-30-3. Definitions. (Effective until July 1, 2000.)**

As used in the Real Estate Appraisers Act [this article]:

A. "appraisal" or "real estate appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser relating to the nature, quality, value or utility of specified interests in or aspects of identified real estate or real property, for or in expectation of compensation, and shall include the following:

(1) a valuation, analysis, opinion or conclusion prepared by a real estate appraiser that estimates the value of identified real estate or real property; and

(2) an analysis or study of real estate or real property other than estimating value;

B. "appraisal assignment" means an engagement for which an appraiser is employed or retained to act or would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased appraisal or real estate appraisal;

C. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the federal real estate appraisal reform amendments;

D. "appraisal report" means any communication, written or oral, of an appraisal or real estate appraisal regardless of title or designation and all other reports communicating an appraisal;

E. "board" means the real estate appraisers board;

F. "certified appraisal" or "certified appraisal report" means an appraisal or appraisal report given or signed and certified as such by a state certified real estate appraiser and shall include an indication of which type of certification is held and shall be deemed to represent to the public that it meets the appraisal standards defined in the Real Estate Appraisers Act;

G. "federal real estate appraisal reform amendments" means the federal Financial Institutions Examination Council Act of 1978, 12 U.S.C. 3301, et seq., as amended by Title XI, Real Estate Appraisal Reform Amendments, 12 U.S.C. 3331 through 3351 [12 U.S.C. §§ 3331 through 3352];

H. "general certificate" or "general certification" means a certificate or certification for appraisals of all types of real estate issued pursuant to the provisions of the Real Estate Appraisers Act and the federal real estate appraisal reform amendments;

I. "real estate" or "real property" means leasehold or other estate or interest in, over or under land, including structures, fixtures and other improvements and interests that by custom, usage or law pass with a conveyance of land, though not described in a contract of sale or instrument of conveyance, and includes parcels with or without upper and lower boundaries and spaces that may be filled with air;

J. "real estate appraiser" means any person who engages in real estate appraisal activity in expectation of compensation;

K. "residential certificate" or "residential certification" means a certificate or certification, limited to appraisals of residential real estate or residential real property without regard to the complexity of the transaction, issued pursuant to the provisions of the Real Estate Appraisers Act and as provided under the terms of the federal real estate appraisal reform amendments;

L. "residential real estate" or "residential real property" means real estate designed and suited or intended for use and occupancy by one to four families, including use and occupancy of manufactured housing;

M. "specialized services" means those services that do not fall within the definition of an appraisal assignment and may include specialized financing or market analyses and feasibility studies that may incorporate estimates of value or analyses, opinions or conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling and real estate tax counseling, provided that the person rendering such services would not be perceived by third parties or the public as acting

as a disinterested third party in rendering an unbiased appraisal or real estate appraisal, regardless of the intention of the client and that person;

N. "state certified appraisal" means any appraisal that is identified as a state certified appraisal report or is in any way described as being prepared by a state certified real estate appraiser;

O. "state certified real estate appraiser" means a person who holds a current, valid general certificate or a current, valid residential certificate issued pursuant to the provisions of the Real Estate Appraisers Act;

P. "state licensed real estate appraiser" means a person who holds a current, valid license issued pursuant to the provisions of the Real Estate Appraisers Act; and

Q. "state registered real estate appraiser" means a person who holds a current, valid registration issued pursuant to the provisions of the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 3; 1992, ch. 54, § 2; 1993, ch. 269, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "without regard to the complexity of the transaction" in Subsection L; added the limitation language in Subsection Q; added Subsection R; and made stylistic changes.

**The 1993 amendment,** effective June 18, 1993, deleted former Subsection G, which defined "commission", redesignating the remaining subsections accordingly; and deleted "limited to appraisals of residential real estate involving non-complex transactions of a transaction value of less than one million dollars (\$1,000,000) and complex transactions of a transaction value of less than two hundred fifty thousand dollars (\$250,000) as provided under the terms of the federal Real Estate Appraisal Reform Amendments, which license is" after "valid license" in Subsection P.

**Real Estate Appraisal Reform Amendments.** - The federal Real Estate Appraisal Reform Amendments, referred to in this section, appear as 12 U.S.C. §§ 3331 through 3352.

### **61-30-4. Administration; enforcement. (Effective until July 1, 2000.)**

The board shall administer and enforce the Real Estate Appraisers Act [this article].

**History:** Laws 1990, ch. 75, § 4; 1993, ch. 269, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, deleted "commission and" before "board".

**61-30-5. Real estate appraisers board created. (Effective until July 1, 2000.)**

- A. There is created a "real estate appraisers board" consisting of nine members.
- B. There shall be five real estate appraiser members of the board who shall be licensed or certified. Membership in a professional appraisal organization or association shall not be a prerequisite to serve on the board. No real estate appraisal organization or association shall have a majority membership on the board. No more than three real estate appraiser members shall be from any one licensed or certified category.
- C. The initial real estate appraiser members shall be appointed by the governor for three-year terms. At the expiration of these initial terms, the governor shall appoint or reappoint one or more of the real estate appraiser members for terms of five years. Real estate appraiser members may be appointed for no more than two five-year terms.
- D. No more than two members shall be from any one county within New Mexico, and at least one appraiser member shall be from each congressional district.
- E. Two members of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages. Two members shall be appointed to represent the public. The public members shall not have been real estate appraisers or engaged in the business of real estate appraisals or have any financial interest, direct or indirect, in real estate appraisal or any real-estate-related business. The lender member and public members shall each be appointed for five-year terms.
- F. Vacancies on the board for real estate appraiser members due to that member's failure to obtain certification or any other vacancy on the board for any other member shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

**History:** Laws 1990, ch. 75, § 5; 1992, ch. 54, § 3; 1993, ch. 269, § 3.

**ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, in Subsection A, substituted "consisting of seven members" for "consisting initially of seven members, for a period of three years after appointment, and thereafter five members"; in Subsection B, inserted "real estate"

in the first sentence and added the last two sentences; and, in Subsection D, inserted "state" at the second occurrence of the word in the first sentence.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, increased the number of members from seven to nine; deleted former Subsections B through G, relating to the qualifications and terms of the members and the composition of the board after the initial terms; inserted present Subsections B through E; and redesignated former Subsection H as present Subsection F.

## **61-30-6. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 269, § 22 repeals 61-30-6 NMSA 1978, as amended by Laws 1992, ch. 54, § 4, concerning the powers and duties of the board, effective June 18, 1993. For former provisions, see 1992 Cumulative Supplement.

## **61-30-7. Board; powers; duties. (Effective until July 1, 2000.)**

The board shall:

A. adopt such regulations as are necessary to implement the provisions of the Real Estate Appraisers Act [this article];

B. establish educational programs and research projects related to the appraisal of real estate;

C. establish the administrative procedures for processing applications and issuing registrations, licenses and certificates to persons who qualify to be registered, licensed and certified real estate appraisers and for conducting disciplinary proceedings pursuant to the provisions of the Real Estate Appraisers Act;

D. receive, review and approve applications for state registered real estate appraisers, state licensed real estate appraisers and each category of state certified real estate appraisers, and for state licensed or certified real estate appraisers, prepare or supervise the preparation of examination questions and answers and supervise grading of examinations and enter into contracts with one or more educational testing services or organizations for such examinations;

E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification under the Real Estate Appraisers Act after considering generally recognized appraisal practices;

F. provide for continuing education programs for the renewal of registrations, licenses and certification that will meet the requirements provided in the Real Estate Appraisers Act;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and will encourage conducting programs at various locations throughout the state;

H. adopt standards for the development and communication of real estate appraisals provided in the Real Estate Appraisers Act and adopt regulations explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for state registered, licensed and certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. maintain a registry of the names and addresses of the individuals who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

L. establish procedures for disciplinary action against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules and regulations promulgated under that act; and

M. perform such other functions and duties as may be necessary to carry out the provisions of the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 7; 1992, ch. 54, § 5; 1993, ch. 269, § 4.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, made a section reference substitution in the introductory language; inserted references to registration in Subsections C, E, F, I, K, and L; inserted "state registered real estate appraisers" in Subsection D; deleted "and will preclude members of the board from an ownership interest in any organization or company authorized to conduct approved courses or from conducting those programs while a member of the board" from the end of Subsection G; inserted "real estate" in Subsection I; and made stylistic changes.

**The 1993 amendment**, effective June 18, 1993, substituted "Board" for "Commission" in the catchline; rewrote the introductory language; inserted "licensed or" in Subsection D; and deleted former Subsection M, which read: "provide administrative assistance to the board by providing such facilities, equipment, supplies and personnel as are

necessary to enable the board to perform its duties under the Real Estate Appraisers Act; and", redesignating former Subsection N as present Subsection M and making a related grammatical change.

### **61-30-8. Board; organization; meetings. (Effective until July 1, 2000.)**

A. The board shall organize by electing a chairman, vice chairman and secretary from among its members. A majority of the board shall constitute a quorum and may exercise all powers and duties established by the provisions of the Real Estate Appraisers Act [this article].

B. The board shall keep a record of its proceedings, a register of persons registered, licensed or certified as state registered, licensed or certified real estate appraisers, showing the name and places of business of each, and retain all records and applications submitted to the board pursuant to the Real Estate Appraisers Act.

C. The board shall meet not less frequently than once each calendar quarter at such place as may be designated by the board, and special meetings may be held on five days' written notice to each of the members by the chairman. At least annually, the board shall meet in each of the congressional districts.

**History:** Laws 1990, ch. 75, § 8; 1992, ch. 54, § 6; 1993, ch. 269, § 5.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "registered" in two places in Subsection B.

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "commission" near the end of Subsection B.

### **61-30-9. Reimbursement and expenses. (Effective until July 1, 2000.)**

The board may appoint such committees of the board and employ such persons to assist the board as may be necessary. Each member of the board or any committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other perquisite, compensation or allowance. Compensation for employees and any necessary supplies and equipment shall be paid from the appraiser fund.

**History:** Laws 1990, ch. 75, § 9; 1993, ch. 269, § 6.

## ANNOTATIONS

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "commission" and deleted "and commission" following "board", in the first sentence.

### **61-30-10. Registration, license or certification required; exceptions. (Effective until July 1, 2000.)**

A. It is unlawful for any person in this state to engage or attempt to engage in the business of developing or communicating real estate appraisals or appraisal reports without first registering or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act [this article].

B. No person, unless certified by the board as a state certified real estate appraiser under a general certification or residential certification, shall:

(1) assume or use any title, designation or abbreviation likely to create the impression of a state certified real estate appraiser;

(2) use the term "state certified" to describe or refer to any appraisal or evaluation of real estate prepared by him;

(3) assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser firm, partnership, corporation or group; or

(4) assume or use any title, designation or abbreviation likely to create the impression of certification under a general certificate or describe or refer to any appraisal or evaluation of nonresidential real estate by the term "state certified" if the preparer's certification is limited to residential real estate.

C. A state registered real estate appraiser who does not hold a license or certificate is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as being prepared by a "state certified real estate appraiser" holding a residential or general certificate or by a "state licensed real estate appraiser" and provided, further, such person does not assume or use any title, designation or abbreviation likely to create the impression of certification as a state certified real estate appraiser or licensure as a state licensed real estate appraiser.

D. A holder of a license or residential certificate is authorized to prepare appraisals of nonresidential real estate, provided such appraisals are not described or referred to as "state certified by a general certified appraiser" and provided, further, the holder of the certificate does not assume or use any title, designation or abbreviation likely to create the impression of general certification.

E. To perform in federally related transactions, as referenced in the federal Financial Institutions Reform, Recovery and Enforcement Act, an appraiser must, at a minimum, meet the requirements for licensing as currently defined.

F. The requirement of registration, licensing or certification shall not apply to a real estate broker or salesperson who, in the ordinary course of business, gives an opinion of the price or value of real estate for the purpose of securing a listing, marketing of real property, affecting a sale, lease or exchange, conducting market analyses or rendering specialized services; provided, however, this opinion of the price or value shall not be referred to or construed as an appraisal or appraisal report and no compensation, fee or other consideration is expected or charged for such opinion, other than the real estate brokerage commission or fee for services rendered in connection with the identified real estate or real property.

G. The requirement of registration, licensing or certification shall not apply to appraisers of the property tax division of the taxation and revenue department, to a county assessor or to the county assessor's employees, who as part of their duties are required to engage in real estate appraisal activity as a county assessor or on behalf of the county assessor and no additional compensation fee or other consideration is expected or charged for such appraisal activity, other than such compensation as is provided by law.

H. The prohibition of Subsection A of this section does not apply to persons whose real estate appraisal activities are limited to the appraisal of interests in minerals, including oil, natural gas, liquid hydrocarbons or carbon dioxide, and property held or used in connection with mineral property, if that person is authorized in his state of residence to practice, and is actually engaged in the practice of, the profession of engineering or geology.

I. The process of analyzing, without altering, an appraisal report that is part of a request for mortgage credit is considered a specialized service under Subsection M of Section 61-30-3 NMSA 1978 of the Real Estate Appraisers Act and is exempt from the requirements of registration, licensing or certification.

**History:** Laws 1990, ch. 75, § 10; 1991, ch. 183, § 1; 1992, ch. 54, § 7; 1993, ch. 269, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, added Subsection G and made minor stylistic changes in Subsections A and F.

**The 1992 amendment,** effective May 20, 1992, inserted references to registration in the catchline and Subsections A, E, and F; rewrote Subsection C; and, in Subsection D,

substituted "holder of a license or residential certificate is authorized to prepare" for "holder of a residential certificate shall be deemed to be licensed so as to permit the holder of the certificate to prepare" and inserted "by a general certified appraiser".

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" in Subsection A and in the introductory language of Subsection B; and added present Subsections E and I, redesignating former Subsections E through G as present Subsections F through H.

**Financial Institutions Reform, Recovery and Enforcement Act.** - The federal Financial Institutions Reform, Recovery and Enforcement Act, P.L. 101-73, referred to in Subsection E, appears as various sections throughout the U.S. Code.

### **61-30-10.1. Qualification for registration. (Effective until July 1, 2000.)**

A. Registration shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a registration shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for registration as a state registered real estate appraiser shall have:

(1) successfully completed sixty classroom hours of instruction in appraisal of real estate approved by the board; or

(2) such equivalent education in an activity closely related to or associated with real estate appraisal as the board determines by regulation.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

**History:** 1978 Comp., § 61-30-10.1, enacted by Laws 1992, ch. 54, § 8; 1993, ch. 269, § 8.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" in Subsections A, C(2), and D.

**Effective dates.** - Laws 1992, ch. 54 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

## **61-30-11. Qualifications for license. (Effective until July 1, 2000.)**

A. Licenses shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a license shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a license as a state licensed real estate appraiser shall have:

(1) a minimum of two thousand hours of experience in real property appraisal;

(2) successfully completed sixty classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in the activity closely related to or associated with real estate appraisal as determined by regulation; or

(3) such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Holders of licenses issued before the effective date of this section shall have until October 1, 1993 to comply with the current requirements of this section. Should the requirements not be met by October 1, 1993, the license shall be surrendered to the board and a registration shall be issued therefor. Individuals who do not meet the qualifications for licensure are not qualified for appraisal assignments involving federally related transactions.

**History:** Laws 1990, ch. 75, § 11; 1992, ch. 54, § 9; 1993, ch. 269, § 9.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico" following "United States" and made a section reference substitution; in Subsection C, added present Paragraph (1), redesignated former Paragraphs (1) and (2) as present Paragraphs (2) and (3), and deleted "approved by the board" following "real estate" in present Paragraph (2).

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "commission" in Subsections A and D; deleted "two years of experience with" from the beginning of Paragraph (1) of Subsection C; and added Subsection E.

## **61-30-12. Qualifications for certificate. (Effective until July 1, 2000.)**

A. Certificates shall be granted only to persons who are deemed by the board to be of good repute and competent to render appraisals.

B. Each applicant for a certificate shall be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and have reached the age of majority.

C. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have:

(1) two years of experience in real property appraisal, with a minimum of two thousand hours of experience in real property appraisal of which at least fifty percent of the hours are in nonresidential appraisal work;

(2) successfully completed one hundred fifty classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation, which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser or the one hundred five classroom hour requirement for the state certified real estate appraiser with a residential certificate; and

(3) such additional experience and education requirements as may be established for the general certification classification issued by the appraiser qualification board of the appraisal foundation and adopted by regulation pursuant to the Real Estate Appraisers Act [this article].

D. Each applicant for a residential certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and shall have:

(1) two years of experience in real property appraisal, with a minimum of two thousand hours of experience in real property appraisal;

(2) successfully completed ninety classroom hours of instruction in appraisal of real estate and fifteen classroom hours related to the standards of professional practice approved by the board or such equivalent education in an activity closely related to or associated with real estate appraisal as determined by regulation, which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser; and

(3) such additional experience and education requirements as may be established for the residential certification classification issued by the appraiser qualification board of the appraisal foundation and adopted by regulation pursuant to the Real Estate Appraisers Act.

E. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

F. Holders of residential certificates issued before the effective date of this section shall have until July 1, 1993 to obtain an additional thirty hours of approved education. Should the required additional education not be obtained by July 1, 1993, the residential certificate shall be surrendered to the board and a license shall be issued therefor.

**History:** Laws 1990, ch. 75, § 12; 1992, ch. 54, § 10; 1993, ch. 269, § 10.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico" following "United States" and made a section reference substitution; in Subsection C, rewrote Paragraph (1), added the language beginning "which may include" to the end of Paragraph (2), and, in Paragraph (3), substituted "such additional experience and education requirements as may be established" for "the minimum criteria" and added "and adopted by regulation pursuant to the Real Estate Appraisers Act" to the end; in Subsection D, rewrote Paragraph (1), in Paragraph (2), substituted "ninety classroom hours" for "sixty classroom hours" near the beginning and added "which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser" to the end, and rewrote Paragraph (3); and added Subsection F.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" in Subsections A and E, and deleted "and commission" after "board" in the second sentence of Subsection F.

### **61-30-13. Application for registration, license or certificate; examination. (Effective until July 1, 2000.)**

A. All applications for registrations, licenses or certificates shall be made to the board in writing, specify whether registration or a license or a certificate is being applied for by the applicant and, if a certificate, the classification of the certificate being applied for by the applicant and shall contain such data and information as may be required by the board.

B. Each applicant for a license or a certificate shall demonstrate by successfully passing a written examination, prepared by or under the supervision of the board, that the applicant possesses, consistent with licensure or the certification sought, the following:

(1) an appropriate knowledge of technical terms commonly used in or related to real estate appraising, appraisal report writing and economic concepts applicable to real estate;

- (2) a basic understanding of real estate law;
- (3) an adequate knowledge of theory and techniques of real estate appraisal;
- (4) an understanding of the principles of land economics, real estate appraisal processes and problems likely to be encountered in the gathering, interpreting and processing of data in carrying out appraisal disciplines;
- (5) an understanding of the standards for the development and communication of real estate appraisals as provided in the Real Estate Appraisers Act [this article];
- (6) knowledge of theories of depreciation, cost estimating, methods of capitalization and the mathematics of real estate appraisal that are appropriate for the classification of certificate applied for by the applicant;
- (7) knowledge of other principles and procedures as may be appropriate for the respective classification; and
- (8) an understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state registered, licensed or certified real estate appraiser, as set forth in the Real Estate Appraisers Act.

C. The examination shall be given at least four times each calendar year at such times and places within the state as the board prescribes. The board shall make a reasonable effort to conduct examinations in each congressional district. Notice of passing or failing the examination shall be given by the board to each applicant not later than thirty days following the date of the examination.

D. An applicant for a license or a certificate who fails to successfully complete the written examination may apply for a reexamination for a license or certificate upon compliance with such conditions as set forth in the rules and regulations adopted by the board pursuant to the provisions of the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 13; 1992, ch. 54, § 11; 1993, ch. 269, § 11.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "registration" near the beginning of Subsection A; inserted references to a license in Subsections B and D; and inserted "registered, licensed or" in Subsection B(8).

**The 1993 amendment,** effective June 18, 1993, rewrote the catchline; substituted "registrations" for "registration" and "registration or a license or a" for "a license or" in Subsection A; substituted "board" for "commission" at the end of Subsection A, in the

last sentence of Subsection C, and in Subsection D; deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" and inserted "licensure or" in Subsection B; and made a stylistic change in Subsection D.

#### **61-30-14. Issuance and renewal of registration, licenses and certificates. (Effective until July 1, 2000.)**

A. The board shall issue to each qualified applicant evidence of registration, a license or a certificate in a form and size prescribed by the board.

B. Every registration, license and certificate shall be subject to annual renewal on the last day of the registration, license or certificate holder's month of birth. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the annual renewal fee. At the election of eligible holders of a license or certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments, each application for renewal shall include payment of an annual registry fee set by the federal financial institutions examination council. The registry fee shall be transmitted by the board to the federal financial institutions examination council.

C. The board shall certify renewal of each registration, license or certificate annually, in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

D. In the event any registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following his registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

E. The board may renew an expired registration upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars (\$100), in addition to any other fee permitted under the Real Estate Appraisers Act [this article].

F. The board may renew an expired license or certificate upon application, payment of the current annual renewal fee, submission of proof of compliance with continuing education requirements and payment of a reinstatement fee in the amount of one hundred dollars (\$100), in addition to any other fee permitted under the Real Estate Appraisers Act; provided that the board may, in the board's discretion, treat the former certificate holder as a new applicant and further may require reexamination as a condition to reissuance of a certificate.

G. If during a period of one year from the date a registration, license or certificate expires, the registration, license or certificate holder is either absent from this state on

active duty military service or is suffering from an illness or injury of such severity that the person is physically or mentally incapable of renewal of the registration, license or certificate, payment of the reinstatement fee and, in the case of a license or certificate holder, reexamination shall not be required by the board if, within three months of the person's permanent return to this state or sufficient recovery from illness or injury to allow the person to make an application, the person makes application to the board for renewal. A copy of the person's military orders or a certificate of the applicant's physician shall accompany the application.

H. The board may adopt additional requirements by regulation for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade appraiser qualifications at a level no less than the appraiser qualifications board recommendations or appraisal subcommittee requirements.

**History:** Laws 1990, ch. 75, § 14; 1992, ch. 54, § 12; 1993, ch. 269, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, inserted "registration" or references to registration throughout the section; inserted "license or" in the third sentence in Subsection B, near the beginning of Subsection F, and near the middle of the first sentence in Subsection G; inserted "registered appraiser or" near the beginning of Subsections D and G; and made stylistic changes.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" in two places in Subsections A and F, in the last sentence of Subsection B, in Subsections C and E, and in two places in the first sentence of Subsection G, "or" for "and" preceding "certificate" in the second sentence of Subsection B, "registration" for "registered appraiser or" in Subsection D and the first sentence of Subsection G, "following" for "preceding" and "thirty days following" for "on" in Subsection D, and "in the board's" for "upon the advice and recommendation of the board, in its" in Subsection F; and added Subsection H.

### **61-30-15. Refusal, suspension or revocation of registration, license or certificate. (Effective until July 1, 2000.)**

A. The board, consistent with Section 61-30-6 NMSA 1978, shall refuse to issue or renew a registration, license or certificate or shall suspend or revoke a registration, license or certificate at any time when the applicant, registered appraiser or license or certificate holder, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act [this article], is determined by the board to have:

(1) procured or attempted to procure a registration or license or certificate by knowingly making a false statement or submitting false information or through any form of fraud or misrepresentation;

(2) refused to provide complete information in response to a question in an application for registration or a license or a certificate or failed to meet the minimum qualifications established by the Real Estate Appraisers Act;

(3) paid money, other than as provided for in the Real Estate Appraisers Act, to any member or employee of the board to procure registration or a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others;

(5) committed an act involving dishonesty, fraud or misrepresentation or by omission engaged in a dishonest or fraudulent act or misrepresentation with the intent to substantially benefit the registration, license or certificate holder or another person or with the intent to substantially injure another person;

(6) willfully disregarded or violated any of the provisions of the Real Estate Appraisers Act or the regulations of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment; provided that a contingent fee agreement is permitted for the rendering of special services not constituting an appraisal assignment and the acceptance of a contingent fee is clearly and prominently stated on the written appraisal report;

(8) suffered the entry of a final civil judgment on the grounds of fraud, misrepresentation or deceit in the making of an appraisal, provided that the state registered, licensed or certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment; or

(9) committed any other conduct that is related to dealings as a state registered, licensed or certified real estate appraiser and that constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act.

B. The board, consistent with Section 61-30-6 NMSA 1978, shall refuse to issue or renew a registration, license or certificate and shall suspend or revoke a registration, license or certificate at any time when the board determines that the applicant or state registered, licensed or certified real estate appraiser, in the performance of real estate appraisal work, has:

(1) repeatedly failed to observe one or more of the standards for the development or communication of real estate appraisals set forth in the regulations adopted pursuant to the Real Estate Appraisers Act;

(2) repeatedly failed or refused, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(3) repeatedly been negligent or incompetent in developing an appraisal, in preparing an appraisal report or in communicating an appraisal; or

(4) violated the confidential nature of records to which the state registered, licensed or certified real estate appraiser gained access through employment or engagement as such an appraiser.

C. The action of the board relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. The board shall participate in any hearings required or conducted by the board pursuant to the provisions of the Uniform Licensing Act.

D. The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted under the Real Estate Appraisers Act.

E. Nothing in the Real Estate Appraisers Act shall be construed to preclude any other remedies otherwise available under common law or statutes of this state.

**History:** Laws 1990, ch. 75, § 15; 1992, ch. 54, § 13; 1993, ch. 269, § 13.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, inserted "registration" or references to registration in the catchline and throughout the section; made section reference substitutions near the beginning of Subsections A and B; inserted references to registered appraisers in the introductory language to Subsection A and in Subsection A(5); and substituted "applicant or state registered, licensed or certified real estate appraiser" for "applicant or license or certificate holder" in the introductory language to Subsection B.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" in two places in the introductory language of Subsections A and B, in Subsection A(6), and in the second sentence of Subsection C; deleted "upon the advice and recommendation of the board and after consultation with the board and" preceding "consistent with" and made a stylistic change in the introductory language of Subsections A and B;

substituted "registration" for "registered appraiser or" in Subsection A(5); inserted "state registered, licensed or certified real estate" and made a stylistic change in Subsection B(4); and deleted "and commission" following "board" in the first sentence of Subsection C.

**Compiler's note.** - Section 61-30-6 NMSA 1978, referred to in Subsections A and B, was repealed in 1993.

### **61-30-16. Standards of professional appraisal practice; certificate of good standing. (Effective until July 1, 2000.)**

A. Each real estate appraiser registered, licensed or certified under the Real Estate Appraisers Act [this article] shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice are currently evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal foundation and as adopted by regulation under the Real Estate Appraisers Act.

B. The board, upon payment of a fee in an amount specified in its regulations, may issue a certificate of good standing to any state registered, licensed or certified real estate appraiser who is in good standing under the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 16; 1992, ch. 54, § 14; 1993, ch. 269, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "registered" in the first sentence in Subsection A and in Subsection B and added "and as adopted by regulation under the Real Estate Appraisers Act" to the end of Subsection A.

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "commission" in Subsection B.

### **61-30-17. Fees. (Effective until July 1, 2000.)**

The board shall charge and collect the following fees not to exceed:

A. an application fee for a registration shall not exceed one hundred dollars (\$100);

B. an application fee for a license or residential certification in the amount of two hundred dollars (\$200);

- C. an application fee for general certification in the amount of two hundred fifty dollars (\$250);
- D. an examination fee for general and residential certification and license in the amount of one hundred dollars (\$100);
- E. an annual registration renewal fee not to exceed fifty dollars (\$50.00);
- F. an annual certificate renewal fee for residential certification and license renewal in the amount of one hundred dollars (\$100);
- G. an annual certificate renewal fee for general certification in the amount of one hundred fifty dollars (\$150);
- H. the registry fee as required by the federal real estate appraisal reform amendments;
- I. for registration for temporary practice, the amount of one hundred dollars (\$100);
- J. for each duplicate registration, license or certificate issued because a registration, license or certificate is lost or destroyed and an affidavit as to its loss or destruction is made and filed, a fee in the amount of twenty-five dollars (\$25.00); and
- K. any and all fees to cover reasonable and necessary administrative expenses.

**History:** Laws 1990, ch. 75, § 17; 1992, ch. 54, § 15; 1993, ch. 269, § 15.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, substituted "registration" for "license" near the beginning of Subsection A and in Subsection E; made a section reference substitution in Subsection A; inserted "a license or" in Subsection B; inserted "and license" in Subsection D; and inserted "and license renewal" in Subsection E.

**The 1993 amendment**, effective June 18, 1993, substituted "board" for "commission" and added "not to exceed" to the end, in the introductory language; rewrote Subsections A, E, and I; deleted former Subsection J, which read: "for registration for temporary practice, for each single appraisal assignment for more than one real property interest, the amount of one hundred dollars (\$100); and"; redesignated former Subsection K as present Subsection J; inserted "registration" in Subsection J; and added present Subsection K, making a related grammatical change.

**61-30-18. Appraiser fund created; disposition; method of payment. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "appraiser fund" to be administered by the board. All fees received by the board pursuant to the Real Estate Appraisers Act [this article] shall be deposited with the state treasurer to the credit of the appraiser fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the appraiser fund shall be used by the board to meet necessary expenses incurred in the enforcement of the provisions of the Real Estate Appraisers Act, in carrying out the duties imposed by the Real Estate Appraisers Act and for the promotion of education and standards for real estate appraisers in this state. Payments out of the appraiser fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration. All unexpended or unencumbered balances remaining at the end of each fiscal year shall remain in the appraiser fund for use in accordance with the provisions of the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 18; 1993, ch. 269, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1993 amendment,** effective June 18, 1993, substituted "board" for "commission" throughout the section.

**Temporary provisions.** - Laws 1990, ch. 75, § 27, effective May 16, 1990, provides that money in the real estate commission fund may be used for paying the initial costs incurred in implementing the Real Estate Appraisers Act [61-30-1 to 61-30-23 NMSA 1978], provided, however, the real estate commission fund shall be reimbursed from the appraiser fund by the fees charged and collected by the commission for licensing and certification of real estate appraisers in New Mexico.

### **61-30-19. Continuing education. (Effective until July 1, 2000.)**

A. The board shall adopt regulations providing for continuing education programs that offer courses in real property appraisal, practices and techniques, including basic real estate law and practice. The regulations shall require that every state registered, licensed or certified real estate appraiser, as a condition to renewal, shall successfully complete thirty classroom hours of instruction every three years in courses approved by the board.

B. The regulations shall prescribe areas of specialty or expertise relating to registration, licenses and the type of certificate held and may require that a certain part of the thirty classroom hours of instruction be devoted to courses in the area of the state registered, licensed or certified real estate appraiser's specialty or expertise. The regulations shall also permit state registered, licensed or certified real estate appraisers to meet the continuing education requirements by participation other than as a student in

educational processes and programs in real property appraisal theory, practices and techniques by instructing or preparing educational materials.

**History:** Laws 1990, ch. 75, § 19; 1992, ch. 54, § 16; 1993, ch. 269, § 17.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, inserted "registered" in the second sentence in Subsection A and "registration" near the beginning of Subsection B; and, in Subsection B, substituted "area of the state registered, licensed or certified real estate appraiser's specialty" for "area of the license holder's or certificate holder's specialty" and "permit state registered, licensed or certified real estate appraisers" for "permit licensed or certificate holders".

**The 1993 amendment**, effective June 18, 1993, in Subsection A, deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" near the beginning and substituted "board" for "commission" at the end.

### **61-30-20. Nonresident applicants; reciprocity. (Effective until July 1, 2000.)**

A. The board shall issue a registration, license or certificate to a nonresident, provided that state's requirements for registration, licensing or certification are the same or similar to the requirements set forth in the Real Estate Appraisers Act [this article]. In the event that the other state's requirements are not similar or cannot be verified, a qualifying nonresident applicant may become a registered, licensed or certified real estate appraiser in this state by conforming to all conditions of the Real Estate Appraisers Act. Examinations taken in other states are acceptable in New Mexico, provided the exam was at the appropriate level and approved by the appraisal foundation. If it is beneficial to New Mexico registered, licensed or certified appraisers, the board may negotiate agreements with other states allowing reciprocity. The registration, license or certificate shall be issued upon payment of the application fee; verification that the applicant has complied with his resident state's current education requirements; and the filing with the board of a license history and verification of good standing issued by the licensing board of the other state.

B. The applicant shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state registered, licensed or certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service has been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is

served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state registered, licensed or certified real estate appraiser to whom the processes or pleadings are directed.

**History:** Laws 1990, ch. 75, § 20; 1992, ch. 54, § 17; 1993, ch. 269, § 18.

## ANNOTATIONS

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment,** effective May 20, 1992, inserted "registered" and "registration" throughout the section; and, in Subsection A, inserted "shall issue a registration, license or certificate" and substituted "greater conditions" for "lesser conditions" in the first sentence.

**The 1993 amendment,** effective June 18, 1993, rewrote Subsection A and substituted "board" for "commission" throughout Subsection B.

### **61-30-21. Temporary practice. (Effective until July 1, 2000.)**

A. The board shall recognize, on a temporary basis, the registration, certification or license of a real estate appraiser issued by another state if:

(1) the real estate appraiser's business is of a temporary nature and certified by the real estate appraiser not to exceed six months; and

(2) the real estate appraiser registers the temporary practice with the board.

B. The applicant or any person registering with the board for temporary practice shall file an irrevocable consent that suits and actions may be commenced against him in the proper court of any county of this state in which a cause of action may arise from his actions as a state registered, licensed or certified real estate appraiser or in which the plaintiff may reside, by the service of any processes or pleadings authorized by the laws of this state on the board, the consent stipulating and agreeing that such service of processes or pleadings on the board shall be taken and held in all courts to be as valid and binding as if personal service had been made upon the applicant in New Mexico. In case any process or pleading mentioned in the case is served upon the board, it shall be by duplicate copies, one of which shall be filed in the office of the board and the other immediately forwarded by registered mail to the nonresident state registered, licensed or certified real estate appraiser to whom the processes or pleadings are directed.

**History:** Laws 1990, ch. 75, § 21; 1992, ch. 54, § 18; 1993, ch. 269, § 19.

## ANNOTATIONS

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1992 amendment**, effective May 20, 1992, inserted "registration" in the introductory language to Subsection A and "registered" in two places in Subsection B.

**The 1993 amendment**, effective June 18, 1993, in Subsection A, deleted "In accordance with 12 U.S.C. 3351" from the beginning, deleted former Paragraph (1), which read: "the property to be appraised is part of a federally related transaction, as defined in the federal real estate appraisal reform amendments", renumbered former Paragraphs (2) and (3) as present Paragraphs (1) and (2), deleted "and commission" after "board" in the introductory language and Paragraph (2), and inserted "real estate" before "appraiser" throughout the subsection, making a related stylistic change; and in Subsection B, deleted "and commission" after "board" near the beginning and substituted "board" for "commission" throughout.

### **61-30-22. Penalty; injunctive relief. (Effective until July 1, 2000.)**

A. Any person who violates any provision of the Real Estate Appraisers Act [this article] is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment for not more than six months or both.

B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Real Estate Appraisers Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the board, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

**History:** Laws 1990, ch. 75, § 22; 1993, ch. 269, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-30-24 NMSA 1978.

**The 1993 amendment**, effective June 18, 1993, deleted "commission, upon the advice and recommendation of the" before "board" in Subsection B.

### **61-30-23. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 269, § 22 repeals 61-30-23 NMSA 1978, as enacted by Laws 1990, ch. 75, § 23, providing for waiver of license requirements for 180 days after December 1, 1990 for certain applicants, effective June 18, 1993. For former provisions, see 1990 Replacement Pamphlet.

## **61-30-24. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The real estate appraisers board is repealed effective July 1, 1999. The Real Estate Appraisers Act [this article] shall continue in effect until July 1, 2000. The Real Estate Appraisers Act is repealed effective July 1, 2000.

**History:** 1978 Comp., § 61-30-24, enacted by Laws 1993, ch. 269, § 21.

### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 269 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Compiler's note.** - Virtually identical versions of this section were enacted by Laws 1993, ch. 83, § 8 and Laws 1993, ch. 269, § 21, except that ch. 83, § 8, provided for a July 1, 1997 sunset date and ch. 269 provided for a July 1, 2000 sunset date. The section is set out as enacted by Laws 1993, ch. 269, § 21. See 12-1-8 NMSA 1978.

## **ARTICLE 31 SOCIAL WORK PRACTICE**

### **61-31-1. Short title. (Effective until July 1, 1996.)**

Sections 1 through 24 [61-31-1 to 61-31-24 NMSA 1978] of this act may be cited as the "Social Work Practice Act".

**History:** Laws 1989, ch. 51, § 1.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 39 to 41, 45 to 47, 58 to 62, 72, 73.

Cause of action for clergy malpractice, 75 A.L.R.4th 750.

53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 66, 82.

### **61-31-2. Purpose. (Effective until July 1, 1996.)**

The profession of social work profoundly affects the lives of the people of this state; therefore, to safeguard the public health, safety and welfare of the people of New Mexico against the unregulated practice of social work, the legislature finds it necessary that a proper regulatory authority be established for persons who seek to engage in the practice of social work.

**History:** Laws 1989, ch. 51, § 2.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-3. Definitions. (Effective until July 1, 1996.)**

As used in the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978]:

- A. "advisory committee" means an evaluation advisory committee;
- B. "appropriate supervision" means supervision by an independent social worker or a master social worker with two years of supervised social work practice experience or other supervision which is deemed by the board to be equivalent to supervision by a master social worker;
- C. "baccalaureate social worker" means a person who uses the title of social worker and has a bachelor's degree in social work from a program accredited by the council on social work education;
- D. "board" means the board of social work examiners;
- E. "department" means the regulation and licensing department;
- F. "executive agency" means any agency within the executive branch of government;
- G. "independent social worker" means a person who uses the title of social worker and has a master's degree in social work from a graduate school of social work accredited by the council on social work education and who has had two years of postgraduate social work practice under appropriate supervision;
- H. "master social worker" means a person who uses the title of social worker and has a master's degree in social work from a graduate school of social work accredited by the council on social work education; and
- I. "professional code of ethics" means a code of ethics and rules adopted by the board, designed to protect the public and to regulate the professional conduct of social workers.

**History:** Laws 1989, ch. 51, § 3.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-4. License required. (Effective until July 1, 1996.)**

A. Effective January 1, 1990, unless licensed to practice social work under the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978], no person shall:

(1) practice as an independent social worker as defined in the Social Work Practice Act;  
or

(2) use the title or represent himself as a licensed social worker or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed as a social worker.

B. Notwithstanding the provisions of Subsection A of this section, any individual who is employed in an executive agency on or after the effective date of the Social Work Practice Act under the title of social worker or other title which is deemed to be social work practice by the board and who has a bachelor's degree or higher in a field other than social work shall not be required to be licensed until July 1, 1992; provided any employee of an executive agency who qualifies for licensure under the provisions of the Social Work Practice Act shall apply for licensure as provided in that act.

**History:** Laws 1989, ch. 51, § 4; 1991, ch. 222, § 1.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "July 1, 1992" for "July 1, 1991" in Subsection B.

**"Effective date of the Social Work Practice Act".** - The phrase "effective date of the Social Work Practice Act", referred to in Subsection B, means July 1, 1989, the effective date of Laws 1989, ch. 51.

#### **61-31-5. Exemptions. (Effective until July 1, 1996.)**

Nothing in the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978] shall be construed to prevent qualified members of other recognized professions that are licensed, certified or regulated under New Mexico law or regulation from rendering services within the scope of their license, certification or regulation, provided they do not represent themselves as licensed social workers.

**History:** Laws 1989, ch. 51, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-6. Scope of practice. (Effective until July 1, 1996.)**

A. For the purposes of the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978], a person is practicing social work if he advertises, offers himself to practice, is employed in a position described as social work or holds out to the public or represents in any manner that he is licensed to practice social work in this state.

B. Social work practice means a professional service and emphasizes the use of specialized knowledge of social resources, social systems and human capabilities to effect change in human behavior, emotional responses and social conditions. Services may be rendered through direct assistance to individuals, couples, families, groups and community organizations. Social work practice focuses on both direct and indirect services to facilitate change on the intrapersonal, interpersonal and systemic levels. Areas of specialization which address these include but are not limited to the following:

(1) clinical social work practice, which is the professional application of social work theory and methods in the diagnosis, treatment and prevention of psychosocial dysfunction, disability or impairment, including but not limited to emotional and mental disorders. It is based on knowledge of one or more theories of human development within a psychosocial context. Clinical social work includes interventions directed to interpersonal interactions, intrapsychic dynamics or life support and management issues. Clinical social work services consist of assessment, diagnosis and treatment, including psychotherapy and counseling, client-centered advocacy, consultation and evaluation;

(2) social work research practice, which is the professional study of human capabilities and practice of social work specialties, including direct and indirect practice, through the formal organization and the methodology of data collection and the analysis and evaluation of social work data;

(3) social work community organization, planning and development practice, which is a conscious process of social interaction and method of social work concerned with the meeting of broad needs and bringing about and maintaining adjustment between needs and resources in a community or other areas; helping people to deal more effectively with their problems and objectives by helping them develop, strengthen and maintain qualities of participation, self-direction and cooperation; and bringing about changes in community and group relationships and in the distribution of decision-making power. The community is the primary client in community organizations. The community may be an organization, neighborhood, city, county, state or national entity;

(4) social work administration, which is the practice that is concerned primarily with translating laws, technical knowledge and administrative rulings into organizational goals and operational policies to guide organizational behavior; designing organizational structure and procedures or processes through which social work goals can be achieved; and securing resources in the form of material, staff, clients and societal legitimation necessary for goal attainment and organizational survival; and

(5) social work education practice, which provides an equal quality of social work education in identified areas of content; prepares graduates to practice in a range of geographic areas with diverse populations; and establishes the foundation for practitioners' professional futures, exposing them to the best of current knowledge and developing in them the ability to continue questioning and learning, as well as an awareness of their responsibility to continue this professional development.

**History:** Laws 1989, ch. 51, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-7. Board created. (Effective until July 1, 1996.)**

A. There is created the "board of social work examiners".

B. The board shall be administratively attached to the department.

C. The board shall consist of ten members who are representative of the ethnic groups within New Mexico, who are United States citizens and have been New Mexico residents for at least five years prior to their appointment. From the ten members:

(1) four members shall have been engaged in social work practice for at least five years and each shall hold a master's degree in social work from a graduate school of social work that is accredited by the council on social work education of which one member shall be engaged primarily in clinical social work practice, one member shall be engaged primarily in education, one member shall be engaged primarily in administration or research in social work practice and one member shall be engaged primarily in community organization, planning and development. These members shall not hold office in any professional organization of social workers during their tenure on the board;

(2) one member shall hold a bachelor's degree in social work from a program accredited by the council on social work education, shall have been engaged in social work practice for at least two years and shall not hold office in any professional organization of social workers during his tenure on the board; and

(3) five members shall represent the public. The public members shall not have been licensed or have practiced as social workers. Public members shall not have any significant financial interest, whether direct or indirect, in social work practice.

D. Members of the board shall be appointed by the governor for staggered terms of three years, except that in making the initial appointments, three members shall be appointed for a term ending June 30, 1990; three members for terms ending June 30, 1991; and four members for terms ending June 30, 1992. Each member shall hold office until his successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

E. Except for the representatives of the public on the board, the governor shall appoint board members from a list of nominees submitted by social work organizations and individual social work professionals.

F. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

G. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

H. A simple majority of the board members currently serving shall constitute a quorum of the board.

I. The board shall meet at least once a year and at such other times as it deems necessary. Other meetings may be called by the chairman upon the written request of a quorum of the board.

J. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for any reason that would justify the suspension or revocation of his license to practice social work.

K. No board member shall serve more than two consecutive terms, and any member failing to attend, after proper notice, three executive meetings, shall automatically be removed as a board member, unless excused for reasons set forth in board regulations.

L. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the board of social work examiners of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member within a six-month period.

**History:** Laws 1989, ch. 51, § 7.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**61-31-8. Board's authority. (Effective until July 1, 1996.)**

In addition to any authority provided by law, the board shall have the authority to:

A. adopt and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations necessary to carry out the provisions of the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978], in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], including the procedures for an appeal of an examination failure;

B. select, prepare and administer, at least annually, written examinations for licensure which shall include a testing of the knowledge of New Mexico cultures;

C. adopt a professional code of ethics;

D. appoint advisory committees pursuant to Section 19 [61-31-19 NMSA 1978] of the Social Work Practice Act;

E. conduct hearings on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to the Uniform Licensing Act;

F. require and establish criteria for continuing education;

G. issue subpoenas, statements of charges, statements of intent to deny licenses and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges and statements of intent to deny licenses and establish procedures for receiving, investigating and conducting hearings on complaints;

H. approve appropriate supervision for those persons seeking licensure as an independent social worker;

I. issue provisional licenses and licenses based on credentials to persons meeting the requirements set forth in the Social Work Practice Act;

J. determine qualifications for licensure;

K. set fees for licenses as authorized by the Social Work Practice Act and authorize all disbursements necessary to carry out the provisions of the Social Work Practice Act;

L. approve the selection of primary staff assigned to the board;

M. contract with the department for the provisions of space and administrative support; and

N. keep a record of all proceedings and shall make an annual report to the governor.

**History:** Laws 1989, ch. 51, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-9. Requirements for licensure. (Effective until July 1, 1996.)**

A. The board shall issue a license as a baccalaureate social worker to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has at least a bachelor's degree in social work from a program accredited by the council on social work education; and

(3) demonstrates professional competence by satisfactorily passing a written examination as prescribed by the board.

B. The board shall issue a license as a master social worker to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has obtained a master's degree in social work from a graduate school of social work accredited by the council on social work education; and

(3) demonstrates professional competence by satisfactorily passing a written examination as prescribed by the board.

C. The board shall issue a license as an independent social worker to any person who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) has reached the age of majority;

(2) has obtained a master's degree in social work from a graduate school of social work accredited by the council on social work education;

(3) has two years of postgraduate social work practice under appropriate supervision; and

(4) demonstrates professional competence by satisfactorily passing a written examination as prescribed by the board.

D. Notwithstanding the provisions of this section, the board may grant a license on a case-by-case basis to those employees of an executive agency who are currently practicing social work as defined in Section 6 [61-31-6 NMSA 1978] of the Social Work Practice Act and have been so employed for at least ten years prior to the effective date of that act.

**History:** Laws 1989, ch. 51, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**"Effective date of that act".** - The phrase "effective date of that act", referred to in Subsection D, means July 1, 1989, the effective date of Laws 1989, ch. 51.

#### **61-31-10. Written examination. (Effective until July 1, 1996.)**

The date and location of the written examination shall be established by the board. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The board shall establish by rule the examination application deadline and other rules relating to the retaking of the licensure examination.

**History:** Laws 1989, ch. 51, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-11. Provisional licensure. (Effective until July 1, 1996.)**

Prior to examination, an applicant for licensure may obtain a provisional license to engage in social work practice as long as the applicant meets all the requirements, except examination, as prescribed in Section 10 [61-31-10 NMSA 1978] of the Social Work Practice Act for the level of license sought. The provisional license is valid until the results of the first qualifying written examination are available.

**History:** Laws 1989, ch. 51, § 11.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

## **61-31-12. Licensure without written examination. (Effective until July 1, 1996.)**

A. An applicant for licensure under Section 61-31-9 NMSA 1978 may be licensed without written examination if the applicant:

(1) meets all other requirements for licensure as a baccalaureate social worker, independent social worker or master social worker and files his application within one year of the effective date of the Social Work Practice Act;

(2) has a bachelor's degree in a field other than social work, has been employed for one year immediately preceding the effective date of the Social Work Practice Act in a private agency or public agency other than an executive agency in a position as described in any of the areas of specialization pursuant to Subsection B of Section 61-31-6 NMSA 1978 under the title of social worker or other title under which he is deemed by the board to be practicing social work and has filed his application within one year of the effective date of the Social Work Practice Act; or

(3) has a bachelor's degree or higher in a field other than social work, has been employed in an executive agency under the title of social worker or other title under which he is deemed by the board to be practicing social work and has filed his application within three years of the effective date of the Social Work Practice Act.

B. An applicant for licensure under Section 61-31-9 NMSA 1978 who has a master's or doctoral degree in a closely related field other than social work may be licensed as a master social worker if he has been employed for one year immediately preceding the effective date of the Social Work Practice Act in a private agency or public agency other than an executive agency in a position as described in any of the areas of specialization pursuant to Subsection B of Section 61-31-6 NMSA 1978, under the title of social worker or other title under which he is deemed by the board to be practicing social work, has filed his application within one year of the effective date of that act and passes a written examination as prescribed by the board in accordance with Paragraph (3) of Subsection B of Section 61-31-9 NMSA 1978.

**History:** Laws 1989, ch. 51, § 12; 1991, ch. 222, § 2.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**The 1991 amendment,** effective June 14, 1991, substituted "61-31-9 NMSA 1978" for "9 of the Social Work Practice Act" in the introductory paragraph in Subsection A and in two places in Subsection B; substituted "61-31-6 NMSA 1978" for "6 of the Social Work Practice Act" in Paragraph (2) of Subsection A and in Subsection B; substituted "three years" for "two years" near the end of Paragraph (3) in Subsection A; and made related stylistic changes in Paragraph (1) and (2) in Subsection A.

**Compiler's note.** - The phrases "effective date of that act" and "effective date of the Social Work Practice Act", referred to throughout this section, mean July 1, 1989, the effective date of Laws 1989, ch. 51.

### **61-31-13. Licensure by credentials. (Effective until July 1, 1996.)**

The board may license an applicant without written examination, provided that he possesses a valid social worker license issued by the appropriate examining board under the laws of any other state or territory of the United States, the district of Columbia or any foreign nation which, in the judgment of the board, has requirements, including knowledge of New Mexico cultures, substantially [substantially] equivalent to or exceeding those in the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978] for the licensure level sought.

**History:** Laws 1989, ch. 51, § 13.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-14. License renewal. (Effective until July 1, 1996.)**

A. Each licensee shall renew his license annually by submitting a renewal application on a form provided by the board. At the time of license renewal, the board shall require a licensee to produce evidence of continuing education, as prescribed by the board.

B. A sixty-day grace period shall be allowed each licensee after each annual licensing period, during which time licenses may be renewed upon payment of the renewal fee and providing evidence of continuing education as required under the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978].

C. Any licensee who allows his license to lapse for longer than six months shall have such license automatically revoked and shall be required to take a written examination.

D. A late penalty fee shall be assessed after the sixty-day grace period has expired for anyone attempting to renew a license to practice social work.

**History:** Laws 1989, ch. 51, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-15. License fees. (Effective until July 1, 1996.)**

Applicants for licensure shall pay fees set by the board, not to exceed:

- A. for written examination for any level of licensure other than initial licensure, two hundred dollars (\$200);
- B. for initial licensure following a written examination as a baccalaureate social worker, two hundred dollars (\$200);
- C. for initial licensure following a written examination as a master social worker, three hundred dollars (\$300);
- D. for initial licensure following a written examination as an independent social worker, three hundred dollars (\$300);
- E. for licensure by credentials at any level, three hundred dollars (\$300);
- F. for licensure without written examination, including a provisional license, as a baccalaureate social worker, one hundred fifty dollars (\$150);
- G. for licensure without written examination, including a provisional license, as a master social worker, two hundred fifty dollars (\$250);
- H. for licensure without written examination, including a provisional license, as an independent social worker, three hundred dollars (\$300);
- I. for renewal of a license as a baccalaureate social worker, one hundred dollars (\$100);
- J. for renewal of a license as a master social worker, two hundred dollars (\$200);
- K. for renewal of a license as an independent social worker, three hundred dollars (\$300);
- L. for a late fee for failure to renew within the allotted grace period, one hundred dollars (\$100); and
- M. for a duplicate license, twenty-five dollars (\$25.00).

**History:** Laws 1989, ch. 51, § 15.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-16. Fund established. (Effective until July 1, 1996.)**

A. There is created in the state treasury the "board of social work examiners fund".

B. All money received by the board under the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978] shall be deposited with the state treasurer for credit to the fund. The state treasurer shall invest the fund as other state funds are invested, and all income derived from investment of the fund shall be credited to the fund. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Social Work Practice Act.

**History:** Laws 1989, ch. 51, § 16.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-17. License denial, suspension or revocation. (Effective until July 1, 1996.)**

A. In accordance with procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978], upon grounds that the licensee or applicant:

- (1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certification provided for in the Social Work Practice Act;
- (2) has been adjudicated as mentally incompetent by regularly constituted authorities;
- (3) has been convicted of a felony;
- (4) is guilty of unprofessional or unethical conduct;
- (5) is habitually or excessively using controlled substances or alcohol;
- (6) has repeatedly and persistently violated any of the provisions of the Social Work Practice Act or regulations of New Mexico or any other state or territory and has been convicted thereof;
- (7) has been convicted of the commission of any illegal operation;
- (8) is grossly negligent or incompetent in the practice of social work; or
- (9) has had a license to practice social work revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee similar to acts described in this subsection. A certified copy of the record of the

jurisdiction, territory or possession of the United States or another country making such revocation, suspension or denial shall be conclusive evidence thereof.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for such copy.

**History:** Laws 1989, ch. 51, § 17.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-18. Impaired social workers. (Effective until July 1, 1996.)**

The license of any social worker to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the licensee to practice social work with reasonable skill and safety to clients by reason of one or more of the following:

A. mental disability; or

B. habitual or excessive use of controlled substances, as defined in the Controlled Substances Act, or alcohol.

**History:** Laws 1989, ch. 51, § 18.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**Controlled Substances Act.** - See 30-31-1 NMSA 1978 and notes thereto.

#### **61-31-19. Impaired social workers' program. (Effective until July 1, 1996.)**

A. The board shall establish a process by which social workers who may be impaired because of a mental disability or habitual or excessive use of controlled substances or alcohol may seek rehabilitation. The intent of the process is to provide impaired social workers the opportunity to voluntarily enter a treatment program as an alternative to disciplinary action, while providing adequate safeguards to the public.

B. The board shall appoint evaluation advisory committees as appropriate to the specific disability of a social worker. Each advisory committee shall be composed of at least three members. One member of an advisory committee shall be a licensed physician, one a certified psychologist or a licensed psychiatrist and one licensed to practice social

work in New Mexico. No member of an advisory committee shall be a member of the board.

C. An advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to the advisory committee to:

(1) develop criteria for admission to and continuance in a treatment program for board approval;

(2) review complaints against a licensed social worker involving habitual or excessive use of controlled substances or alcohol;

(3) review voluntary requests of each social worker seeking admission to a treatment program as an alternative to disciplinary action;

(4) develop and submit to the board for approval a written treatment agreement setting forth the requirements that shall be met by the social worker and the conditions under which the treatment program may be successfully completed or terminated;

(5) recommend to the board in favor of or against an individual social worker's admission into or release from a treatment program;

(6) receive and review all reports regarding an individual social worker's progress in treatment and recovery;

(7) report violations to the board; and

(8) submit statistical reports to the board.

D. Files of social workers referred to an advisory committee and admitted to a treatment program shall be maintained in the office of the board and shall be confidential. Files are not confidential if they contain reports to the board concerning social workers who have not cooperated or complied with treatment agreements, or who have refused to participate in a program after having been accepted for admission into the program or reports used as evidence in a disciplinary proceeding. Such files may be made available to other states' social worker boards or law enforcement agencies upon request to the board if the social worker leaves the state prior to successful completion of the program and shall be subject to discovery by subpoena.

E. Any person who makes a report to the board regarding a social worker suspected of practicing while mentally disabled or under the influence of alcohol or controlled substances or who makes a report of a social worker's progress or lack of progress in a treatment program shall be immune from civil action for defamation or other causes of action resulting from such reports, provided that such reports are made in good faith and with some reasonable basis in fact.

F. After an appropriate treatment period, to be approved by the board, the advisory committee shall refer to the board for formal disciplinary action, including suspension or removal of license, a social worker who fails to respond to treatment. The board may on its own initiative or at the recommendation of the advisory committee immediately proceed with disciplinary actions against any social worker previously admitted to and released from a treatment program who has subsequently relapsed into a mental disability or abuse of alcohol or a controlled substance.

**History:** Laws 1989, ch. 51, § 19.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-20. Provision for hearing. (Effective until July 1, 1996.)**

The board shall, before taking any disciplinary action, set any matter for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1989, ch. 51, § 20.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-21. Criminal offender's character evaluation. (Effective until July 1, 1996.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978].

**History:** Laws 1989, ch. 51, § 21.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

#### **61-31-22. Penalties. (Effective until July 1, 1996.)**

Any person who violates any provision of the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978] is guilty of a misdemeanor.

**History:** Laws 1989, ch. 51, § 22.

## ANNOTATIONS

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**Cross-references.** - As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

### **61-31-23. Injunctive proceedings. (Effective until July 1, 1996.)**

The board may apply for an injunction in the district court of the first judicial district to enjoin any person from committing any act prohibited by the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978].

**History:** Laws 1989, ch. 51, § 23.

## ANNOTATIONS

**Delayed repeals.** - See 61-31-25 NMSA 1978.

### **61-31-24. Privileged communications. (Effective until July 1, 1996.)**

A. A licensed social worker shall not be examined without the consent of his client concerning any communication made by the client to him or any advice given to the client in the course of professional employment; nor shall the secretary, stenographer or clerk of a social worker be examined without the consent of his employer concerning any fact, the knowledge of which he has acquired in that capacity; nor shall any person who has participated in any social work practice conducted under the supervision of a person authorized by law to conduct such practice, including group therapy sessions, be examined concerning any knowledge gained during the course of the practice without the consent of the person to whom the testimony sought relates.

B. No licensed social worker may disclose any information he has acquired from a person consulting him in his professional capacity, unless:

(1) he has the written consent of the client or, in the case of death or disability, of his personal representative, any other person authorized to sue or the beneficiary of any insurance policy on his life, health or physical condition;

(2) such communication reveals the contemplation of a crime or harmful act;

(3) the client is under the age of sixteen years or an adult who is mentally fragile and the information acquired indicates that the child or adult was the victim or subject of a crime, in which case the social worker may be required to testify fully in relation to the crime in any examination, trial or other proceeding in which the commission of the crime is a subject of inquiry; or

(4) the person waives the privilege by bringing charges against the social worker.

C. Nothing in this section shall be construed to prohibit a licensed social worker from disclosing information in court hearings concerning matters of adoption, child abuse, child neglect or other matters pertaining to the welfare of children as stipulated in the Children's Code [Chapter 32A NMSA 1978] or to those matters pertaining to citizens protected under the Adult Protective Services Act [27-7-14 to to 27-7-31 NMSA 1978].

**History:** Laws 1989, ch. 51, § 24.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-31-25 NMSA 1978.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 81 Am. Jur. 2d Witnesses §§ 453, 541, 542.

97 C.J.S. Witnesses §§ 252, 254.

#### **61-31-25. Termination of agency life; delayed repeal.**

The board of social work examiners is terminated on July 1, 1995 pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of the Social Work Practice Act [61-31-1 to 61-31-24 NMSA 1978] until July 1, 1996. Effective July 1, 1996, the Social Work Practice Act is repealed.

**History:** Laws 1989, ch. 51, § 27.

#### **ANNOTATIONS**

**Severability clauses.** - Laws 1989, ch. 51, § 28 provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 32 THANATOPRACTICE**

#### **ANNOTATIONS**

**Recompilations.** - Former Chapter 61, Article 29A NMSA 1978 was recompiled as this article by the compiler in 1990 to alphabetize the article headings.

#### **61-32-1. Short title. (Effective until July 1, 2000.)**

This act [61-32-1 to 61-32-31 NMSA 1978] may be cited as the "Thanatopractice Act".

**History:** 1978 Comp., § 61-32-1, enacted by Laws 1993, ch. 204, § 1.

## ANNOTATIONS

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-1 NMSA 1978, as enacted by Laws 1978, ch. 185, § 1, giving the short title of the Thanatopractice License Law, and § 1 of that act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 38 Am. Jur. 2d Funeral Directors and Embalmers §§ 3 to 16.

Civil liability of undertaker in connection with transportation, burial, or safeguarding of body, 53 A.L.R.4th 360.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract, 54 A.L.R.4th 901.

### **61-32-2. Purpose. (Effective until July 1, 2000.)**

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of the care and disposition of the dead human body, it is necessary to provide laws and regulations to govern the handling and care of the dead and the sensitivities of those who survive, whether they wish or do not wish rites or ceremonies. The primary responsibility and obligation of the board of thanatopractice is to protect the public.

**History:** 1978 Comp., § 61-32-2, enacted by Laws 1993, ch. 204, § 2.

## ANNOTATIONS

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-2 NMSA 1978, as enacted by Laws 1978, ch. 185, § 2, giving the purpose of Thanatopractice License Law, and § 2 of that act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-3. Definitions. (Effective until July 1, 2000.)**

As used in the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978]:

A. "assistant funeral service practitioner" means a person licensed to engage in practice as an assistant funeral service practitioner as provided in the Thanatopractice Act;

B. "associate funeral service practitioner" means a person licensed to engage in practice as an associate funeral service practitioner as provided in the Thanatopractice Act;

C. "board" means the board of thanatopractice;

D. "cremains" means cremated remains;

E. "cremation" means the reduction of the dead body by direct flame to a residue, which may include bone fragments;

F. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;

G. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;

H. "department" means the regulation and licensing department;

I. "direct disposer" means a person licensed to engage solely in providing direct disposition as provided in the Thanatopractice Act;

J. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a funeral, graveside service, committal service or memorial service, whether public or private, and without embalming of the body unless embalming is required by the place of disposition;

K. "direct supervision" means the supervisor is physically present with and in control of the person being supervised;

L. "disposition" means the final disposal of a dead human body, whether it be by earth interment, above-ground interment or entombment, cremation, burial at sea or delivery to a medical school when the medical school assumes complete responsibility for the disposal of the body following medical study, or release of custody of the body to the family or personal representative or other legal representative;

M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body;

N. "establishment" means every office, premises or place of business where the practice of funeral service or direct disposition is conducted or advertised as being conducted and includes commercial establishments that provide for the practice of funeral service or direct disposition services exclusively to licensed funeral or direct disposition establishments, or a school of medicine;

O. "funeral" means a period following death in which there is an organized, purposeful, time-limited, group-centered ceremony or rite, whether religious or not, with the body of the deceased present;

P. "funeral merchandise" means that personal property offered for sale in connection with the transportation, funeralization or disposition of a dead human body, including the enclosure into which a dead human body is directly placed, and excluding mausoleum crypts and interment enclosures preset in a cemetery and columbarium niches;

Q. "funeral service intern" means a person licensed pursuant to the Thanatopractice Act who is in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner;

R. "funeral service practitioner" means a person licensed by the board to engage in the practice of funeral service who may provide shelter, care and custody of human dead; prepare human dead by embalming or other methods for disposition; transport human dead, bereaved relatives and friends; make arrangements, financial or otherwise, to provide for a funeral or the sale of funeral merchandise; and perform other funeral directing or embalming practices;

S. "general supervision" means the supervisor is not necessarily physically present with the person being supervised, but is available for advice and assistance;

T. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

U. "jurisprudence examination" means an examination prescribed and graded by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Thanatopractice Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act [24-14-1 to 24-14-17, 24-14-20 to 24-14-31 NMSA 1978];

V. "licensee in charge" means a funeral service practitioner who is ultimately responsible for the conduct of a funeral or commercial establishment and its employees, or a direct disposer who is ultimately responsible for the conduct of a direct disposition establishment and its employees;

W. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

X. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

Y. "practice of funeral service" means those activities allowed under the Thanatopractice Act by a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern;

Z. "pulverization" means the process that reduces cremains to a granular substance; and

AA. "thanatopractice" means those immediate post-dead activities related to the dead human body, its care and disposition, whether with or without rites or ceremonies, but not including disposition of the body by a school of medicine following medical study.

**History:** 1978 Comp., § 61-32-3, enacted by Laws 1993, ch. 204, § 3.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-3 NMSA 1978, as amended by Laws 1983, ch. 137, § 1, containing definitions, and § 3 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**Salesmen of insurance funding funeral plans.** - A person licensed to sell life insurance specifically designed to fund funeral plans need not be licensed to practice funeral service. 1987 Op. Att'y Gen. No. 87-60.

### **61-32-4. License required. (Effective until July 1, 2000.)**

Unless licensed to practice under the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978], no person shall:

A. practice as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer;

B. use the title or represent himself as a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern or direct disposer or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a funeral service practitioner, associate funeral service practitioner, funeral service intern or direct disposer; or

C. maintain, manage or operate a funeral establishment, a commercial establishment, direct disposition establishment or a crematory.

**History:** 1978 Comp., § 61-32-4, enacted by Laws 1993, ch. 204, § 4.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-4 NMSA 1978, as enacted by Laws 1978, ch. 185, § 4, creating the state board of thanatopractice of the state of New Mexico, and § 4 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**61-32-5. Board created. (Effective until July 1, 2000.)**

A. There is created the "board of thanatopractice".

B. The board is administratively attached to the department.

C. The board consists of six members. Three members shall be funeral service practitioners who have been licensed in the state for at least five years; two members shall represent the public and shall not have been licensed for the practice of funeral service or direct disposition in this state or any other jurisdiction and shall not ever have had any financial interest, direct or indirect, in any funeral, commercial or direct disposition establishment or crematory; and one member shall be a licensed direct disposer or health care practitioner who has been licensed in the state for at least five years.

D. Members of the board shall be appointed by the governor for staggered terms of four years; except that members of the board appointed and serving under prior law at the effective date of the Thanatopractice Act shall serve out the terms for which they were appointed as members of the board created by this section. Each member shall hold office until his successor is duly qualified and appointed. Vacancies shall be filled for any unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

F. A simple majority of the board members currently serving constitutes a quorum.

G. The board shall hold at least two regular meetings each year and shall meet at such other times as it deems necessary.

H. No board member shall serve more than two full consecutive terms, and any member failing to attend, after proper notice, three meetings shall automatically be recommended for removal as a board member unless excused for reasons set forth in board regulations.

I. The board shall elect a chairman and other officers as deemed necessary to administer its duties.

**History:** 1978 Comp., § 61-32-5, enacted by Laws 1993, ch. 204, § 5.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-5 NMSA 1978, as enacted by Laws 1978, ch. 185, § 5, concerning board duties and powers, and § 5 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-6. Board powers. (Effective until July 1, 2000.)**

A. In addition to any other authority provided by law, the board has the power to:

(1) adopt, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], and file, in accordance with the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978], rules and regulations necessary to carry out the provisions of the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978];

(2) adopt rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions, including license denial, suspension or revocation, or the issuance of a fine, reprimand or other remedial action;

(4) establish reasonable fees to carry out the provisions of the Thanatopractice Act;

(5) provide for investigations necessary to determine violations of the Thanatopractice Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Thanatopractice Act;

(7) apply for injunctive relief to enforce the provisions of the Thanatopractice Act or to restrain any violation of that act;

(8) take administrative action by issuing orders, instructions and reprimands, not inconsistent with law, to ensure implementation of and compliance with the Thanatopractice Act, and to enforce those orders, instructions and reprimands by appropriate administrative or court action; and

(9) impose a fine not to exceed five thousand dollars (\$5,000), in addition to other administrative or disciplinary costs, and all fines shall be deposited in the thanatopractice fund.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Thanatopractice Act or for any neglect or default in the good faith performance or exercise of any such power or duty.

**History:** 1978 Comp., § 61-32-6, enacted by Laws 1993, ch. 204, § 6.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-6 NMSA 1978, as enacted by Laws 1978, ch. 185, § 6, concerning the secretary of the board, and § 6 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-7. Board duties. (Effective until July 1, 2000.)**

The board shall:

A. administer the provisions of the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978];

B. provide for the examination, licensing and renewal of applicants or licensees; and

C. provide for the inspection of establishments and crematories.

**History:** 1978 Comp., § 61-32-7, enacted by Laws 1993, ch. 204, § 7.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-7 NMSA 1978, as amended by Laws 1983, ch. 137, § 2, providing for an inspector and board representation, and § 7 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-8. Inspection; access; counsel. (Effective until July 1, 2000.)**

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours or through prior arrangement. Acceptance of a license shall include permission for the board, or its designee, to enter the premises without legal process.

B. The board shall be represented by the attorney general. The board may employ special counsel, whose services shall be paid by the board, upon the approval of the attorney general.

**History:** 1978 Comp., § 61-32-8, enacted by Laws 1993, ch. 204, § 8.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-8 NMSA 1978, as enacted by Laws 1978, ch. 185, § 8, concerning applicability of the Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, and § 8 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-9. Requirements for licensure; funeral service practitioner; funeral service intern; direct disposer; associate funeral service practitioner; assistant funeral service practitioner. (Effective until July 1, 2000.)**

A. A license to practice as a funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training period the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals;

(3) has successfully completed any examination to be a funeral service practitioner, including a jurisprudence examination, prescribed by board rules;

(4) has not been convicted of unprofessional conduct or incompetency;

(5) has graduated from an institution accredited by the American board of funeral service education or any other successor recognized by the United States office of education for funeral service education; and

(6) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of Paragraphs (5) and (6) of this subsection if the assistant funeral service practitioner has successfully

completed examinations required by the board of thanatopractice for practice as an associate funeral service practitioner and a funeral service practitioner, and provided further that a funeral service intern need not satisfy the provisions of Paragraph (5) of this subsection if the funeral service intern has successfully completed examinations required by the board of thanatopractice for practice as an associate funeral service practitioner and a funeral service practitioner.

B. A license to practice as a funeral service intern shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent; and

(3) has submitted proof of employment and supervision as required by the board. Except as may be allowed by board rule, a license as a funeral service intern is not ambulatory and is issued for a specific funeral establishment only.

C. A license to practice as a direct disposer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) is at least eighteen years of age;

(2) has graduated from high school or the equivalent;

(3) has successfully completed any examination, including a jurisprudence examination, prescribed by board rules; and

(4) has not been convicted of unprofessional conduct or incompetency.

D. A license to practice as an assistant funeral service practitioner shall be issued to any person who, prior to the effective date of the Thanatopractice Act, held a valid license as an assistant funeral service practitioner and who was qualified to receive a renewal license on July 1, 1993.

E. A license to practice as an associate funeral service practitioner shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that he:

(1) has been licensed as an assistant funeral service practitioner; or

(2) has served as a licensed funeral service intern for not less than twelve months, under the supervision of a licensed funeral service practitioner. During the training

period the applicant shall have assisted in the embalming of at least fifty bodies and assisted in the directing of at least fifty funerals; and

(3) has graduated from high school or the equivalent;

(4) has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university; provided, however, that an assistant funeral service practitioner need not satisfy the provisions of this paragraph to become an associate funeral service practitioner;

(5) has successfully completed any examination, including a jurisprudence examination to be an associate funeral service practitioner, prescribed by board rules; and

(6) has not been convicted of unprofessional conduct or incompetency.

**History:** 1978 Comp., § 61-32-9, enacted by Laws 1993, ch. 204, § 9.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-9 NMSA 1978, as amended by Laws 1989, ch. 187, § 1, concerning the issuance of licenses, and § 9 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

#### **61-32-10. Licensure by credentials. (Effective until July 1, 2000.)**

After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, provided the applicant possesses a valid license or its equivalent, for the practice of funeral service issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation, and provided the applicant has met educational requirements substantially equivalent to or exceeding those established pursuant to the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] or has at least five consecutive years experience in another state or territory as a licensed funeral service practitioner or its equivalent.

**History:** 1978 Comp., § 61-32-10, enacted by Laws 1993, ch. 204, § 10.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-10 NMSA 1978, as enacted by Laws 1978, ch. 185, § 10, limiting the practice of funeral

service, and § 10 enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**61-32-11. Licensure of establishments; funeral establishments; commercial establishments; direct disposition establishments; crematories. (Effective until July 1, 2000.)**

A. Funeral establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice of funeral service and shall comply with the following minimum requirements:

(a) a chapel shall be present in which funerals may be conducted;

(b) a display room shall be present for displaying caskets and other funeral merchandise; and

(c) a preparation room shall be present with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] and board rules, including specific sanitary or physical requirements for licensure.

B. Commercial establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location primarily devoted to the practice allowed for a commercial establishment and shall have a preparation room with the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

C. Direct disposition establishment licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the establishment shall be maintained at a specific location, primarily devoted to the practice of direct disposition and shall maintain:

(a) a room equipped with a tile, cement or composition floor;

(b) necessary drainage and ventilation;

(c) a refrigeration unit thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, for sheltering prior to disposition; and

(d) necessary supplies for safely handling unembalmed dead human bodies; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

D. Crematory licenses shall only be granted under the following terms and conditions:

(1) applications for licensure shall be upon forms furnished by the board and shall be accompanied by the required fee;

(2) the crematory shall be maintained at a specific location, including a funeral, commercial or direct disposition establishment, and shall have appropriate facilities and equipment devoted to cremation and pulverization; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Thanatopractice Act and board rules, including specific sanitary or physical requirements for licensure.

**History:** 1978 Comp., § 61-32-11, enacted by Laws 1993, ch. 204, § 11.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-11 NMSA 1978, as enacted by Laws 1978, ch. 185, § 11, limiting the practice of direct disposition, and § 11 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**61-32-12. License; display of license. (Effective until July 1, 2000.)**

A. Initial licenses shall be issued for the remainder of the year in which the license is granted, as established by rule.

B. A license issued by the board shall at all times be posted in the establishment or crematory in a conspicuous place.

**History:** 1978 Comp., § 61-32-12, enacted by Laws 1993, ch. 204, § 12.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-12 NMSA 1978, as amended by Laws 1989, ch. 187, § 2, concerning license renewal and revival, and § 12 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-13. Establishments; requirements. (Effective until July 1, 2000.)**

A. Each establishment shall have a full-time licensee in charge. The establishment license is a privilege granted to the person to whom it is issued and is not transferable to other owners or operators or to another location than that designated on the license.

B. The board may adopt by rule special requirements for multi-unit establishments that are located within fifty miles of each other and that wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

**History:** 1978 Comp., § 61-32-13, enacted by Laws 1993, ch. 204, § 13.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-13 NMSA 1978, as enacted by Laws 1978, ch. 185, § 13, concerning licensure under prior law, and § 13 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-14. Funeral service intern; scope of practice; limitations. (Effective until July 1, 2000.)**

A. A funeral service intern does not have the rights and duties of a funeral service practitioner and is only subordinate to the funeral service practitioner. The scope of

what a funeral service intern is permitted to do depends on the activity and the experience of the funeral service intern, provided that:

(1) a funeral service intern may make arrangements only under the direct supervision of a licensed funeral service practitioner. After the completion of fifty arrangements under direct supervision, the funeral service intern may request approval from the board to make arrangements under the general supervision of a licensed funeral service practitioner;

(2) a funeral service intern may embalm or otherwise prepare dead human bodies for disposition only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has assisted with the embalming of at least fifty bodies under direct supervision, the funeral service intern may request approval from the board to embalm under the general supervision of a licensed funeral service practitioner;

(3) a funeral service intern may direct a funeral, committal service, graveside service or memorial service only under the direct supervision of a licensed funeral service practitioner. After the funeral service intern has directed at least fifty services under direct supervision, the funeral service intern may request approval from the board to direct such services under the general supervision of a licensed funeral service practitioner; and

(4) a funeral service intern shall at no time act under the general supervision of a funeral service practitioner until he is notified in writing of board approval to so act.

B. A funeral service intern shall be employed by and receive training at only one establishment. The board may adopt rules that will allow training at more than one establishment under special circumstances.

C. Any funeral service intern's change of employment shall be reported to the board in writing within thirty days of the change. A change of employment that is not reported will cause the period worked at the new establishment not to count as time served toward completion of the internship. It is the responsibility of the funeral service intern and the licensee in charge to report changes of employment.

D. A funeral service intern may be under the supervision of more than one funeral service practitioner at the establishment at which he is employed, provided that the board has received notice in writing prior to any changes in supervision.

E. A funeral service intern shall be employed a minimum average of thirty hours per week by the establishment. Proof of employment hours shall be provided to the board upon request.

F. Each funeral service intern shall report to the board quarterly upon forms provided by the board showing the work that has been completed during the preceding three months. All quarterly reports are due in the board office within thirty days of the close of

the quarter. If a report is not received by the date due, the work completed during the reporting period shall not be counted when the board tabulates requirements for general supervision or for licensure as a funeral service practitioner.

G. Once a funeral service intern is under the general supervision of a funeral service practitioner, the funeral service intern need not submit to the board the quarterly reports required in this section.

**History:** 1978 Comp., § 61-32-14, enacted by Laws 1993, ch. 204, § 14.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-14 NMSA 1978, as amended by Laws 1989, ch. 187, § 3, concerning assistant funeral service practitioners, and § 14 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

#### **61-32-14.1. Repealed.**

#### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 204, § 32 repeals 61-32-14.1 NMSA 1978, as amended by Laws 1989, ch. 187, § 4, concerning associate funeral service practitioners, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

#### **61-32-15. Associate funeral service practitioner; limitations. (Effective until July 1, 2000.)**

An associate funeral service practitioner may engage in the practice of funeral service to the same extent and subject to the same limitations and grounds for disciplinary action as prescribed by the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] and the rules of the board for the license of a funeral service practitioner; provided that an associate funeral service practitioner shall not be the licensee in charge of a funeral establishment or the supervisor of a funeral service intern, except as otherwise expressly permitted by the board in a particular circumstance upon the basis of public interest or need.

**History:** 1978 Comp., § 61-32-15, enacted by Laws 1993, ch. 204, § 15.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-15 NMSA 1978, as amended by Laws 1989, ch. 187, § 5, concerning funeral service resident trainees, and § 15 enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**61-32-16. Assistant funeral service practitioner; scope of practice; limitations. (Effective until July 1, 2000.)**

An assistant funeral service practitioner may engage in the practice of funeral service to the same extent and subject to the same limitations and grounds for disciplinary action as prescribed by the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] and the rules of the board for the license of a funeral service practitioner; provided that an assistant funeral service practitioner shall not embalm, be the licensee in charge of a funeral establishment or be the supervisor of a funeral service intern.

**History:** 1978 Comp., § 61-32-16, enacted by Laws 1993, ch. 204, § 16.

**ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-16 NMSA 1978, as amended by Laws 1987, ch. 48, § 2, concerning funeral establishment permits, and § 16 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**61-32-17. Direct disposer; scope of practice; limitations. (Effective until July 1, 2000.)**

A direct disposer may only provide direct disposition of a dead human body as quickly as possible. In doing so, the direct disposer shall not provide or participate in a funeral, graveside service, committal service or memorial service, whether public or private, and the body shall not be embalmed prior to disposition unless embalming is required by the place of disposition.

**History:** 1978 Comp., § 61-32-17, enacted by Laws 1993, ch. 204, § 17.

**ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-17 NMSA 1978, as enacted by Laws 1978, ch. 185, § 17, concerning direct disposition establishment permits, and § 17 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

## **61-32-17.1. Repealed.**

### **ANNOTATIONS**

**Repeals.** - Laws 1993, ch. 204, § 32 repeals 61-32-17.1 NMSA 1978, as enacted by Laws 1983, ch. 137, § 4, concerning crematory permits, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

## **61-32-18. Commercial establishments; scope of practice; limitations. (Effective until July 1, 2000.)**

A. The scope of practice of a commercial establishment depends on the entity for whom the commercial establishment is acting as an agent and is subject to the following terms and conditions:

(1) when acting under the direction of a licensed funeral establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm;

(c) provide minimum forwarding services;

(d) provide direct disposition; and

(e) arrange for identification of a dead human body by family members only, prior to disposition or transportation;

(2) when acting under the direction of a licensed direct disposition establishment, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation;

(b) embalm only when embalming is required by the place of disposition; and

(c) provide direct disposition; and

(3) when acting under the direction of a school of medicine, the commercial establishment may:

(a) engage in transportation of dead human bodies, file a certificate of death, obtain certified copies thereof and obtain necessary permits for transportation or cremation; and

(b) embalm.

B. A licensed commercial establishment shall not engage in any activity, or for any entity, not specifically permitted in this section.

C. The licensee in charge shall certify to the board that the establishment will not exceed the scope of practice allowed by law.

**History:** 1978 Comp., § 61-32-18, enacted by Laws 1993, ch. 204, § 18.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-18 NMSA 1978, as amended by Laws 1989, ch. 187, § 6, concerning funeral establishment permits, and § 18 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-19. Cremation; requirements; right to authorize cremation. (Effective until July 1, 2000.)**

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. Any adult may authorize his own cremation and the lawful disposition of his cremated remains by:

(1) stating his desire to be cremated in a written statement that is signed by the individual and notarized or witnessed by two persons; or

(2) including an express statement in his will indicating that the testator desired that his remains be cremated upon his death.

C. A personal representative acting pursuant to the Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains. Statements dated prior to the effective date of this section shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by any person against any other person acting in accordance with that authorization.

F. If a decedent has left no written instructions regarding the disposition of his remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

(1) the surviving spouse;

(2) a majority of the surviving children of the decedent;

(3) the surviving parents of the decedent;

(4) a majority of the surviving siblings of the decedent;

(5) an adult who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of his body and who is willing and able to make a decision about the disposition of the decedent's body; or

(6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. A crematory authority shall keep an accurate record of all cremations performed, and the disposition of the cremains by the crematory, for a period of not less than five years.

H. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

I. Legal forms for cremation authorization shall provide that they will hold harmless a crematory authority or establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year.

**History:** 1978 Comp., § 61-32-19, enacted by Laws 1993, ch. 204, § 19.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Cross-references.** - As to right to authorize cremations, see 24-12A-1 and 24-12A-2 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-19 NMSA 1978, as enacted by Laws 1978, ch. 185, § 19, concerning funeral service practices, and § 19 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

**Probate Code.** - See 45-1-101 NMSA 1978 and notes thereto.

## **61-32-20. Embalming. (Effective until July 1, 2000.)**

A. All dead human bodies not disposed of within twenty-four hours after death shall be embalmed in accordance with the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] or stored under refrigeration as determined by board rule or regulation, unless otherwise required by regulation of the office of the medical investigator or the secretary of health, or by orders of an authorized official of the office of the medical investigator, a court of competent jurisdiction or other authorized official.

B. No dead human body shall be embalmed except by a funeral service practitioner, an associate funeral service practitioner or a funeral service intern under the supervision of a funeral service practitioner.

C. When embalming is not required under the provisions of this section, no dead human body shall be embalmed without express authorization by the:

- (1) surviving spouse or next of kin;
- (2) legal agent or personal representative of the deceased; or
- (3) person assuming responsibility for final disposition.

D. When embalming is not required, and prior to obtaining authorization for the embalming, a dead human body may be washed and other health procedures, including closing of the orifices, may be performed without authorization.

E. When a dead human body is embalmed, the funeral service practitioner or associate funeral service practitioner who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall complete and sign an embalming case report. The embalming case report shall be kept on file at the establishment for a period of not less than five years following the embalming.

**History:** 1978 Comp., § 61-32-20, enacted by Laws 1993, ch. 204, § 20.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-20 NMSA 1978, as enacted by Laws 1978, ch. 185, § 20, concerning direct disposition practices, and § 20 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-21. License renewal. (Effective until July 1, 2000.)**

A. All licenses expire annually and shall be renewed by submitting a completed renewal application, accompanied by the required fees, on a form provided by the board.

B. The board may require proof of continuing education or other proof of competency as a requirement for renewal.

C. A license not renewed on or before the expiration date is considered lapsed and is no longer valid. A ninety-day grace period shall be allowed each licensee after the end of the licensing period, during which time licenses may be renewed upon payment of the renewal fee and a late fee as prescribed by the board and compliance with any other renewal requirements adopted by the board.

D. Any license not renewed at the end of the grace period shall be considered expired and the license holder shall be required to apply as a new applicant.

**History:** 1978 Comp., § 61-32-21, enacted by Laws 1993, ch. 204, § 21.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-21 NMSA 1978, as enacted by Laws 1978, ch. 185, § 21, concerning embalming, and § 21 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-22. Funeral service practitioner; inactive status. (Effective until July 1, 2000.)**

A. A funeral service practitioner who has a current license may request that his license be placed on inactive status. The board shall approve each request for inactive status unless the practitioner is under investigation or disciplinary proceedings have been initiated.

B. A license placed on inactive status may be renewed within a period not to exceed five years following the date the board granted the inactive status.

C. Renewal of an inactive license requires payment of renewal and reinstatement fees as set forth by board rule or regulation and compliance with the following requirements:

(1) certification by the practitioner that he has not engaged in the practice of funeral service in this state during the inactive status;

(2) compliance with continuing education requirements established by board rule; and

(3) successful completion of an examination, which shall be administered at the discretion of the board, to certify continuing competency.

D. Disciplinary proceedings may be initiated against a licensee who has been granted inactive status.

**History:** 1978 Comp., § 61-32-22, enacted by Laws 1993, ch. 204, § 22.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-22 NMSA 1978, as amended by Laws 1983, ch. 137, § 6, concerning investigations, enforcement, and criminal penalties, and § 22 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-23. Fees. (Effective until July 1, 2000.)**

The board shall establish by regulation a schedule of reasonable fees for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees, provided that no one fee shall exceed five hundred dollars (\$500). All fees collected shall be deposited in the thanatopractice fund.

**History:** 1978 Comp., § 61-32-23, enacted by Laws 1993, ch. 204, § 23.

### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-23 NMSA 1978, as amended by Laws 1983, ch. 137, § 7, containing additional prohibitions, and § 23 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-24. Disciplinary proceedings; judicial review. (Effective until July 1, 2000.)**

A. The board, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], may refuse to issue or renew, or may suspend, revoke or impose

a fine, or place on probation, any license of a funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner, funeral service intern, direct disposer, establishment or crematory upon a finding by the board that the applicant or licensee is guilty of any of the following acts of commission or omission:

(1) conviction of an offense punishable by incarceration in a state penitentiary or federal prison, provided the board receives a copy of the record of conviction, certified to by the clerk of the court entering the conviction, which shall be conclusive evidence of the conviction;

(2) fraud or deceit in procuring or attempting to procure a license;

(3) gross negligence or incompetence;

(4) unprofessional or dishonorable conduct, which includes:

(a) misrepresentation or fraud;

(b) false or misleading advertising;

(c) solicitation of dead human bodies by the licensee, his agents, assistants or employees, whether the solicitation occurs after death or while death is impending, provided that this shall not be deemed to prohibit general advertising;

(d) solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing a dead body to be disposed of in any cemetery, mausoleum or crematory;

(e) using any funeral merchandise previously purchased, in whole or in part, except for transportation purposes, without prior written permission of the person selecting or paying for the use of the merchandise; and

(f) failing to make disposition of a dead human body in the enclosure or container that was purchased for that purpose by the arrangers;

(5) violation of any of the provisions of the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] or any rule or regulation of the board;

(6) violation of any local, state or federal ordinance, law or regulation affecting the practice of funeral service, direct disposition or cremation, including the Prearranged Funeral Plan Regulatory Law [Chapter 59A, Article 49 NMSA 1978] or any regulations ordered by the superintendent of insurance;

(7) willful or negligent practice beyond the scope of the license issued by the board;

(8) refusing to release properly a dead human body to the custody of the person or entity who has the legal right to effect the release, when the authorized cost has been paid;

(9) failure to secure a necessary permit required by law for removal from this state or cremation of a dead human body;

(10) knowingly making any false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspector, agent or attorney for the board in the performance of official duties;

(12) has had a license, certificate or registration to practice revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for actions of the licensee or applicant similar to acts described in this subsection. A certified copy of the record of the jurisdiction taking the disciplinary action is conclusive evidence of the violation;

(13) failure to supervise adequately subordinate personnel; or

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public.

B. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any funeral service practitioner, associate funeral service practitioner, assistant funeral service practitioner or funeral service intern upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) practicing funeral service without a license or aiding or abetting an unlicensed person to practice funeral service; or

(2) permitting an associate funeral service practitioner, assistant funeral service practitioner or a funeral service intern to exceed the limitations set forth in the provisions of the Thanatopractice Act or the regulations of the board.

C. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation any direct disposer or direct disposition establishment upon finding the applicant or licensee guilty of any of the following acts of commission or omission:

(1) embalming, restoring, acting as a cosmetician or in any way altering the condition of a dead human body, except for washing and dressing;

- (2) causing a body to be embalmed when embalming is not required by a place of disposition;
- (3) engaging in any rites or ceremonies in association with the body, before or after the direct disposition;
- (4) reclaiming, transporting or causing to be transported a body after written release for disposition; or
- (5) practicing direct disposition without a license or aiding or abetting an unlicensed person to practice direct disposition.

D. In addition to the offenses listed in Subsection A of this section, the board, in accordance with the provisions of the Uniform Licensing Act, may refuse to issue or renew or may suspend, revoke, impose a fine or place on probation a crematory applicant or crematory authority upon finding the applicant or crematory authority guilty of any of the following acts of commission or omission:

- (1) engaging or holding oneself out as engaging in the practice of funeral service or direct disposition, unless the applicant or crematory authority has a license to practice funeral service or direct disposition;
- (2) operating a crematory without a license or aiding and abetting a crematory to operate without a license; or
- (3) engaging in conduct or activities for which a license to engage in the practice of funeral service or direct disposition is required or aiding and abetting an unlicensed person to engage in conduct or activities for which a license to practice funeral service or direct disposition is required.

E. Unless exonerated by the board, persons who have been subjected to formal disciplinary sanctions by the board shall be responsible for the payment of costs of the disciplinary proceedings, which include costs for:

- (1) court reporters;
- (2) transcripts;
- (3) certification or notarization;
- (4) photocopies;
- (5) witness attendance and mileage fees;
- (6) postage for mailings required by law;

(7) expert witnesses; and

(8) depositions.

F. All fees, fines and costs imposed on an applicant, a licensee, establishment or crematory shall be paid in full to the board before an initial or renewal license may be issued.

**History:** 1978 Comp., § 61-32-24, enacted by Laws 1993, ch. 204, § 24.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-24 NMSA 1978, as enacted by Laws 1978, ch. 185, § 24, construing the Thanatopractice License Law, and § 24 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-25. Additional prohibitions. (Effective until July 1, 2000.)**

A. No person licensed under the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] shall advertise under any name that tends to mislead the public or that sufficiently resembles the professional or business name of another license holder or that may cause confusion or misunderstanding.

B. No person licensed under the Thanatopractice Act shall transport or cause to be transported by common carrier any dead human body out of this state when the licensee knows or had reason to believe that the dead human body carries any notifiable communicable disease or when the transportation would take place more than twenty-four hours after death, unless the body has been prepared or embalmed as provided in the Thanatopractice Act, unless approval for transportation has been given by the office of the medical investigator, the secretary of health, a court of competent jurisdiction or other authorized official or unless the body is placed in a sealed container.

C. No person licensed under the Thanatopractice Act shall remove, and no authorized person shall embalm, a dead human body when the authorized person has information indicating crime or violence of any sort in connection with the cause or manner of death, unless in accordance with instructions or regulations of the office of the medical investigator, or until permission has been obtained from the office of the medical investigator or other authorized official.

**History:** 1978 Comp., § 61-32-25, enacted by Laws 1993, ch. 204, § 25.

## **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Repeals and reenactments.** - Laws 1993, ch. 204, § 32 repeals former 61-32-25 NMSA 1978, as amended by Laws 1987, ch. 333, § 13, providing for the delayed repeal of this article, and § 25 of the act enacts the above section, effective June 18, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

### **61-32-26. Fund established. (Effective until July 1, 2000.)**

A. There is created in the state treasury the "thanatopractice fund".

B. All money received by the board under the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] shall be deposited with the state treasurer for credit to the thanatopractice fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund shall remain in the fund and shall not revert to the general fund.

C. Money in the thanatopractice fund is appropriated to the board and shall be used only for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Thanatopractice Act.

**History:** Laws 1993, ch. 204, § 26.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **61-32-27. Criminal Offender Employment Act. (Effective until July 1, 2000.)**

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted under the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978].

**History:** Laws 1993, ch. 204, § 27.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after

adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **61-32-28. Communications; confidentiality. (Effective until July 1, 2000.)**

All written and oral communications made to the board relating to potential disciplinary action shall be confidential. All data communication and information acquired by the board relating to complaints is confidential and shall not be disclosed unless formal disciplinary action is initiated under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] or absent an order of a court of competent jurisdiction.

**History:** Laws 1993, ch. 204, § 28.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **61-32-29. Construction. (Effective until July 1, 2000.)**

Nothing in the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] shall be construed to:

A. prohibit a funeral service practitioner, an associate funeral service practitioner, assistant funeral service practitioner or funeral service intern under the supervision of a funeral service practitioner from providing a direct disposition at a funeral or commercial establishment; or

B. govern or limit the authority of any personal representative, trustee or other person having a fiduciary relationship with the deceased.

**History:** Laws 1993, ch. 204, § 29.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **61-32-30. Criminal penalties. (Effective until July 1, 2000.)**

Any person who violates any provision of the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or imprisonment, or both.

**History:** Laws 1993, ch. 204, § 30.

#### **ANNOTATIONS**

**Delayed repeals.** - See 61-32-31 NMSA 1978.

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

### **61-32-31. Termination of agency life; delayed repeal. (Effective until July 1, 2000.)**

The board of thanatopractice is terminated on July 1, 1999, pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Section 12-9-18 NMSA 1978 until July 1, 2000. Effective July 1, 2000, the Thanatopractice Act [61-32-1 to 61-32-31 NMSA 1978] is repealed.

**History:** Laws 1993, ch. 204, § 31.

#### **ANNOTATIONS**

**Effective dates.** - Laws 1993, ch. 204 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1993, 90 days after adjournment of the legislature. See Volume 14 of the NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

**Severability clauses.** - Laws 1993, ch. 204, § 33 provides for the severability of the act if any part or application thereof is held invalid.

## **ARTICLE 33 UTILITY OPERATORS**

#### **ANNOTATIONS**

**Recompilations.** - This article, formerly designated Chapter 61, Article 30 NMSA 1978, was redesignated as Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

## **61-33-1. Short title.**

Chapter 61, Article 33 NMSA 1978 may be cited as the "Utility Operators Certification Act".

**History:** 1953 Comp., § 67-40-1, enacted by Laws 1973, ch. 394, § 1; recompiled as 1978 Comp., § 61-33-1; Laws 1992, ch. 44, § 1.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 6, 1992, substituted "Chapter 61, Article 33 NMSA 1978" for " This act".

## **61-33-2. Definitions.**

As used in the Utility Operators Certification Act [this article]:

A. "certified operator" means a person who is certified by the commission as being qualified to operate one of the classifications of water supply systems or wastewater facilities;

B. "certified supervisor" means a person who is certified as an operator by the commission as qualified to operate one of the classifications of water supply systems or wastewater facilities and who performs on-site coordinations, direction and inspection of the operation of a public wastewater facility or a public water supply facility;

C. "commission" means:

(1) the water quality control commission; or

(2) the department, when used in connection with any activity or function under the Utility Operators Certification Act the administration and enforcement of which the commission has delegated to the department;

D. "department" means the department of environment;

E. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including but not limited to waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

F. "domestic liquid waste treatment unit" means a watertight unit designed, constructed and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including but not limited to aerobic treatment units and septic tanks;

G. "person" means any agency, department or instrumentality of the United States and any of their officers, agents or employees, the state or any agency, institution or political subdivision thereof, any public or private corporation, individual, partnership, association or other entity, and includes any officer, or governing or managing body of any political subdivision or public or private corporation;

H. "public wastewater facility" means a system of structures, equipment and processes designed to collect and treat domestic and industrial waste and dispose of the effluent, but does not include:

(1) any domestic liquid waste treatment unit; or

(2) any industrial facility subject to an industrial pretreatment program regulated by the United States environmental protection agency under the requirements of the federal Clean Water Act of 1977; and

I. "public water supply system" means:

(1) a system for the provision to the public of piped water for human consumption or domestic purposes if the system:

(a) has at least fifteen service connections; or

(b) regularly serves an average of at least twenty-five individuals at least sixty days of the year; and

(2) includes any water supply source and any treatment, storage and distribution facilities under control of the operator of the system.

**History:** 1978 Comp., § 61-33-2, enacted by Laws 1992, ch. 44, § 2.

## **ANNOTATIONS**

**Repeals and reenactments.** - Laws 1992, ch. 44, § 2 repeals former 61-33-2 NMSA 1978, as amended by Laws 1977, ch. 253, § 67, and enacts the above section, effective March 6, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

**Federal Clean Water Act of 1977.** - The federal Clean Water Act of 1977, referred to in Subsection H(2), appears as 33 U.S.C. § 1251 et seq.

### **61-33-3. Administration; enforcement.**

A. The administration and enforcement of the Utility Operators Certification Act [this article] is vested in the commission.

B. The commission may further delegate to the department the administration and enforcement of any portion of the Utility Operators Certification Act except:

- (1) the adoption of regulations; and
- (2) the conducting of hearings on compliance orders.

**History:** 1953 Comp., § 67-40-3, enacted by Laws 1973, ch. 394, § 3; recompiled as 1978 Comp., § 61-33-3; Laws 1992, ch. 44, § 3.

## **ANNOTATIONS**

**Cross-references.** - For water quality control commission, see 74-6-3 NMSA 1978.

**The 1992 amendment,** effective March 6, 1992, designated the formerly undesignated provisions as Subsection A, deleted "water quality control" preceding "commission" in Subsection A, and added Subsection B.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 569; 61A Am. Jur. 2d Pollution Control § 129; 78 Am. Jur. 2d Waterworks and Water Companies §§ 1, 38.

39A C.J.S. Health and Environment §§ 45, 46, 131.

### **61-33-4. Powers and duties of commission.**

The commission shall:

A. adopt regulations that classify public water supply systems and public wastewater facilities into categories for each type of utility based on:

- (1) size and type of system or facility;
- (2) capacity of system or facility based on the size of the serviced area and the number and size of the users to be served;
- (3) the type and character of the water or wastewater to be treated; and
- (4) the physical conditions affecting the treatment plants, collection systems and distribution systems;

B. adopt regulations providing standards and criteria for the certification of plant operators based on their qualifications and their ability to supervise or operate public water supply systems or public wastewater facilities of the various classifications;

C. approve and accredit schools and training programs designed to educate and qualify persons for certification in one of the classifications of public water supply system operator and public wastewater facility operator;

D. prepare and administer written and practical examinations, based on nationally accepted standards, for certification of applicants as operators for one of the facility classifications established under Subsection A of this section;

E. enter into agreements, contracts or cooperative arrangements with agencies of the federal, state or local governments or other organizations or individuals under such terms and conditions as the agency deems appropriate;

F. receive and accept financial and technical assistance from the federal government and other public or private agencies;

G. appoint a seven-member board from the certified public water supply system operators and public wastewater facility operators to function with the commission to establish qualifications of operators, classify systems, adopt regulations and advise the administration of the Utility Operators Certification Act [this article]. Two board members selected by the board shall sit as commission members on matters to which that act is applicable; and

H. adopt and file under the State Rules Act [14-3-24, 14-3-25, 14-4-1 to 14-4-9 NMSA 1978] rules and regulations necessary to carry out the provisions of the Utility Operators Certification Act.

**History:** 1953 Comp., § 67-40-4, enacted by Laws 1973, ch. 394, § 4; 1979, ch. 147, § 1; recompiled as 1978 Comp., § 61-33-4; Laws 1992, ch. 44, § 4.

## ANNOTATIONS

**Cross-references.** - For the Uniform Licensing Act, see 61-1-1 to 61-1-31 NMSA 1978.

**The 1992 amendment,** effective March 6, 1992, substituted "that" for "which" and deleted "four" preceding "categories" in the introductory paragraph of Subsection A, inserted ", collection systems" in Subsection A(4), substituted "Certification" for "Certifications" in the first sentence of Subsection G, substituted "public water supply systems" for "water systems" several times throughout the section, and inserted "public" preceding "wastewater facilities" several times throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 64 Am. Jur. 2d Public Utilities § 9.

### **61-33-5. Application requirements; fees; endorsement.**

A. Each applicant for certification as a public water supply system operator or public wastewater facility operator shall:

- (1) make application on forms furnished by the commission;
- (2) submit evidence satisfactory to the commission that the applicant has reached the age of majority; and
- (3) pay in advance to the commission fees set by regulation not to exceed:

(a) for examination for certification as a public water supply system operator or a public wastewater facility operator in each classification  
 .....  
 ..... \$25.00

(b) for issuance of a certificate  
 ..... 10.00

(c) for the annual renewal of a certificate  
 ..... 10.00

(d) for issuance of a certificate by endorsement  
 ..... 25.00.

B. Fees collected pursuant to Subsection A of this section shall be deposited with the state treasurer in the "public water supply system operator and public wastewater facility operator fund", hereby created. This fund shall be used solely for the purpose of making necessary refunds. At the end of each month, the fees remaining in the fund after refunds shall be transferred to the state general fund by the state treasurer.

C. The commission may, in its discretion, endorse for certification without examination a public water supply system operator or a public wastewater facility operator who meets the qualifications set forth in Paragraph (2) of Subsection A of this section and holds a valid license or certification in any state, territory or foreign jurisdiction having standards equal to or exceeding those of New Mexico.

**History:** 1953 Comp., § 67-40-5, enacted by Laws 1973, ch. 394, § 5; recompiled as 1978 Comp., § 61-33-5; Laws 1992, ch. 44, § 5.

**ANNOTATIONS**

**Cross-references.** - For age of majority, see 12-2-2 and 28-6-1 NMSA 1978.

**The 1992 amendment**, effective March 6, 1992, redesignated former Subsection A(4) as present Subsection B while making minor stylistic changes therein, redesignated former Subsection B as present Subsection C, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

**Temporary provisions.** - Laws 1992, ch. 44, § 11, effective March 6, 1992, provides that, on March 6, 1992, any money remaining in the water system operator and wastewater facility operator fund shall be transferred to the public water supply system operator and public wastewater facility operator fund.

### **61-33-6. Certification required.**

It is unlawful to operate any public water supply system or public wastewater facility unless the public water supply system is operated by or under the supervision of a certified public water supply system supervisor or operator or the public wastewater facility is operated by or under the supervision of a certified public wastewater facility operator or supervisor.

**History:** 1953 Comp., § 67-40-6, enacted by Laws 1973, ch. 394, § 6; recompiled as 1978 Comp., § 61-33-6; Laws 1992, ch. 44, § 6.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 6, 1992, deleted "present plant operators" at the end of the section catchline, deleted the former Subsection A designation at the beginning of the section, substituted "it is" for "it shall be", substituted "public water supply system" for "water system" several times throughout the section, inserted "public" preceding "wastewater facility" several times throughout the section, deleted "for public or commercial use serving twenty-five hundred persons or more after July 1, 1976" preceding "unless", and deleted former Subsection B relating to present plant operators.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 1, 4.

53 C.J.S. Licenses § 30.

### **61-33-7. Suspension and revocation.**

The commission shall, under the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] relating to notice and hearing, suspend or revoke any certification upon the grounds that the certified operator:

A. is guilty of fraud or deceit in procuring his certification;

B. is guilty of gross incompetence in the operation or supervision of the class of public water supply system or public wastewater facility that he is certified to supervise or operate;

C. was derelict in the performance of a duty as a certified public water supply system operator or public wastewater facility operator;

D. performed in the capacity of a certified public water supply system operator or public wastewater facility operator for a higher classification than that in which he is certified; or

E. is convicted of any violation of Section 61-33-8 NMSA 1978 or any state or federal water quality statutes.

**History:** 1953 Comp., § 67-40-7, enacted by Laws 1973, ch. 394, § 7; recompiled as 1978 Comp., § 61-33-7; Laws 1992, ch. 44, § 7.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 6, 1992, added Subsection E, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses § 50 et seq.

### **61-33-8. Prohibitions; penalty.**

A. It is unlawful for any person not certified as a public water supply system operator or public wastewater facility operator to:

(1) use the title "certified operator" or words of similar import in connection with his employment;

(2) represent himself as a certified public water supply system operator or a certified public wastewater facility operator; or

(3) perform the duties of a supervisor or operator of a public water supply system or a public wastewater facility.

B. It is unlawful for any person who operates a public water supply system or public wastewater facility to employ a supervisor or operator of a public water supply system or a public wastewater facility who is not certified by the commission.

C. Any violation of the provisions of this section is a misdemeanor.

**History:** 1953 Comp., § 67-40-8, enacted by Laws 1973, ch. 394, § 8; recompiled as 1978 Comp., § 61-33-8; Laws 1992, ch. 44, § 8.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 6, 1992, substituted "person who operates a public water supply system or public wastewater facility" for "person, instrumentality of the state or instrumentality of any political subdivision of the state expending any public funds" in Subsection B, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 61A Am. Jur. 2d Pollution Control § 594.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 A.L.R.3d 1258.

### **61-33-9. Variance procedures.**

A. The commission shall establish by regulation a variance procedure for public water supply system and public wastewater facility operating authorities.

B. Any variance procedure established by the commission shall not allow an operating authority more than six months to obtain the service of a certified operator, except the commission may give a variance not to exceed eighteen months if the operator in charge is involved in a training course that will bring his level of competency to the level required within the eighteen-month period.

**History:** 1953 Comp., § 67-40-9, enacted by Laws 1973, ch. 394, § 9; recompiled as 1978 Comp., § 61-33-9; Laws 1992, ch. 44, § 9.

### **ANNOTATIONS**

**The 1992 amendment**, effective March 6, 1992, twice inserted "public" in Subsection A.

### **61-33-10. Enforcement; compliance orders.**

A. Whenever, on the basis of any information, the commission determines that any person has violated, is violating or threatens to violate any requirement of the Utility

Operators Certification Act [this article], any regulation adopted pursuant to that act or any condition of a certification issued under that act, the commission may:

(1) issue a compliance order stating with reasonable specificity the nature of the violation or threatened violation and either requiring compliance immediately or within a specified time period or assessing a civil penalty for any past or current violation, or both; or

(2) commence a civil action in district court for appropriate relief, including a temporary or permanent injunction.

B. Any penalty assessed in the compliance order shall not exceed two thousand five hundred dollars (\$2,500) per day for each violation of any provision of the Utility Operators Certification Act, any regulation adopted pursuant to the provisions of that act or any condition of a certification issued under that act.

C. In assessing any penalty authorized by this section, the commission shall take into account the seriousness of the violation, any good faith efforts to comply with the applicable requirements and other relevant factors.

D. If a violator fails to take corrective actions within the time specified in a compliance order, the commission may assess a civil penalty of not more than five thousand dollars (\$5,000) for each day of continued noncompliance with the compliance order.

E. Any compliance order issued by the commission pursuant to this section shall become final unless, no later than thirty days after the compliance order is served, any person named in the compliance order submits a written request to the commission for a public hearing. Upon receiving such a request the commission shall promptly conduct a public hearing.

F. The commission may appoint an independent hearing officer to preside over any public hearing held pursuant to this section. The hearing officer shall make and preserve a complete record of the proceedings and forward his recommendation based upon the record to the commission, which shall make the final decision.

G. In connection with any proceeding under this section the commission may:

(1) adopt rules for discovery procedures; and

(2) issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents.

H. Penalties collected pursuant to a compliance order shall be deposited in the general fund.

**History:** Laws 1992, ch. 44, § 10.

## ANNOTATIONS

**Emergency clauses.** - Laws 1992, ch. 44, § 12 makes the act effective immediately.  
Approved March 6, 1992.