

# UNANNOTATED

## CHAPTER 61 Professional and Occupational Licenses

### ARTICLE 1 Uniform Licensing

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

Chapter 61, Article 1 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; 2021 (1st S.S.), ch. 3, § 7.

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

As used in the Uniform Licensing Act:

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 the manufactured housing division of the regulation and licensing department;

(3) the crane operators licensure examining council;

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

(5) the cannabis control division of the regulation and licensing department;  
and

(6) 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. "expedited license", whether by examination, endorsement, credential or reciprocity, means a license issued to a person in this state based on licensure in

another state or territory of the United States, the District of Columbia or a foreign country, as applicable;

D. "initial license" means the first regular license received from a board for a person who has not been previously licensed;

E. "license" means a certificate, permit or other authorization to engage in a profession or occupation regulated by a board;

F. "licensing jurisdiction" means another state or territory of the United States, the District of Columbia or a foreign country, as applicable;

G. "party" means a respondent licensee, applicant or unlicensed person who is the subject of a disciplinary proceeding or the civil administrative prosecutor representing the state and the board;

H. "probation" means to allow, for a stated period of time, the conduct authorized by a license, subject to conditions or other restrictions that are reasonably related to the grounds for probation;

I. "regular license" means a license that is not issued as a temporary or provisional license;

J. "revocation" means to prohibit the conduct authorized by the license for an indefinite period of time; and

K. "suspension" means to prohibit, for a stated period of time, the conduct authorized by the license.

**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; 1978 Comp., § 61-1-2, 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; 2002, ch. 83, § 1; 2022, ch. 39, § 1 2023, ch. 190, § 1; 2024, ch. 38, § 18.

### **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 that would result in:

A. denial of permission to take an examination for licensing for which a complete 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 a complete application has been properly made as required by board rule on the basis of expedited licensure, reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for which a complete application has been properly made for any cause other than:

- (1) failure to pay any 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. probation of a license, including 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, excluding supervision required for initial licensure;

J. the censure or reprimand of the licensee or applicant, including an action that constitutes formal discipline or is subject to reporting to a state or national organization;

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

L. payment of a fine;

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; 1978 Comp., § 61-1-3; 1981, ch. 349, § 2; 1993, ch. 295, § 2; 2020, ch. 6, § 3; 2023, ch. 190, § 2.

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

A. An action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to unlicensed activity shall not be

initiated by a board later than two years after the discovery by the board of the conduct that would be the basis for the action, except as provided in this section or otherwise provided by law. Discovery by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the person was received by a board or board staff.

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 public accountancy board shall not initiate an action under the 1999 Public Accountancy Act [Chapter 61, Article 28B 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 by the board 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; 2003, ch. 334, § 1; 2023, ch. 190, § 3.

### **61-1-3.2. Unlicensed activity; disciplinary proceedings; civil penalty.**

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation against a person who, without an active license, engages in a profession or occupation regulated by the board.

**History:** Laws 2003, ch. 334, § 3; 2023, ch. 190, § 4.

### **61-1-3.3. Conversion therapy; grounds for disciplinary action.**

A. A person licensed pursuant to provisions of Chapter 61 NMSA 1978 shall not provide conversion therapy to any person under eighteen years of age. The provision of

conversion therapy in violation of the provisions of this subsection shall be grounds for disciplinary action by a board in accordance with the provisions of the Uniform Licensing Act.

B. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth; and

(3) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** Laws 2017, ch. 132, § 1.

#### **61-1-3.4. Fingerprints not required for license renewal.**

When a professional or occupational board requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the board shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required by law or rule of the board.

**History:** Laws 2019, ch. 209, § 4; 2023, ch. 190, § 5.

#### **61-1-3.5. Incomplete application; notice; expiration.**

An application for licensure is considered incomplete if it is submitted on an application form missing required information or without providing required supporting documentation. If a board or a board's designee deems an application for licensure incomplete, the board or designee shall notify the applicant within thirty days from the

date the application was received by the board or designee and include how the application is incomplete and what is needed to complete the application. An incomplete application expires one year from the date the application was first received by the board.

**History:** Laws 2022, ch. 39, § 3; 2023, ch. 190, § 6.

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

A. When investigating complaints against licensees, applicants or unlicensed persons, a board may issue civil investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section. The authority to issue a specific civil investigative subpoena under this section may be delegated by the board to staff.

B. When a board contemplates taking an 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 the applicant's 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 the applicant's rights under Section 61-1-8 NMSA 1978.

C. In a board proceeding to take an 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 an action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978 or Section 61-1-3.2 NMSA 1978, it shall serve upon the licensee, applicant or unlicensed person a written notice containing a statement:

- (1) that the board has sufficient evidence that, if not rebutted or explained, may justify the board in taking the contemplated action;
- (2) indicating the general nature of the evidence and allegations, including specific laws or rules that are alleged to have been violated;

(3) that unless the licensee, applicant or unlicensed person 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 may take the contemplated action; and

(4) calling the licensee's, applicant's or unlicensed person's attention to the rights provided in Section 61-1-8 NMSA 1978.

E. Except as provided in Section 61-1-15 NMSA 1978, if the licensee, applicant or unlicensed person 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 as a matter of right.

F. If the licensee, applicant or unlicensed person 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, applicant or unlicensed person of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and rules authorizing the board to take the contemplated action. The hearing shall be held not more than sixty nor less than fifteen days from the date the notice of hearing is deposited in the mail, certified return receipt requested, or the date of personal service.

G. All fines collected by a board shall be deposited to the credit of the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

**History:** 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1978 Comp., § 61-1-4; 1993, ch. 295, § 3; 2003, ch. 334, § 2; 2022, ch. 39, § 4; 2023, ch. 190, § 7.

### **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, applicant or unlicensed person at the last known address as shown by the records of the board. Unlicensed persons with no address on record with the board shall receive notice by personal service. 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. Service of correspondence sent by a licensee, applicant or unlicensed person through other methods, including electronic mail or physical mail, should be reasonably accepted and processed by the board.

**History:** 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5; 1978 Comp., § 61-1-5; 1981, ch. 349, § 5; 2023, ch. 190, § 8.

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

Board hearings held pursuant to provisions of the Uniform Licensing Act shall be conducted at the election of the board in the county in which the licensee, applicant or unlicensed person maintains residence or in a county in which the act 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 or application is involved or the person who performed the unlicensed act and the board may agree that the hearing is to be held in some other county or by virtual remote means.

**History:** 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6; 1978 Comp., § 61-1-6; 2023, ch. 190, § 9.

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

A. All hearings held pursuant to provisions of the Uniform Licensing Act 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 a hearing, submit to the board a report setting forth the hearing officer's findings of fact and recommendations.

B. All hearings held pursuant to provisions of the Uniform Licensing Act shall be open to the public; provided that in cases in which a constitutional right of privacy of a licensee, applicant or unlicensed person 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 licensee, applicant or unlicensed person 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 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 licensee, applicant or unlicensed person from any possible odium that may attach by reason of the proceeding, by such public exoneration as it sees fit to make, if requested by the licensee, applicant or unlicensed person 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 party who directly or through an agent intimidates, threatens, injures or takes 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; 1978 Comp., § 61-1-7; 1981, ch. 349, § 6; 1993, ch. 295, § 5; 2023, ch. 190, § 10.

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

A. A party entitled to be heard pursuant to the provisions of the Uniform Licensing Act shall have the right to be represented by counsel; to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who appear on a 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 for them 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 documents or items that the other party will or may introduce in evidence at the hearing.

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

D. A 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; 1978 Comp., § 61-1-8; 1981, ch. 349, § 7; 2023, ch. 190, § 11.

### **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, 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 party.

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 or other person who fails to provide discovery or to comply with a subpoena.

**History:** 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1978 Comp., § 61-1-9; 1981, ch. 349, § 8; 2023, ch. 190, § 12.

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

In proceedings before a board or hearing officer under the Uniform Licensing Act, 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.

### **61-1-10.1. Prohibiting certain actions by boards against licensees or license applicants.**

A board shall not take an action pursuant to the Uniform Licensing Act against a license holder or license applicant based solely on a licensee's or license applicant's:

A. provision of, authorization of, recommendation of, assistance in, referral for or other participation in a protected health care activity, as defined in the Reproductive and Gender-Affirming Health Care Protection Act [24-35-1 to 24-35-8 NMSA 1978], in accordance with the laws of New Mexico, including the medical standards of care, whether the protected health care activity is provided to a resident of this state or to a resident of another state; or

B. actual or alleged violation of another state's laws prohibiting the provision of, authorization of, recommendation of, assistance in, referral for or other participation in a protected health care activity, as defined in the Reproductive and Gender-Affirming Health Care Protection Act, if the protected health care activity provided would have been in accordance with the laws of New Mexico, including the medical standards of care.

**History:** Laws 2023, ch. 167, § 10.

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

A. In proceedings held under the Uniform Licensing Act, 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.

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

In all hearings conducted pursuant to the Uniform Licensing Act, 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 digital recording technology. The board shall observe any standards pertaining to digital recordings established for the district courts of this state.

**History:** 1953 Comp., § 67-26-12, enacted by Laws 1957, ch. 247, § 12; 1978 Comp., § 61-1-12; 1981, ch. 349, § 11; 2023, ch. 190, § 13.

### **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 final decision and order based on the hearing shall be made by a quorum of the board and signed and executed by the person designated by the board within ninety days after the hearing is closed by the board.

**History:** 1953 Comp., § 67-26-13, enacted by Laws 1957, ch. 247, § 13; 1978 Comp., § 61-1-13; 1981, ch. 349, § 12; 1993, ch. 295, § 6; 2023, ch. 190, § 14.

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

Within fifteen days after the decision is signed and executed, the board shall serve upon the parties a copy of the written decision.

**History:** 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14; 1978 Comp., § 61-1-14; 1981, ch. 349, § 13; 2023, ch. 190, § 15.

### **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 weight of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where, because of accident, sickness or other extraordinary cause, a person fails to request a hearing or fails to appear for a hearing that the person 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; 1978 Comp., § 61-1-15; 1981, ch. 349, § 14; 2023, ch. 190, § 16.

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

The final decision and order 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 the applicant's or licensee's right to judicial review and the time within which such review shall be sought.

**History:** 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1978 Comp., § 61-1-16; 1981, ch. 349, § 15; 2023, ch. 190, § 17.

### **61-1-17. Petition for review.**

A party entitled to a hearing provided for in the Uniform Licensing Act, who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 67-26-17, enacted by Laws 1957, ch. 247, § 17; 1978 Comp., § 61-1-17; 1993, ch. 295, § 7; 1998, ch. 55, § 73; 1999, ch. 265, § 76; 2023, ch. 190, § 18.

### **61-1-18. Repealed.**

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

At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved party 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 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; 1978 Comp., § 61-1-19; 1981, ch. 349, § 16; 1998, ch. 55, § 74; 2023, ch. 190, § 19.

### **61-1-20. Repealed.**

### **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 party 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 within fifteen days after the board receives the request and served upon the parties.

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; 1978 Comp., § 61-1-21; 1981, ch. 349, § 17; 2023, ch. 190, § 20.

### **61-1-22, 61-1-23. Repealed.**

### **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.

## **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.

### **61-1-25.1. Preliminary injunction and hearing; summary suspension or probation.**

A. When a board finds that evidence in its possession indicates that a licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice, the board may seek a preliminary injunction from the district court in the county in which the principal office of the licensee is located or, if the principal office is not in New Mexico, in the district court for Santa Fe county. If the injunction is granted, the board shall hold an expedited hearing for the suspension of the license or probation of the licensee. The board shall follow the hearing procedures of the Uniform Licensing Act, but times shall be shortened in accordance with the injunction or at the request of the licensee.

B. A board may summarily suspend a license issued by the board or place a licensee on probation without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided pursuant to the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

(1) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(2) has pled guilty to or been found guilty of any offense directly related to the practice of the respective license.

C. A licensee is not required to comply with a summary action until service has been made or the licensee has actual knowledge of the order, whichever occurs first. The

licensee may appeal the summary suspension as a final agency action as provided in Section 39-3-1.1 NMSA 1978.

D. When a board takes action to summarily suspend a license or place a licensee on probation pursuant to this section, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence to justify the board in issuing the summary suspension or probation;

(2) indicating the general nature of the evidence and allegations, including specific laws or rules that are alleged to have been violated;

(3) that unless the licensee within thirty 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 summary suspension or probation shall be final; and

(4) that the licensee is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date a request for hearing is received by the board from the licensee.

**History:** 1978 Comp., § 61-1-25.1, enacted by Laws 2023, ch. 190, § 21.

### **61-1-26. Repealed.**

### **61-1-27. Repealed.**

**History:** 1953 Comp., § 67-26-27, enacted by Laws 1957, ch. 247, § 27; 1981, ch. 349, § 18; 1978 Comp., § 61-1-27, repealed by Laws 2022, ch. 39, § 106.

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

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act 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.

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

Rulemaking procedures of a board shall be as provided in the State Rules Act [Chapter 14, Article 4 NMSA 1978].



**History:** 1953 Comp., § 67-26-29, enacted by Laws 1971, ch. 54, § 3; 1981, ch. 349, § 19; 2022, ch. 39, § 5.

### **61-1-30. Repealed.**

**History:** 1953 Comp., § 67-26-30, enacted by Laws 1971, ch. 54, § 4; 1981, ch. 349, § 20; 1978 Comp., § 61-1-30, repealed by Laws 2022, ch. 39, § 106.

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

A. A person who is or may be affected by a rule promulgated by a 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 rule pursuant to the State Rules Act [Chapter 14, Article 4 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 rule from which the appeal is taken. The appellant shall certify in the appellant's 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 the appellant's appeal to the court, at the expense of the appellant, including three copies that the appellant shall furnish to the board.

C. Upon appeal, the court of appeals shall set aside the rule only if it is 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; 2022, ch. 39, § 6.

#### **61-1-31.1. Expedited licensure; issuance.**

A. A board that issues an occupational or professional license shall, as soon as practicable but no later than thirty days after an out-of-state licensee files a complete application for an expedited license accompanied by any required fees:

- (1) process the completed application; and
- (2) issue a license to the qualified applicant who submits satisfactory evidence that the applicant:

(a) holds a license that is current and in good standing issued by another licensing jurisdiction;

(b) has practiced and held an active license in the profession or occupation for which expedited licensure is sought for a period required by New Mexico law; and

(c) provides fingerprints and other information necessary for a state or national criminal background check or both if required by law or rule of the board.

B. An expedited license is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board; provided that a board may allow for the initial term of an expedited license to be greater than one year by board rule or may extend an expedited license upon a showing of extenuating circumstances.

C. Before the end of the expedited license term and upon application, a board shall issue a regular license through its license renewal process. If a board requires a state or national examination for initial licensure that was not required when the out-of-state applicant was licensed in the other licensing jurisdiction, the board shall issue the expedited license and may require the license holder to pass the required examination prior to renewing the license.

D. A board by rule shall determine those states and territories of the United States and the District of Columbia from which the board will not accept an applicant for expedited licensure and determine any foreign countries from which the board will accept an applicant for expedited licensure. The list of those licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed by the board annually to determine if amendments to the rule are warranted.

**History:** Laws 2016, ch. 19, § 1; 2020, ch. 6, § 4; 2022, ch. 39, § 7; 2023, ch. 190, § 22.

### **61-1-31.2. Temporary or provisional license; evidence of insurance.**

A board may issue a temporary or other provisional license, including an expedited license, to a person licensed in another licensing jurisdiction, which may be limited as to time, practice or other condition of a regular license. If a board requires licensees to carry professional or occupational liability or other insurance, the board shall require the applicant for a temporary or provisional license to show evidence of having required insurance that will cover the person in New Mexico during the term of the temporary or provisional license. Each board shall provide information on the board's website that describes the insurance requirements for practice in New Mexico, if applicable.

**History:** Laws 2022, ch. 39, § 8; 2023, ch. 190, § 23.

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

An interested person may request in writing that a board subject to the Uniform Licensing Act adopt, amend or repeal a rule. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] 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; 2022, ch. 39, § 9.

### **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.

### **61-1-34. Expedited licensure; military service members, including spouses and dependents, and veterans; waiver of fees.**

A. A board that issues an occupational or professional license pursuant to Chapter 61 NMSA 1978 shall, as soon as practicable but no later than thirty days after a military service member or a veteran files a complete application, and provides a background check if required:

(1) process the application; and

(2) issue a license prima facie to a qualified applicant who submits satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States.

B. A license issued pursuant to this section is a provisional license but shall confer the same rights, privileges and responsibilities as a regular license. If the military service member or veteran was licensed in a licensing jurisdiction that did not require examination, a board may require the military service member or veteran to take a board-required examination prior to renewing the license.

C. A military service member or a veteran who is issued a license pursuant to this section shall not be charged an initial or renewal licensing fee for the first three years of licensure.

D. Each board that issues a license to practice a trade or profession shall, upon the conclusion of the state fiscal year, prepare a report on the number and type of licenses that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

E. As used in this section:

(1) "licensing fee" means a fee charged at the time an initial or renewal application for a professional or occupational license is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an annual inspection or examination of a licensee, a late fee or a fee charged for copies of documents, replacement licenses or other expenses related to a professional or occupational license;

(2) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(c) the child of a military service member if the child is also a dependent of that person for federal income tax purposes; and

(3) "veteran" means a person who has received an honorable discharge or separation from military service.

**History:** Laws 2013, ch. 33, § 1; 2020, ch. 6, § 5; 2021, ch. 92, § 8; 2022, ch. 39, § 10; 2023, ch. 190, § 24.

### **61-1-35. Occupational or professional licenses and certification; qualification.**

A. It is the policy of this state that a person is eligible for occupational or professional licensure or certification for which that person is qualified, regardless of the person's citizenship or immigration status.

B. No administrative rule or agency procedure shall be adopted or enforced that conflicts with the policy stated in Subsection A of this section.

C. This section serves as the affirmation of eligibility in this state pursuant to 8 U.S.C. Section 1621(d) for persons not lawfully present in the United States to be licensed or certified.

**History:** Laws 2020, ch. 53 § 1.

### **61-1-36. Criminal convictions; exclusion from licensure; disclosure requirement.**

A. A board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime, unless the person has a disqualifying criminal conviction.

B. By December 31, 2021, each board shall promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Rules relating to licensing requirements promulgated by a board shall not use the terms "moral turpitude" or "good character". A board shall only list potentially disqualifying criminal convictions.

C. In an administrative hearing or agency appeal, a board shall carry the burden of proof on the question of whether the exclusion from occupational or professional licensure is based upon a potentially disqualifying criminal conviction.

D. No later than October 31 of each year, while ensuring the confidentiality of individual applicants, a board shall make available to the public an annual report for the prior fiscal year containing the following information:

(1) the number of applicants for licensure and, of that number, the number granted a license;

(2) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who received notice of potential disqualification;

(3) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who provided a written justification with evidence of mitigation or rehabilitation; and

(4) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who were granted a license, denied a license for any reason or denied a license because of the conviction.

E. As used in this section, "disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

**History:** Laws 2021 (1st S.S.), ch. 3, § 8; 2023, ch. 190, § 25.

### **61-1-37. Residency in New Mexico not a requirement for licensure.**

A person who otherwise meets the requirements for a professional or occupational license shall not be denied licensure or license renewal because the person does not live in New Mexico.

**History:** Laws 2022, ch. 39, § 2; 2023, ch. 190, § 26.

## **ARTICLE 2 Optometry**

### **61-2-1. Short title.**

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.

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

As used in the Optometry Act:

A. "practice of optometry" means:

(1) the employment of any subjective or objective means or methods, including but not limited to the use of lenses, prisms, autorefractors or other automated testing devices, and includes the prescription or administration of drugs for the purpose of diagnosing the visual defects or abnormal conditions of the human eye and its adnexa;

(2) the employing, adapting or prescribing of preventive or corrective measures, including but not limited to lenses, prisms, contact or corneal lenses or other optical appliances, ocular exercises, vision therapy, vision training and vision rehabilitation services, and includes the prescription or administration of all drugs rational for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa; and

(3) does not include the use of surgery or injections in the treatment of eye diseases except for the use of the following types of in-office minor surgical procedures:

(a) non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

(b) removal of nonperforating foreign bodies from the cornea, conjunctiva and eyelid;

(c) non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias;

(d) removal of eyelashes; and

(e) probing, dilation, irrigation or closure of the tear drainage structures of the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

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

C. "contact lens" means a lens to be worn on the anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:

(1) ophthalmic lenses;

(2) contact lenses; or

(3) a pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978];

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; 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; 1995, ch. 20, § 2; 2003, ch. 274, § 1; 2007, ch. 277, § 1; 2015, ch. 131, § 1.

### **61-2-3. Criminal offender's character evaluation.**

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.

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

#### **61-2-4. License required.**

Unless licensed pursuant to the Optometry Act, or specifically exempted or excluded from the application of all or part of that act, a person shall not:

- A. practice optometry;
- B. represent himself or offer his services as being able to practice optometry; or
- C. duplicate or replace an ophthalmic lens.

**History:** 1953 Comp., § 67-1-3, enacted by Laws 1973, ch. 353, § 3; 2003, ch. 274, § 2.

#### **61-2-5. Board created; terms; appointment; continuance; removal.**

A. There is created a six-member "board of optometry". The board shall be administratively attached to the regulation and licensing department. The board consists 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 optometrists, 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 term 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 a member from the board for the neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for a reason that would justify the suspension or revocation of his license to practice optometry.



D. A board member shall not serve more than two consecutive terms, and a 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; 2003, ch. 408, § 1.

### **61-2-6. Optometry board organization; meetings; compensation; powers and duties.**

A. The board shall annually elect a chair, a vice chair and a secretary-treasurer; each shall serve until a successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chair and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving 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 has the authority to determine what constitutes the practice of optometry in accordance with the provisions of the Optometry Act and has jurisdiction to exercise any other powers and duties pursuant to that act. The board may issue advisory opinions and declaratory rulings pursuant to that act and rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], but shall not expand the scope of practice of optometry beyond the provisions of the Optometry Act.

E. The board shall:

- (1) administer and enforce the provisions of the Optometry Act;
- (2) promulgate in accordance with the State Rules Act, all rules 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 matters within the board's jurisdiction;

- (5) keep an accurate record of meetings, receipts and disbursements;
- (6) keep a record of examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within thirty days after an 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 the applicant is examined; providing that an 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 licensees shall be recorded, together with a record of 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 [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Optometry Act;
- (10) develop and administer qualifications for certification for the use of pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978, including minimum educational requirements and examination, as required by Section 61-2-10.2 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978; and
- (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 61-2-10.2 NMSA 1978, after proper notice and an opportunity to be heard before the board.

**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; 1995, ch. 20, § 3; 2003, ch. 408, § 2; 2015, ch. 131, § 2; 2022, ch. 39, § 11.

### **61-2-7. Disposition of funds; optometry fund created; method of payments; bonds.**

- A. There is created the "optometry fund."
- B. All funds received by the board and money collected under the Optometry Act 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.

### **61-2-8. Qualifications for licensure as an optometrist.**

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

A. has reached the age of majority; and

B. has graduated and been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board. In the event the applicant applies for licensure by endorsement, the applicant 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 that degree.

**History:** 1953 Comp., § 67-1-7, enacted by Laws 1973, ch. 353, § 7; 2021, ch. 70, § 7; 2022, ch. 39, § 12.

### **61-2-9. Licensure by examination; expedited licensure by endorsement.**

A. An applicant meeting the qualifications set forth in Section 61-2-8 NMSA 1978 for initial licensure shall file an 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. A person issued a license by examination shall be issued the license upon payment of required fees.

B. No later than thirty days after an out-of-state licensee files an application for an expedited license, the board shall process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal.

C. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-1-8, enacted by Laws 1973, ch. 353, § 8; 2022, ch. 39, § 13.

#### **61-2-9.1. License issued.**

Each applicant for a license to practice optometry as provided in Chapter 61, Article 2 NMSA 1978 who successfully passes the examination for licensure, possesses the required educational qualifications and meets other requirements of the Optometry Act or regulations adopted pursuant to that act is entitled to a license that carries with it the title "doctor of optometry".

**History:** Laws 1995, ch. 20, § 1.

#### **61-2-10. Repealed.**

**History:** 1953 Comp., § 67-1-8.1, enacted by Laws 1977, ch. 30, § 3; 1985, ch. 241, § 4; 1995, ch. 20, § 4; repealed by Laws 2015, ch. 131, § 7.

### **61-2-10.1. Repealed.**

### **61-2-10.2. Designation of pharmaceutical agents; certification for use of certain agents.**

A. Subject to the provisions of the Optometry Act, optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:

- (1) may prescribe hydrocodone and hydrocodone combination medications;
- (2) may administer epinephrine auto-injections to counter anaphylaxis; and
- (3) shall not prescribe any other controlled substance classified in Schedule I or II pursuant to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

B. The board shall issue certification for the use of pharmaceutical agents as set forth in Subsection A of this section to optometrists currently licensed by the board. To be certified, an optometrist shall submit to the board proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the administration of pharmaceutical agents for the purpose of examination of the human eye, and 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 twenty hours of instruction in clinical pharmacology, including systemic pharmacology as applied to optometry, and shall be taught by an accredited institution approved by the board.

C. Applicants for licensure shall meet the requirements for certification in the use of pharmaceutical agents as set forth in the Optometry Act and shall successfully complete the board's examination in pharmaceutical agents prior to licensure.

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:** 1978 Comp., § 61-2-10.2, enacted by Laws 1995, ch. 20, § 5; 1996, ch. 59, § 1; 2015, ch. 131, § 3.

### **61-2-10.3. Prescription for pharmaceutical agent or ophthalmic lenses; required elements; authority of a person who sells and dispenses eyeglasses.**

A. A prescription written for a pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to a pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the agent prescribed and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses shall include:

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

(2) the designation of pupillary distance; and

(3) the name of the patient, the date of the prescription, the expiration date of the prescription and the name and address of the prescriber.

C. A person who sells and dispenses eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine:

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

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

(3) the designation of type and placement of reading segments in multivision lenses;

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

(5) the designation of pupillary distance.

**History:** Laws 2003, ch. 274, § 8; 2015, ch. 131, § 4.

#### **61-2-10.4. Contact lens prescription; required elements; restrictions.**

A. A contact lens prescription shall:

(1) explicitly state that it is for contact lenses;

(2) specify the lens type;

(3) include all specifications for the ordering and fabrication of the lenses;

(4) include the date of issue, the name and address of the patient and the name and address of the prescriber; and

(5) indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

B. A contact lens shall be fitted to a patient at the prescriber's place of practice.

C. A prescriber may extend a patient's prescription without completing another eye examination of the patient.

D. A prescriber shall not write a contact lens prescription until he has determined all the requirements of a satisfactory fit.

E. A contact lens prescription may include a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented patient records.

F. The words "OK for contact or corneal lenses", "fit with contact or corneal lenses", "contact or corneal lenses may be worn" or similar wording do not constitute a contact lens prescription.

G. If, in the professional opinion of the prescriber, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the prescriber may terminate his care of that patient. The prescriber shall notify the patient in writing that the prescriber is terminating care and shall state his reasons for doing so.

**History:** Laws 2003, ch. 274, § 9.

### **61-2-10.5. Replacement contact lens prescriptions.**

A. As used in this section:

(1) "immediate follow-up care" is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient; and

(2) "replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

B. A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

- (a) lens manufacturer;
  - (b) type of lens;
  - (c) power of the lens;
  - (d) base curve;
  - (e) lens size;
  - (f) name of the patient;
  - (g) date the prescription was given to the patient;
  - (h) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and
  - (i) expiration date of the replacement contact lens prescription; and
- (2) is reduced to writing and placed in the patient's permanent file.

C. After a licensed optometrist releases the patient from immediate follow-up care, the patient may request a replacement contact lens prescription from the licensed optometrist. The request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five years. If, after examination, the patient's prescription has not changed since the last examination and there are no ocular concerns, a licensed optometrist shall, upon request of the patient, provide the patient's replacement contact lens prescription to the patient without cost to the patient and without requiring the patient to purchase contact lenses.

D. In responding to a patient's request pursuant to Subsection C of this section, a licensed optometrist shall transmit the replacement contact lens prescription by mail, telephone, facsimile, e-mail or any other means of communication that will, under normal circumstances, result in the patient receiving the information within a reasonable time.

E. The replacement contact lens prescription that a licensed optometrist provides a patient:

(1) shall contain the information necessary for the proper duplication of the current prescription of the patient;



(2) shall contain, subject to the provisions of Subsection F of this section, an expiration date for the replacement contact lens prescription of not more than twenty-four months from the time the patient was first examined; and

(3) may contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

F. The licensed optometrist shall enter into the patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

G. When a patient's prescription is dispensed by a person other than a licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

H. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

I. A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with rules promulgated by the board.

J. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

K. The board may impose a civil fine of no more than one thousand dollars (\$1,000) on a licensed optometrist who fails to provide a replacement contact lens prescription, knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription or who otherwise fails to comply with the provisions of this section.

L. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription in accordance with Subsection M of this section.

M. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

N. A verification shall not be provided pursuant to Paragraph (3) of Subsection M of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days of receipt;

(3) if not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days after 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescriber shall promptly contact the patient to determine if a designation is in effect. Under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any prescription; and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday but does not include a holiday.

O. A person who knowingly violates the provisions of Subsection L of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

P. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement. The board of pharmacy shall maintain a current list of all registered sellers and dispensers of contact lenses. A person who is

not registered pursuant to this subsection and knowingly sells or dispenses a contact lens to a resident of this state is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

**History:** Laws 2003, ch. 274, § 10.

### **61-2-11. License fees; licensure under prior law.**

A. The board shall set fees for the following by rule:

- (1) application fee in an amount not to exceed five hundred dollars (\$500);
- (2) examination fee in an amount not to exceed five hundred dollars (\$500);
- (3) except as provided in Section 61-1-34 NMSA 1978, licensure fee in an amount not to exceed four hundred dollars (\$400); and
- (4) issuance fee for pharmaceutical certification in an amount not to exceed one hundred dollars (\$100).

B. A person licensed as an optometrist under any prior laws of this state, whose license is valid on April 3, 1973, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of the person's license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, a licensee shall furnish the board evidence that the licensee holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, the continuing education requirements as set by the rules of the board.

**History:** 1953 Comp., § 67-1-9, enacted by Laws 1973, ch. 353, § 9; 1981, ch. 50, § 1; 1995, ch. 20, § 6; 1996, ch. 59, § 2; 2003, ch. 274, § 3; 2020, ch. 6, § 6.

### **61-2-12. License; display; renewal; retirement; resumption of practice.**

A. A person to whom a license as an optometrist has been issued shall display the license in a conspicuous place in the licensee's principal office or place of business.

B. A license shall be renewed annually on or before July 1. Except as provided in Section 61-1-34 NMSA 1978, the licensee shall pay to the secretary-treasurer of the board the required fees. The board shall promulgate rules establishing additional requirements and procedures for renewal of a license. It shall also promulgate rules establishing a fee schedule for renewal of a license, but a specific fee shall not exceed five hundred dollars (\$500).

C. Failure to renew a license pursuant to this section terminates the optometrist's authority to practice optometry, and the former licensee shall fulfill all current requirements for licensing and therapeutic drug certification if application for licensing or certification is made after termination.

D. An optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of the optometrist's license, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If within a period of five years from the year of retirement the optometrist desires to resume practice, the optometrist shall notify the board in writing, and, upon giving proof of completing refresher courses prescribed by rules of the board and the payment of any required fees, the license shall be restored to the optometrist in full effect.

E. Before engaging in the practice of optometry, a licensed optometrist shall notify the secretary-treasurer of the board in writing of the address at which the optometrist intends to begin practice and subsequently of changes in the optometrist's business address or location. 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; 1995, ch. 20, § 7; 2003, ch. 274, § 4; 2020, ch. 6, § 7.

### **61-2-13. Refusal, suspension or revocation of license.**

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; or

J. committing any act defined as "unprofessional conduct" by regulation of the board filed in accordance with the State Rules Act [Chapter 14, Article 4 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.

## **61-2-14. Offenses.**

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

(1) practicing or attempting to practice optometry without a valid current license issued by the board;

(2) using or attempting to use a pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or

(3) permitting a person in one's employ, supervision or control to practice optometry or use pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

B. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

(1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;

(2) 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;

(3) refusing, after a request, to provide a patient a copy of the patient's eyeglasses prescription, if the prescription is not over one year old;

(4) duplicating or replacing an ophthalmic 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;

(5) except for licensed optometrists, 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, but it is not the intent of this paragraph to prevent a school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the 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;

(6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part of them, but this paragraph 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

(7) 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; 1995, ch. 20, § 8; 1996, ch. 59, § 3; 2003, ch. 274, § 5; 2015, ch. 131, § 5.

**61-2-14.1. Contact lenses; spectacles; limitations on prescriptions; criminal penalty; civil remedy; exceptions.**

A. Unless the person is licensed pursuant to the Optometry Act or the Medical Practice Act [Chapter 41, Article 5 NMSA 1978], a person shall not:

(1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or

(2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. The board of optometry, the New Mexico medical board or any other person potentially aggrieved by a violation of this section may bring a suit in a court of competent jurisdiction to enjoin a violation of a provision of this section.

E. Nothing in this section shall be construed to prohibit:

(1) a health care provider from using telehealth in accordance with the provisions of the New Mexico Telehealth Act [Chapter 24, Article 25 NMSA 1978] for ocular diseases;

(2) a vision screening performed in a school by a nurse, physician assistant, osteopathic physician assistant or another provider otherwise authorized pursuant to state law;

(3) an optician from completing a prescription for spectacles or contact lenses in accordance with the provisions of the Optometry Act;

(4) a technician from providing an eye care screening program at a health fair, not-for-profit event, not-for-profit public vision van service, public health event or other similar event;

(5) a physician assistant licensed pursuant to the Medical Practice Act, or an osteopathic physician assistant licensed pursuant to the Medical Practice Act, working under the supervision of an ophthalmologist licensed pursuant to the Medical Practice

Act, from performing an eye examination on an individual physically located in the state at the time of the eye examination; or

(6) a vision screening performed by another provider otherwise authorized pursuant to state law.

F. As used in this section:

(1) "autorefractor" means any electronic computer or automated testing device used remotely, in person or through any other communication interface to provide an objective or subjective measurement of an individual's refractive error;

(2) "contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic or corrective lens;

(3) "eye examination" means an in-person assessment at a physician's office or an optometrist's office, in a hospital setting or in a hospital health system setting that:

(a) is performed in accordance with the applicable standard of care;

(b) consists of an assessment of the ocular health and visual status of an individual;

(c) does not consist of solely objective or subjective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or for the determination of refractive error; and

(d) is performed on an individual who is physically located in this state at the time of the assessment;

(4) "kiosk" means any automatic or electronic equipment, application or computer software designed to be used on a telephone, teleconference device, computer, virtual reality device or internet-based device that can be used remotely, in person or through any other communication interface to conduct an eye examination or determine refractive error;

(5) "prescription" means an optometrist's or ophthalmologist's handwritten or electronic order for spectacle lenses or contact lenses based on an eye examination that corrects refractive error; and

(6) "spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as "glasses" or



"eyeglasses", including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. "Spectacles" does not mean:

(a) an optical instrument or device that is not intended to correct or enhance vision or that does not require consideration of the visual status of the individual who will use the optical instrument or device; or

(b) eyewear that is sold without a prescription.

**History:** Laws 2019, ch. 15, § 1; 2021, ch. 54, § 15.

### **61-2-15. Exemptions.**

A. Except for the provisions of Section 61-2-16 NMSA 1978 and as provided in this subsection, the Optometry Act does not apply to a licensed physician or a person, clinic or program under his responsible supervision and control, provided that the person, clinic or program under the responsible supervision and control of the licensed physician shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses.

B. Except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, the Optometry Act does not apply to a person selling eyeglasses who does not represent himself as being qualified to detect or correct ocular anomalies and who does 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; 2003, ch. 274, § 6.

### **61-2-16. Freedom of choice.**

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.

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; 2003, ch. 274, § 7.

## **61-2-17. Power to enjoin violations.**

Upon conviction of any person for violation of any provision of the Optometry Act, 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.

## **61-2-18. 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; 1997, ch. 46, § 2; 2003, ch. 428, § 1; 2009, ch. 96, § 2; 2015, ch. 119, § 2; repealed by Laws 2023, ch. 15, § 8.

# **ARTICLE 3**

## **Nursing**

### **61-3-1. Short title.**

Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act".

**History:** 1953 Comp., § 67-2-1, enacted by Laws 1968, ch. 44, § 1; 2003, ch. 276, § 1; 2003, ch. 282, § 1; 2003, ch. 307, § 4.

### **61-3-2. Purpose.**

The purpose of the Nursing Practice Act is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians and medication aides in the state.

**History:** 1953 Comp., § 67-2-2, enacted by Laws 1968, ch. 44, § 2; 1991, ch. 190, § 1; 2001, ch. 137, § 1.

### **61-3-3. Definitions.**

As used in the Nursing Practice Act:

A. "advanced practice" means the practice of professional registered nursing by a registered nurse who has been prepared through additional formal education as provided in Sections 61-3-23.2 through 61-3-23.4 NMSA 1978 to function beyond the scope of practice of professional registered nursing, including certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

B. "board" means the board of nursing;

C. "certified hemodialysis technician" means a person who is certified by the board to assist in the direct care of a patient undergoing hemodialysis, under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

D. "certified medication aide" means a person who is certified by the board to administer medications under the supervision and at the direction of a registered nurse or a licensed practical nurse, according to the rules adopted by the board;

E. "certified nurse practitioner" means a registered nurse who is licensed by the board for advanced 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;

F. "certified registered nurse anesthetist" means a registered nurse who is licensed by the board for advanced 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;

G. "clinical nurse specialist" means a registered nurse who is licensed by the board for advanced 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;

H. "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;

I. "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 or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978];

J. "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;

K. "Nurse Licensure Compact" means the agreement entered into between New Mexico and other jurisdictions permitting the practice of professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege;

L. "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;

M. "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 and supervising nursing interventions that may be performed safely by others and are not in conflict with the Nursing Practice Act; and

(9) maintaining accountability for safe and effective nursing care;

N. "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 advanced 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;

O. "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 or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

P. "scope of practice" means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise; and

Q. "training program" means an educational program approved by the board.

**History:** 1978 Comp., § 61-3-3, enacted by Laws 1991, ch. 190, § 2; 1993, ch. 61, § 1; 1997, ch. 244, § 3; 2001, ch. 137, § 2; 2003, ch. 307, § 5; 2005, ch. 307, § 1.

#### **61-3-4. Criminal offender's character evaluation.**

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.

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

### **61-3-5. License required.**

A. Except as otherwise provided in the Nursing Practice Act, no person shall use the title "nurse" unless the person is licensed or has been licensed in the past as a registered nurse or licensed practical nurse under the Nursing Practice Act.

B. Except as otherwise provided in the Nursing Practice Act, unless licensed as a registered nurse under the Nursing Practice Act, 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 or imply that the person is a registered nurse; or

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

C. Except as otherwise provided in the Nursing Practice Act, 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 or imply that the person is a licensed practical nurse.

D. Unless licensed 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.

E. Unless licensed 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.

F. Unless licensed 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.

G. No licensed nurse shall be prohibited from identifying himself or his licensure status.

**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; 1997, ch. 244, § 4; 2001, ch. 137, § 3; 2003, ch. 307, § 6.

### **61-3-5.1. Temporary licensure.**

An applicant for nurse licensure pursuant to the Nursing Practice Act may be issued a temporary license for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met the licensure requirements set out in that act, whichever is less.

**History:** Laws 2001, ch. 137, § 14.

### **61-3-6. Administration of anesthetics.**

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

**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; 1997, ch. 244, § 5; 2005, ch. 307, § 2.

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

### **61-3-8. Board created; members; qualifications; terms; vacancies; removal.**

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.

### **61-3-9. Board meetings; quorum; officers.**



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.

### **61-3-10. Powers; duties.**

The board:

A. shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] as necessary to enable it to carry into effect the provisions of the Nursing Practice Act 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, if a majority of the board concurs in the 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 nurse not licensed to practice in New Mexico who is permitted to practice professional registered nursing or licensed practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978];

G. conduct hearings upon charges related to an applicant or 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];

H. shall cause the prosecution of persons violating the Nursing Practice Act and have the power to incur such expense as is necessary for the prosecution;

I. shall keep a record of all proceedings;

J. shall make an annual report to the governor;

K. 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 the board 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 a license authorized by the Nursing Practice Act shall not be delegated by the board;

L. 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;

M. shall, for the purpose of protecting the health and well-being of residents of New Mexico and promoting current nursing knowledge and practice, promulgate rules establishing continuing education requirements as a condition of license renewal and shall study methods of monitoring continuing competence;

N. may appoint advisory committees consisting of at least one member who is a board member and at least two members who are expert in the pertinent field of health care 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];

O. may promulgate rules designed to maintain an inactive status listing for registered nurses and licensed practical nurses;

P. may promulgate rules to regulate the advanced practice of professional registered nursing and expanded practice of licensed practical nursing;

Q. shall license qualified certified nurse practitioners, certified registered nurse anesthetists and clinical nurse specialists;

R. shall register nurses not licensed to practice in New Mexico who are permitted to practice professional registered nursing or licensed practical nursing in New Mexico pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact;

S. shall promulgate rules establishing standards for authorizing prescriptive authority to certified nurse practitioners, clinical nurse specialists and certified registered nurse anesthetists; and

T. shall determine by rule the states and territories of the United States or the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of unapproved and approved

licensing jurisdictions on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-2-7, enacted by Laws 1968, ch. 44, § 7; 1977, ch. 220, § 4; 1991, ch. 190, § 6; 1997, ch. 244, § 6; 2003, ch. 276, § 4; 2003, ch. 307, § 7; 2022, ch. 39, § 14.

### **61-3-10.1. Hemodialysis technicians; training programs; certification.**

A. A statewide program for certification of hemodialysis technicians is created according to the rules adopted by the board.

B. Unless certified as a certified hemodialysis technician pursuant to the Nursing Practice Act, no person shall:

- (1) practice as a certified hemodialysis technician; or
- (2) 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 certified hemodialysis technician.

C. The board shall:

- (1) maintain a permanent register of all certified hemodialysis technicians;
- (2) adopt rules for certified hemodialysis technician training programs, including standards and curricula;
- (3) provide for periodic evaluation of training programs at least every two years;
- (4) grant, deny or withdraw approval from a training program that fails to meet prescribed standards or fails to maintain a current contract with the board; and
- (5) conduct disciplinary hearings of certified hemodialysis technicians or on the denial, suspension or revocation of certified hemodialysis technician certificates in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. Except as provided in Section 61-1-34 NMSA 1978, every applicant for certification as a certified hemodialysis technician shall pay the required application fee, submit written evidence of having completed a board-approved training program for hemodialysis technicians and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified hemodialysis technician shall be renewed every two years. The certified hemodialysis technician seeking renewal shall submit proof of employment as a certified hemodialysis technician and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

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

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

(4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200).

**History:** 1978 Comp., § 61-3-10.1, enacted by Laws 1993, ch. 61, § 2; 1997, ch. 244, § 7; 2001, ch. 137, § 4; 2003, ch. 276, § 5; 2005, ch. 307, § 3; 2021, ch. 92, § 9.

## **61-3-10.2. Medication aides.**

A. A statewide program for certification of medication aides and approval of medication aide training programs is created under the board.

B. Unless certified as a certified medication aide under the Nursing Practice Act, no person shall:

(1) practice as a certified 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.

C. The board shall:

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

(2) adopt rules for certified medication aide education and certification, including standards and curricula;

(3) adopt rules governing the supervision of certified medication aides by licensed nurses, including standards and performance evaluations of certified medication aides;

(4) conduct disciplinary hearings of certified medication aides or on the denial, suspension or revocation of certified medication aide certificates in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]; and

(5) grant approval to a certified medication aide training program that meets all the requirements set by the board and deny or withdraw approval from medication aide training programs that fail to meet prescribed standards or fail to maintain a current contract.

D. Except as provided in Section 61-1-34 NMSA 1978, every applicant for certification as a certified medication aide shall pay the required application fee, submit written evidence of having completed a board-approved training program for certified medication aides and successfully complete a board-approved examination. The board shall issue a certificate to any person who fulfills the requirements for certification.

E. Every certificate issued by the board to practice as a certified medication aide shall be renewed every two years. The certified medication aide seeking renewal shall submit proof of employment as a certified medication aide and proof of having met continuing education requirements adopted by the board.

F. The board shall set the following nonrefundable fees:

(1) for initial certification by initial or subsequent examination, a fee not to exceed sixty dollars (\$60.00);

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

(3) for reactivation of a lapsed certificate after failure to renew a certificate or following board action, a fee not to exceed sixty dollars (\$60.00);

(4) for initial review and approval of a training program, a fee not to exceed three hundred dollars (\$300);

(5) for subsequent review and approval of a training program that has changed, a fee not to exceed two hundred dollars (\$200);

(6) for subsequent review and approval of a training program when a change has been required by a change in board policy or rules, a fee not to exceed fifty dollars (\$50.00); and

(7) for periodic evaluation of a training program, a fee not to exceed two hundred dollars (\$200).

**History:** 1978 Comp., § 61-3-10.2, enacted by Laws 1991, ch. 209, § 1; 1993, ch. 138, § 1; 1995, ch. 118, § 1; 1997, ch. 244, § 8; 2001, ch. 137, § 5; 2003, ch. 276, § 6; 2005, ch. 303, § 1; 2005, ch. 307, § 4; 2021, ch. 92, § 10.

### **61-3-10.3. Repealed.**

**History:** 1978 Comp., § 61-3-10.3, enacted by Laws 1995, ch. 117, § 1; 1997, ch. 244, § 9; repealed Laws 2005, ch. 303, § 3 and Laws 2005, ch. 307 § 10.

### **61-3-10.4. Repealed.**

**History:** Laws 2003, ch. 282, § 2; repealed Laws 2005, ch. 303, § 3 and Laws 2005, ch. 307 § 10.

### **61-3-10.5. Nursing excellence program; license renewal surcharge.**

A. The board may establish a "nursing excellence program" that provides strategies to:

(1) enhance recruitment and retention of professional nurses, increase career and educational opportunities and improve interaction with health facilities administrations, the medical profession and institutions of higher education; and

(2) fund loan repayment assistance pursuant to Section 2 of this 2017 act [21-22D-11 NMSA 1978].

B. The board may impose a license renewal surcharge for each nursing license renewed in an amount not to exceed twenty dollars (\$20.00) to implement and maintain the nursing excellence program. The surcharge shall be used as follows:

(1) fifty percent of each license renewal surcharge shall be deposited in the nursing excellence fund to be used by the board to carry out the provisions of Paragraph (1) of Subsection A of this section; and

(2) fifty percent of each license renewal surcharge shall be appropriated to the higher education department in accordance with the provisions of Section 2 of this 2017 act to fund loan repayment assistance for nurses in advanced practice who practice in areas of New Mexico that the higher education department has designated as underserved.

C. The board shall transfer the portion of the license renewal surcharge to be appropriated to the higher education department in accordance with the provisions of Paragraph (2) of Subsection B of this section by July 1, 2018 and by each July 1 thereafter.

**History:** Laws 2003, ch. 276, § 2; 2017, ch. 91, § 3.

### **61-3-10.6. Nursing excellence fund created.**

The "nursing excellence fund" is created in the state treasury to support the nursing excellence program. The fund consists of license renewal surcharges, appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the board and money in the fund is appropriated to the board to carry out the purposes of the nursing excellence program. Disbursements from the fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the chairman of the board or his authorized representative.

**History:** Laws 2003, ch. 276, § 3.

### **61-3-11. Bonds; expenses.**

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.

### **61-3-12. Examination; notice to applicants.**

The board shall provide for the examination of all applicants seeking licensure under the provisions of the Nursing Practice Act.

**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.

### **61-3-13. Qualifications for licensure as a registered nurse.**

Before being considered for licensure as a registered nurse, either by endorsement or examination, under Section 61-3-14 NMSA 1978, an applicant shall:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check.

**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; 1997, ch. 244, § 10; 2001, ch. 137, § 6.

### **61-3-14. Licensure of registered nurses; by examination; expedited licensure.**

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 shall issue an expedited license to practice professional registered nursing without an examination to an applicant who has been duly licensed in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of a license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

**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; 2014, ch. 3, § 1; 2022, ch. 39, § 15.

### **61-3-15. Repealed.**

### **61-3-16. Fees for licensure as a registered nurse.**

Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a registered nurse shall pay the following nonrefundable fees:



A. for licensure without examination, a fee 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, a fee not to exceed one hundred fifty dollars (\$150);

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

D. for initial licensure as a certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, a fee not to exceed one hundred dollars (\$100). 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; 1997, ch. 244, § 11; 2005, ch. 307, § 5; 2020, ch. 6, § 8.

### **61-3-17. Registration under previous law.**

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 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.

### **61-3-18. Qualifications for licensure as a licensed practical nurse.**

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:

A. furnish evidence satisfactory to the board that the applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse or registered nurse and has graduated or is eligible for graduation; and

B. at the cost to the applicant, provide the board with fingerprints and other information necessary for a state and national criminal background check.

**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; 1997, ch. 244, § 12; 2001, ch. 137, § 7; 2003, ch. 276, § 7.

### **61-3-19. Licensure of licensed practical nurses; by examination; by expedited licensure.**

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

B. The board shall issue an expedited license as a licensed practical nurse without an examination to an applicant who has been duly licensed in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of a license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

**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; 1997, ch. 244, § 13; 2014, ch. 3, § 2; 2022, ch. 39, § 16.

### **61-3-20. Repealed.**

### **61-3-21. Registration under previous law.**

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 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.

### **61-3-22. Fees for licensure as a licensed practical nurse.**

Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a licensed practical nurse shall pay the following nonrefundable fees:

A. for licensure without examination, a fee 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, a fee not to exceed one hundred fifty dollars (\$150); and

C. for licensure by examination when the examination is other than the first examination, a fee not to exceed sixty dollars (\$60.00) for each examination.

**History:** 1953 Comp., § 67-2-19, enacted by Laws 1968, ch. 44, § 19; 1977, ch. 220, § 13; 1991, ch. 190, § 12; 2005, ch. 307, § 6; 2020, ch. 6, § 9.

### **61-3-23. Permit to practice for graduate nurses.**

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 national licensing examination after graduation within the time frame set by rules of the board.

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; 2003, ch. 276, § 8.

#### **61-3-23.1. Permit to practice for graduate nursing specialties.**

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.

#### **61-3-23.2. Certified nurse practitioner; qualifications; practice; examination; endorsement; expedited licensure.**

A. The board may license for advanced 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 program for the education and preparation of nurse practitioners; provided that, if the applicant is initially licensed by the board or a board in another jurisdiction after January 1, 2001, the program shall be at the master's level or higher;

(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 advanced practice that is beyond the scope of practice of professional registered nursing;

(2) practice independently and make decisions regarding health care needs of the individual, family or community and carry out health regimens, including the prescription and distribution of dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; and

(3) serve as a primary acute, chronic long-term and end-of-life health care provider and as necessary collaborate with licensed medical doctors, osteopathic physicians or podiatrists.

C. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may prescribe in accordance with rules, guidelines and formularies for individual certified nurse practitioners promulgated by the board.

D. Certified nurse practitioners who have fulfilled requirements for prescriptive authority may distribute to their patients dangerous drugs and 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 [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

E. Certified nurse practitioners licensed by the board on and after December 2, 1985 shall successfully complete a national certifying examination and shall maintain national professional certification in their specialty area. Certified nurse practitioners licensed by a board prior to December 2, 1985 are not required to sit for a national certification examination or be certified by a national organization.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified nurse practitioner in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying

for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

**History:** 1978 Comp., § 61-3-23.2, enacted by Laws 1991, ch. 190, § 14; 1993, ch. 61, § 5; 1997, ch. 244, § 14; 2001, ch. 137, § 8; 2014, ch. 3, § 3; 2022, ch. 39, § 17.

### **61-3-23.3. Certified registered nurse anesthetist; qualifications; licensure; practice; endorsement; expedited licensure.**

A. The board may license for advanced 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) has successfully completed a nurse anesthesia education program accredited by the council on accreditation of nurse anesthesia educational programs; provided that, if the applicant is initially licensed by the board or a board in another licensing jurisdiction after January 1, 2001, the program shall be at a master's level or higher; and

(3) is certified by the national board of certification and recertification for nurse anesthetists.

B. A certified registered nurse anesthetist may provide preoperative, intraoperative and postoperative anesthesia care and related services, including ordering of diagnostic tests, in accordance with the current American association of nurse anesthetists' guidelines for nurse anesthesia practice.

C. Certified registered nurse anesthetists shall function in an interdependent role as a member of a health care team in which the medical care of the patient is directed by a licensed physician, osteopathic physician, dentist or podiatrist licensed in New Mexico pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978], the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] or the Podiatry Act [Chapter 61, Article 8 NMSA 1978]. The certified registered nurse anesthetist shall collaborate with the licensed physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient. As used in this subsection, "collaboration" means the process in which each health care provider contributes the health care provider's respective expertise. Collaboration includes systematic formal planning and evaluation between the health care professionals involved in the collaborative practice arrangement.

D. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice is authorized to prescribe and administer therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article

31 NMSA 1978] within the emergency procedures, perioperative care or perinatal care environments. Dangerous drugs and controlled substances, pursuant to 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 [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] may be prescribed and administered.

E. A certified registered nurse anesthetist who has fulfilled the requirements for prescriptive authority in the area of anesthesia practice may prescribe in accordance with rules of the board. The board shall adopt rules concerning a prescriptive authority formulary for certified registered nurse anesthetists that shall be based on the scope of practice of certified registered nurse anesthetists. The board, in collaboration with the New Mexico medical board, shall develop the formulary. Certified registered nurse anesthetists who prescribe shall do so in accordance with the prescriptive authority formulary.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a certified registered nurse anesthetist in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

G. A health care facility may adopt policies relating to the providing of anesthesia care.

H. A certified registered nurse anesthetist licensed by the board shall maintain this certification with the national board of certification and recertification for nurse anesthetists.

**History:** 1978 Comp., § 61-3-23.3, enacted by Laws 1991, ch. 190, § 15; 1997, ch. 244, § 15; 2001, ch. 137, § 9; 2014, ch. 3, § 4; 2022, ch. 39, § 18.

#### **61-3-23.4. Clinical nurse specialist; qualifications; endorsement; expedited licensure.**

A. The board may license for advanced practice as a clinical nurse specialist an applicant who furnishes evidence satisfactory to the board that the applicant:

- (1) is a registered nurse;

(2) has a master's degree or doctoral degree in a defined clinical nursing specialty;

(3) has successfully completed a national certifying examination in the applicant's area of specialty; and

(4) is certified by a national nursing organization.

B. Clinical nurse specialists may:

(1) perform an advanced practice that is beyond the scope of practice of professional registered nursing;

(2) make independent decisions in a specialized area of nursing practice using expert knowledge regarding the health care needs of the individual, family and community, collaborating as necessary with other members of the health care team when the health care need is beyond the scope of practice of the clinical nurse specialist; and

(3) carry out therapeutic regimens in the area of specialty practice, including the prescription and distribution of dangerous drugs.

C. A clinical nurse specialist who has fulfilled the requirements for prescriptive authority in the area of specialty practice is authorized to prescribe, administer and distribute therapeutic measures, including dangerous drugs and controlled substances included in Schedules II through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] within the scope of specialty practice, including controlled substances pursuant to 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 [Chapter 61, Article 11 NMSA 1978] and the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

D. Clinical nurse specialists who have fulfilled the requirements for prescriptive authority in the area of specialty practice may prescribe in accordance with rules, guidelines and formularies based on scope of practice and clinical setting for individual clinical nurse specialists promulgated by the board.

E. Clinical nurse specialists licensed by the board shall maintain certification in their specialty area.

F. The board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a clinical nurse specialist in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction. The board shall expedite the issuance of the license in accordance with Section 61-1-31.1 NMSA 1978 within thirty days. If the board issues an expedited

license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal. An applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English.

**History:** 1978 Comp., § 61-3-23.4, enacted by Laws 1991, ch. 190, § 16; 1997, ch. 244, § 16; 2014, ch. 3, § 5; 2022, ch. 39, § 19.

### **61-3-23.5. Supervision of psychologist in the prescribing of psychotropic medication by nurse practitioner or clinical nurse specialist.**

A. Subject to rules promulgated by the board, a nurse practitioner or clinical nurse specialist may supervise a psychologist in the prescribing of psychotropic medication pursuant to the Professional Psychologist Act [Chapter 61, Article 9 NMSA 1978].

B. No later than January 1, 2020, the board shall promulgate regulations for a nurse practitioner or clinical nurse specialist who supervises a psychologist in the prescribing of psychotropic medication pursuant to the Professional Psychologist Act.

**History:** Laws 2019, ch. 19, § 7.

### **61-3-23.6. Recompiled.**

**History:** Laws 2019, ch. 129, § 1; recompiled by compiler as § 24-1-41 NMSA 1978.

### **61-3-24. Renewal of licenses.**

A. Any person licensed pursuant to the provisions of the Nursing Practice Act who intends to continue practice shall renew the license every two years by the end of the applicant's renewal month and shall show proof of continuing education as required by the board except when on active military duty during a military action.

B. Upon receipt of the application and, except as provided in Section 61-1-34 NMSA 1978, a fee, in an amount not to exceed one hundred ten dollars (\$110), a license valid for two years shall be issued.

C. Upon receipt of the application and any required fee, the board shall verify the licensee's eligibility for continued licensure and issue to the applicant a renewal license for two years.

D. A person who allows a license to lapse shall be reinstated by the board on payment of any required fee for the current two years plus a reinstatement fee not to exceed two hundred dollars (\$200), provided that all other requirements are 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; 1997, ch. 244, § 17; 2001, ch. 137, § 10; 2003, ch. 276, § 9; 2005, ch. 307, § 7; 2020, ch. 6, § 10.

## **61-3-24.1. Nurse licensure compact entered into.**

The Nurse Licensure Compact is entered into law and entered into with all other jurisdictions legally joining therein in a form substantially as follows:

### "Nurse Licensure Compact

#### ARTICLE 1 – Findings and Declaration of Purpose

##### A. The party states find that:

(1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and

(6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

##### B. The general purposes of this compact are to:

(1) facilitate the states' responsibility to protect the public's health and safety;

(2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

(4) promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;

(6) decrease redundancies in the consideration and issuance of nurse licenses; and

(7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

## ARTICLE 2 – Definitions

As used in this compact:

A. "adverse action" means any administrative, civil, equitable or criminal action permitted by a state's laws that is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action;

B. "alternative program" means a non-disciplinary monitoring program approved by a licensing board;

C. "commission" means the Interstate Commission of Nurse Licensure Compact Administrators established in this compact;

D. "coordinated licensure information system" means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards;

E. "current significant investigative information" means:

(1) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond;

F. "encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board;

G. "home state" means the party state which is the nurse's primary state of residence;

H. "licensing board" means a party state's regulatory body responsible for issuing nurse licenses;

I. "multistate license" means a license to practice as a registered nurse or a licensed practical or vocational nurse issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege;

J. "multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in a remote state;

K. "nurse" means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's practice laws;

L. "party state" means any state that has adopted this compact;

M. "prior compact" means the prior nurse licensure compact that is superseded by this compact;

N. "remote state" means a party state, other than the home state;

O. "single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state;

P. "state" means a state, territory or possession of the United States and the District of Columbia; and

Q. "state practice laws" means a party state's laws, rules and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

### ARTICLE 3 – General Provisions and Jurisdiction

A. A multistate license to practice registered or licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each

party state as authorizing a nurse to practice as a registered nurse or as a licensed practical or vocational nurse, under a multistate licensure privilege, in each party state.

B. A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records.

C. For an applicant to obtain or retain a multistate license in the home state, each party state shall require that the applicant:

(1) meets the home state's qualifications for licensure or renewal of licensure as well as all other applicable state laws;

(2) has graduated:

(a) or is eligible to graduate from a licensing board-approved registered nurse or licensed practical or vocational nurse prelicensure education program; or

(b) from a foreign registered nurse or licensed practical or vocational nurse prelicensure education program that: 1) has been approved by the authorized accrediting body in the applicable country; and 2) has been verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the applicant's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing and listening;

(4) has successfully passed a national council licensure examination for registered nurses or a national council licensure examination for practical or vocational nurses given by the national council of state boards of nursing or an exam given by a recognized predecessor or successor organization, as applicable;

(5) is eligible for or holds an active, unencumbered license;

(6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation and the agency responsible for retaining that state's criminal records;

(7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) is not currently enrolled in an alternative program;

(10) is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) has a valid United States social security number.

D. All party states shall be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

E. A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

F. Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact shall affect the requirements established by a party state for the issuance of a single-state license.

G. Any nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by the nurse's then-current home state, provided that a nurse who:

(1) changes primary state of residence after this compact's effective date must meet all applicable requirements of Subsection C of Article 3 of the Nurse Licensure Compact to obtain a multistate license from a new home state; or

(2) fails to satisfy the multistate licensure requirements in Subsection C of Article 3 of the Nurse Licensure Compact due to a disqualifying event occurring after this compact's effective date shall be ineligible to retain or renew a multistate license,

and the nurse's multistate license shall be revoked or deactivated in accordance with applicable rules adopted by the commission.

#### ARTICLE 4 – Applications for Licensure in a Party State

A. Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant and whether the applicant is currently participating in an alternative program.

B. A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

C. If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission.

(1) The nurse may apply for licensure in advance of a change in primary state of residence.

(2) A multistate license shall not be issued by the new home state until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

D. If a nurse changes primary state of residence by moving from a party state to a non-party state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

#### ARTICLE 5 – Additional Authorities Invested in Party State Licensing Boards

A. In addition to the other powers conferred by state law, a licensing board shall have the authority to:

(1) take adverse action against a nurse's multistate licensure privilege to practice within that party state; provided that:

(a) only the home state shall have the power to take adverse action against a nurse's license issued by the home state; and

(b) for purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it

would if such conduct had occurred within the home state. In so doing, the home state shall apply its own state laws to determine appropriate action;

(2) issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state;

(3) complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions;

(4) issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located;

(5) obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the federal bureau of investigation for criminal background checks, receive the results of the federal bureau of investigation record search on criminal background checks and use the results in making licensure decisions;

(6) if otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse; and

(7) take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

B. If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states shall be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license shall include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

C. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing

board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative program.

#### ARTICLE 6 – Coordinated Licensure Information System and Exchange of Information

A. All party states shall participate in a coordinated licensure information system of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

C. All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications (with the reasons for such denials) and nurse participation in alternative programs known to the licensing board regardless of whether such participation is deemed nonpublic or confidential under state law.

D. Current significant investigative information and participation in nonpublic or confidential alternative programs shall be transmitted through the coordinated licensure information system only to party state licensing boards.

E. Notwithstanding any other provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

F. Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board shall not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

G. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

H. The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which shall include, at a minimum:

- (1) identifying information;
- (2) licensure data;



- (3) information related to alternative program participation; and
- (4) other information that may facilitate the administration of this compact, as determined by commission rules.

I. The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

## ARTICLE 7 – Establishment of the Interstate Commission of Nurse Licensure Compact Administrators

A. The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

- (1) The commission is an instrumentality of the party states.
- (2) Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.
- (3) Nothing in this compact shall be construed to be a waiver of sovereign immunity.

### B. Membership, Voting and Meetings

- (1) Each party state shall have and be limited to one administrator. The head of the state licensing board or designee shall be the administrator of this compact for each party state. Any administrator may be removed or suspended from office as provided by the law of the state from which the administrator is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the party state in which the vacancy exists.
- (2) Each administrator shall be entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.
- (3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws or rules of the commission.

(4) All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article 8 of the Nurse Licensure Compact.

(5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(a) noncompliance of a party state with its obligations under this compact;

(b) the employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the commission's internal personnel practices and procedures;

(c) current, threatened or reasonably anticipated litigation;

(d) negotiation of contracts for the purchase or sale of goods, services or real estate;

(e) accusing any person of a crime or formally censuring any person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) disclosure of investigatory records compiled for law enforcement purposes;

(i) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(j) matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

C. The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact, including but not limited to:

(1) establishing the fiscal year of the commission;

(2) providing reasonable standards and procedures:

(a) for the establishment and meetings of other committees; and

(b) governing any general or specific delegation of any authority or function of the commission;

(3) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed;

(4) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(5) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission; and

(6) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

D. The commission shall publish its bylaws and rules, and any amendments thereto, in a convenient form on the website of the commission.

E. The commission shall maintain its financial records in accordance with the bylaws.

F. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

G. The commission shall have the following powers:

(1) to promulgate uniform rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all party states;

(2) to bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law shall not be affected;

(3) to purchase and maintain insurance and bonds;

(4) to borrow, accept or contract for services of personnel, including but not limited to employees of a party state or nonprofit organizations;

(5) to cooperate with other organizations that administer state compacts related to the regulation of nursing, including but not limited to sharing administrative or staff expenses, office space or other resources;

(6) to hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel and other related personnel matters;

(7) to accept any and all appropriate donations, grants and gifts of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(8) to lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, whether real, personal or mixed; provided that at all times the commission shall avoid any appearance of impropriety;

(9) to sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real, personal or mixed;

(10) to establish a budget and make expenditures;

(11) to borrow money;

(12) to appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other such interested persons;

(13) to provide and receive information from, and to cooperate with, law enforcement agencies;

(14) to adopt and use an official seal; and

(15) to perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.

#### H. Financing of the Commission

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization and ongoing activities.

(2) The commission may also levy on and collect an annual assessment from each party state to cover the cost of its operations, activities and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, shall be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

(3) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the commission.

#### I. Qualified Immunity, Defense and Indemnification

(1) The administrators, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional, willful or wanton misconduct of that person.

(2) The commission shall defend any administrator, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided

further that the actual or alleged act, error or omission did not result from that person's intentional, willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional, willful or wanton misconduct of that person.

#### ARTICLE 8 – Rulemaking

A. The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each rule or amendment and shall have the same force and effect as provisions of this compact.

B. Rules or amendments to the rules shall be adopted at a regular or special meeting of the commission.

C. Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking:

(1) on the website of the commission; and

(2) on the website of each licensing board or the publication in which each state would otherwise publish proposed rules.

D. The notice of proposed rulemaking shall include:

(1) the proposed time, date and location of the meeting in which the rule will be considered and voted upon;

(2) the text of the proposed rule or amendment, and the reason for the proposed rule;

(3) a request for comments on the proposed rule from any interested person; and

(4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.

E. Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

F. The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

G. The commission shall publish the place, time and date of the scheduled public hearing.

(1) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. All hearings will be recorded, and a copy will be made available upon request.

(2) Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.

H. If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

J. The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

- (1) meet an imminent threat to public health, safety or welfare;
- (2) prevent a loss of commission or party state funds; or
- (3) meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.

L. The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency or grammatical errors. Public notice of any revisions shall be posted on the website of the

commission. The revision shall be subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the commission, prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

## ARTICLE 9 – Oversight, Dispute Resolution and Enforcement

### A. Oversight

(1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.

(2) The commission shall be entitled to receive service of process in any proceeding that may affect the powers, responsibilities or actions of the commission, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission shall render a judgment or order void as to the commission, this compact or promulgated rules.

### B. Default, Technical Assistance and Termination

(1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall:

(a) provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and

(b) provide remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of membership in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.



(4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal the action of the commission by petitioning the United States district court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

### C. Dispute Resolution

(1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and non-party states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

(3) In the event the commission cannot resolve disputes among party states arising under this compact:

(a) the party states may submit the issues in dispute to an arbitration panel, which will be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and

(b) the decision of a majority of the arbitrators shall be final and binding.

### D. Enforcement

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the United States district court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorneys' fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

#### ARTICLE 10 – Effective Date, Withdrawal and Amendment

A. This compact shall become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact that were parties to the prior compact shall be deemed to have withdrawn from the prior compact within six months after the effective date of this compact.

B. Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.

C. Any party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal shall not take effect until six months after enactment of the repealing statute.

D. A party state's withdrawal or termination shall not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

E. Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

F. This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

G. Representatives of non-party states to this compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

#### ARTICLE 11 – Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any

party state, this compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters."

**History:** Laws 2003, ch. 307, § 1; repealed and reenacted by Laws 2018, ch. 1, § 1.

### **61-3-24.2. Repealed.**

**History:** 1978 Comp., § 61-3-29.1, enacted by Laws 1987, ch. 285, § 1; 1991, ch. 190, § 21; 1991, ch. 253, § 2; 1997, ch. 244, § 19; 2001, ch. 137, § 12; repealed by Laws 2018, ch. 1, § 3.

### **61-3-24.3. Repealed.**

**History:** Laws 2003, ch. 307, § 3; repealed by Laws 2005, ch. 307, § 10.

### **61-3-25. Repealed.**

### **61-3-26. Schools of nursing; standards; approval.**

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.

### **61-3-27. Fund established; disposition; method of payment.**

A. There is created a "board of nursing fund".

B. Except as provided in Sections 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received by the board and money collected under the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978] and the Lactation Care Provider Act [61-36-1 to 61-36-4 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 income earned on investment of the fund shall remain in 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 and the Lactation Care Provider Act, the duties imposed by those acts and the promotion of nursing and lactation care provider 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 and the Lactation Care Provider Act to further the purposes of those acts.

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 and the Lactation Care Provider Act.

F. As used in this section, "lactation care provider" means a person licensed by the board pursuant to the Lactation Care Provider Act to provide lactation care and services.

**History:** 1953 Comp., § 67-2-23, enacted by Laws 1968, ch. 44, § 23; 1977, ch. 220, § 17; 1991, ch. 190, § 19; 2003, ch. 276, § 10; 2017, ch. 136, § 7; 2017 (1st S.S.), ch. 1, § 7.

#### **61-3-27.1. Board of nursing fund; authorized use.**

Pursuant to Subsection D of Section 61-3-27 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of nursing fund to support an information technology project manager to develop,

implement and maintain a web site portal for licensure and a central database for credentialing of health care providers.

**History:** 1978 Comp., § 61-3-27.1, enacted by Laws 2003, ch. 235, § 5.

### **61-3-28. Disciplinary proceedings; judicial review; application of uniform licensing act; limitation.**

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, reprimand or place a licensee on probation or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978] upon grounds that the licensee, applicant or nurse:

- (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;
- (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; or
- (9) uses conversion therapy on a minor.

B. Disciplinary proceedings may be instituted by any person, shall be by 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 complaint shall be immune from liability arising out of civil action if the complaint is filed with reasonable care.

D. The board shall not initiate a disciplinary action more than two years after the date that it receives a 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.

F. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the nurse who is the subject of the proceeding if the nurse is practicing professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact.

G. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**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; 2001, ch. 137, § 11; 2003, ch. 307, § 8; 2017, ch. 132, § 2.

## **61-3-29. Exceptions.**

The Nursing Practice Act 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 nurse licensed in another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;
- E. nursing in this state by a person employed by the United States government, while in the discharge of the person's official duties;
- F. the practice of midwifery by a person other than a registered nurse who is certified or licensed in this state to practice midwifery;
- G. a person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- H. a nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- I. a registered nurse holding a current license in another jurisdiction who is enrolled in a professional course requiring nursing practice as a part of the educational program;  
or
- 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 the individual's own needs.

**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; 1995, ch. 117, § 2; 1997, ch. 244, § 18; 2003, ch. 276, § 11; 2005, ch. 303, § 2; 2005, ch. 307, § 8.

### **61-3-29.1. Diversion program created; advisory committee; renewal fee; requirements; immunity from civil actions.**

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 evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency. At least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or the executive officer's designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

- (1) establish criteria for continuance in the program;
- (2) develop a written diversion program contract to be approved by the board that 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;
- (3) recommend to the board in favor of or against each nurse's discharge from the diversion program;
- (4) evaluate each nurse's progress in recovery and compliance with the nurse's diversion program contract;
- (5) report violations to the board;
- (6) submit an annual report to the board; and
- (7) coordinate educational programs and research related to chemically dependent nurses.

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 as required to be disclosed pursuant to the Nurse Licensure Compact, when used to make a report to the board concerning a nurse who is not cooperating and complying with the diversion program contract or, with written



consent of a nurse, when used for research purposes as long as the nurse is not specifically identified. However, the 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. A person making a report to the board or to a regional 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 if the reports are made in good faith and with some reasonable basis in fact.

G. A 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 program contract or with any amendments to the written diversion program contract 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; 1997, ch. 244, § 19; 2001, ch. 137, § 12; 2018, ch. 1, § 2.

### **61-3-30. Violations; penalties.**

It is a misdemeanor for a person, firm, association or corporation to:

A. sell, fraudulently obtain or furnish a nursing diploma, license, examination or record or to aid or abet therein;

B. practice professional nursing as defined by the Nursing Practice Act unless exempted or duly licensed to do so pursuant to 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 pursuant to the provisions of that act;

D. use in connection with his name a designation tending to imply that such person is a registered nurse or a licensed practical nurse unless duly licensed pursuant to 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 the person's 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;

I. employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board to practice as a certified hemodialysis technician or certified medication aide; or

J. otherwise violate a provision of the Nursing Practice Act.

The board shall assist the proper legal authorities in the prosecution of all persons who violate a provision 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; 2001, ch. 137, § 13; 2005, ch. 307, § 9.

### **61-3-31. 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; 1997, ch. 46, § 3; 2003, ch. 428, § 2; repealed by Laws 2005, ch. 307, § 10.

## **ARTICLE 3A**

### **Safe Harbor for Nurses**

#### **61-3A-1. Short title.**

This act [61-3A-1 to 61-3A-3 NMSA 1978] may be cited as the "Safe Harbor for Nurses Act".

**History:** Laws 2019, ch. 52, § 1.

#### **61-3A-2. Definitions.**

As used in the Safe Harbor for Nurses Act:

A. "assignment" means the designated responsibility for the provision or supervision of nursing care for a defined work period in a defined work setting, including the specified functions, duties, practitioner orders, supervisory directives and amount of work designated as an individual nurse's responsibility; provided that changes in a nurse's assignment may occur at any time during the work period;

B. "good faith" means taking action supported by a sincere belief with a reasonable factual or legal basis other than the nurse's moral, religious or personal beliefs;

C. "health care facility" means an entity licensed by the department of health that provides health care on its premises and has three or more nurses;

D. "nurse" means a nurse licensed pursuant to the Nursing Practice Act as a registered nurse or a licensed practical nurse; and

E. "safe harbor" means a process that:

(1) protects a registered nurse or a licensed practical nurse from adverse action by the health care facility where the nurse is working when the nurse makes a good faith request to be allowed to reject an assignment, which request is based on the nurse's:

(a) assessment of the nurse's own education, knowledge, competence or experience; and

(b) immediate assessment of the risk for patient safety or potential violation of the Nursing Practice Act or board of nursing rules; and

(2) provides for further assessment of the situation.

**History:** Laws 2019, ch. 52, § 2.

### **61-3A-3. Safe harbor; health care facility responsibility.**

A. A nurse may invoke safe harbor when:

(1) in the nurse's good faith judgment, the nurse lacks the basic knowledge, skills or abilities necessary to deliver nursing care that is safe and that meets the minimum standards of care to such an extent that accepting the assignment would expose one or more patients to an unjustifiable risk of harm or would constitute a violation of the Nursing Practice Act or board of nursing rules; or

(2) the nurse questions the medical reasonableness of another health care provider's order that the nurse is required to execute.

B. A nurse who intends to invoke safe harbor shall invoke it before the nurse engages in conduct or an assignment giving rise to the nurse's request for safe harbor. A nurse may also invoke safe harbor at any time during the work period, when an initial assignment changes and, in the nurse's good faith judgment, the change creates a situation that comports with the requirements for invoking safe harbor pursuant to Subsection A of this section. A health care facility shall develop a process by which a nurse employed or contracted by that facility may invoke safe harbor.

C. A safe harbor process shall include:

- (1) notification to all nurses on staff as to how safe harbor may be invoked;
- (2) notification by the nurse to the nurse's supervisor that the nurse is invoking safe harbor;
- (3) written documentation with the date, time and location of the invocation of safe harbor and the reason for invocation, signed by the supervisor and the nurse;
- (4) a post-occurrence review of the situation that:
  - (a) includes at least one other staff nurse and nurse manager, as the health care facility defines those roles; and
  - (b) is used to determine whether additional action is required to minimize the likelihood of similar situations in the future; and
- (5) documentation of the resolution and review of the matter in which safe harbor was invoked.

D. A health care facility shall not retaliate against, demote, suspend, terminate, discipline, discriminate against or report any action to the board of nursing when a nurse makes a good faith request for safe harbor.

**History:** Laws 2019, ch. 52, § 3.

## **ARTICLE 3B**

### **Lactation Care Provider**

#### **61-3B-1. Short title.**

Chapter 61, Article 3B NMSA 1978 may be cited as the "Lactation Care Provider Act".

**History:** Laws 2017, ch. 136, § 1; 1978 Comp., § 61-36-1, recompiled and amended as § 61-3B-1 by Laws 2022, ch. 39, § 20.

## 61-3B-2. Definitions.

As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a license to provide lactation care and services as a licensee pursuant to the Lactation Care Provider Act;

B. "approved certification" means certification as a lactation care provider conferred by a certification program accredited by any nationally or internationally recognized accrediting agency that is approved by the board and that establishes continuing education requirements;

C. "board" means the board of nursing;

D. "lactation care and services" means the clinical application of scientific principles and a multidisciplinary body of evidence for the evaluation, problem identification, treatment, education and consultation for the provision of lactation care and services to families, including:

(1) clinical lactation assessment through the systematic collection of subjective and objective data;

(2) analysis of data and creation of a plan of care;

(3) implementation of a lactation care plan with demonstration and instruction to parents and communication to primary health care providers;

(4) evaluation of outcomes;

(5) provision of lactation education to parents and health care providers; and

(6) recommendation and use of assistive devices;

E. "license" means a license to practice as a lactation care provider that the board issues pursuant to the Lactation Care Provider Act;

F. "licensee" means a lactation care provider licensed as a licensed lactation care provider pursuant to the Lactation Care Provider Act;

G. "member" means a member of the board; and

H. "practice" means a course of business in which lactation care and services are rendered or offered to any individual, family or group of two or more individuals.

**History:** Laws 2017, ch. 136, § 2; 1978 Comp., § 61-36-2, recompiled as § 61-3B-2 by Laws 2022, ch. 39, § 105.

### **61-3B-3. Board powers.**

The board may:

A. enforce the provisions of the Lactation Care Provider Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] and promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to execute the provisions of the Lactation Care Provider Act;

B. license qualified applicants;

C. discipline licensees;

D. enforce qualification for licensure;

E. establish standards for licensee competence for continuing in or returning to practice based on approved certification;

F. issue orders relating to the practice of lactation care and services in accordance with the Uniform Licensing Act;

G. regulate licensee advertising and prohibit false, misleading or deceptive practices;

H. establish a code of conduct for licensees;

I. prepare information for the public that describes the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board; and

J. appoint a lactation care provider advisory committee consisting of at least one member who is a board member and at least two members who are experts in lactation to assist in the performance of the board's duties.

**History:** Laws 2017, ch. 136, § 3; 1978 Comp., § 61-36-3, recompiled and amended as § 61-3B-3 by Laws 2022, ch. 39, § 21.

### **61-3B-4. Licensure requirement; qualifications; exemptions from licensure.**

A. An individual shall not use the title "licensed lactation care provider" unless that individual is a licensee.

B. An applicant for a license as a licensee shall:

(1) be at least eighteen years of age;

(2) submit an application completed upon a form that the board prescribes and in accordance with board rules, accompanied by fees required by board rules;

(3) possess current approved certification; and

(4) assist the board in obtaining the applicant's criminal history background check by:

(a) providing fingerprints on two fingerprint cards or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation or the department of public safety; and

(b) paying the cost of obtaining the fingerprints and criminal history background checks. An applicant shall have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied licensure as established by board rule.

C. Nothing in the Lactation Care Provider Act shall be construed to affect or prevent the practice of lactation care and services by licensed care providers or other persons; provided that a person who is not a licensee shall not hold that person out or represent that person's self to be a licensed lactation care provider.

**History:** Laws 2017, ch. 136, § 4; 1978 Comp., § 61-36-4, recompiled as § 61-3B-4 by Laws 2022, ch. 39, § 105.

### **61-3B-5. License fees; term; renewal.**

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall require each applicant for initial licensure or renewal of a license to pay a nonrefundable licensure fee that shall not exceed one hundred dollars (\$100).

B. A license shall expire biennially from the date of initial licensure.

C. The board shall renew licenses only upon receipt of renewal of licensure fees and evidence of compliance with continuing education requirements.

**History:** Laws 2017, ch. 136, § 5; 2020, ch. 6, § 61; 1978 Comp., § 61-36-5, recompiled as § 61-3B-5 by Laws 2022, ch. 39, § 105.

### **61-3B-6. Disciplinary proceedings.**

A. In accordance with the procedures contained in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may deny, revoke or suspend a license held or applied for pursuant to the Lactation Care Provider Act, reprimand or place a licensee on probation or deny, limit or revoke a privilege of a licensee desiring to

practice or practicing lactation care and services upon grounds that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (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 guilty of unprofessional conduct as defined by board rules;
- (6) has willfully or repeatedly violated any provisions of the Lactation Care Provider Act, including any board rule adopted pursuant to that act; or
- (7) was certified or licensed to provide lactation care and services in another licensing jurisdiction and was the subject of disciplinary action for acts similar to acts described in this subsection. A certified copy of the record of the certification or licensure board disciplinary action taken by another licensing jurisdiction is conclusive evidence of the action.

B. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;
- (2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or
- (3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

C. A licensee is not required to comply with a summary action taken pursuant to Subsection B of this section until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

D. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date that the licensee requests a hearing.



E. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. A party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

F. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

G. All written and oral communication made by any person to the board relating to actual or potential disciplinary action, including complaints made to the board, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed, except to the extent necessary to carry out the purposes of the board or in a judicial appeal from the actions of the board or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

H. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

I. 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.

J. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the person who is the subject of the proceeding.

**History:** Laws 2017, ch. 136, § 6; 1978 Comp., § 61-36-6, recompiled and amended as § 61-3B-6 by Laws 2022, ch. 39, § 22.

### **61-3B-7. Expedited license.**

The board shall issue an expedited license to a person who holds a license in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 if the person holds a current approved certification or license in another licensing jurisdiction. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 2022, ch. 39, § 23.

# ARTICLE 4

## Chiropractic

### 61-4-1. Short title. (Repealed effective July 1, 2028.)

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.

### 61-4-2. Definitions. (Repealed effective July 1, 2028.)

As used in the Chiropractic Physician Practice Act:

A. "advanced practice chiropractic certification registry" means a compendium kept by the board that meets and maintains the board's established credentials for certified advanced practice chiropractic physicians;

B. "certified advanced practice chiropractic physician" means a chiropractic physician who has been included in the advanced practice chiropractic certification registry;

C. "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 prescribing and administering of all natural agents to assist in the healing act, such as food, water, heat, cold, electricity, mechanical appliances and medical devices; the selling of herbs, nutritional supplements and homeopathic remedies; the administering of a drug by injection by a certified advanced practice chiropractic physician; and any necessary diagnostic procedure, excluding invasive procedures, except as provided by the board by rule and regulation. It shall exclude operative surgery, the prescription or use of controlled or dangerous drugs and the practice of acupuncture;

D. "board" means the chiropractic board;

E. "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

F. "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; 2008, ch. 44, § 7.

**61-4-3. Board created; appointment; officers; duties; compensation. (Repealed effective July 1, 2028.)**

A. The "chiropractic board" is created and is administratively attached to the regulation and licensing department. The board shall consist of six persons, four of whom 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. A person shall not 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 of five years or less and in 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 association to the governor for 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 chair and a secretary-treasurer. A majority of the board constitutes a quorum. The board shall meet quarterly. Special meetings may be called by the chair 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 a meeting.

D. A 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 [Chapter 14, Article 4 NMSA 1978], all rules necessary for the implementation and enforcement of the provisions of the Chiropractic Physician Practice Act, including educational requirements for a chiropractic assistant.

G. 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 rule mandatory continuing education requirements for

chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state.

H. Failure to comply with the rules adopted by the board shall be grounds for investigation, which may lead to revocation of license.

I. 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; 2003, ch. 408, § 3; 2006, ch. 18, § 1; 2008, ch. 44, § 8; 2022, ch. 39, § 24.

#### **61-4-4. Application requirements; evaluation. (Repealed effective July 1, 2028.)**

A. Each applicant for a license to practice chiropractic shall:

(1) make application on forms furnished by the board;

(2) 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 currently 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 that meets the standards of professional education prescribed in Section 61-4-5 NMSA 1978; and

(3) pay in advance to the board fees:

(a) for examination; and

(b) except as provided in Section 61-1-34 NMSA 1978, for issuance of a license.

B. In evaluating an application, the board may use the services of a professional background information service that compiles background information regarding applicants from multiple sources.

C. Each applicant for inclusion in the advanced practice chiropractic certification registry shall furnish materials and proof of education and training as established by rule of the board.

**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; 2006, ch. 18, § 2; 2008, ch. 44, § 9; 2020, ch. 6, § 11.

### **61-4-5. Evidence of graduation; creditation of college. (Repealed effective July 1, 2028.)**

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.

### **61-4-6. Examination; subjects; method of treatment; recording license. (Repealed effective July 1, 2028.)**

A. The board shall recognize successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

B. The board shall examine each applicant in the act of chiropractic adjusting, procedures and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination conducted by the national board of chiropractic examiners.

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 either the board-administered examination with a general average of not less than seventy-five percent with no subject below sixty-five percent or the examination conducted by the national board of chiropractic examiners with a general average of not less than seventy-five percent with no subject below sixty-five percent. A license shall be refused to an 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 treat injuries, deformities or other physical or mental conditions relating to the basic concepts of chiropractic by the use of any 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 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.

F. The board shall certify a chiropractic physician as a "certified advanced practice chiropractic physician" when the chiropractic physician has demonstrated completion of advanced coursework and met other requirements established in the Chiropractic Physician Practice Act and by rule of the board.

**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; 2006, ch. 18, § 3; 2008, ch. 44, § 10.

#### **61-4-7. Disposition of funds; chiropractic fund created; method of payment. (Repealed effective July 1, 2028.)**

A. There is created the "chiropractic fund".

B. All funds received by the board and money collected under the Chiropractic Physician Practice Act 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 superintendent of regulation and licensing 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 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; 2006, ch. 18, § 4.

### **61-4-8. License without examination. (Repealed effective July 1, 2028.)**

A. The board shall issue a license without examination to a chiropractic physician who is a graduate of a standard college of chiropractic and has been licensed in another licensing jurisdiction if the applicant holds a valid and unrestricted license, is in good standing with the licensing board of the other licensing jurisdiction and has practiced as a chiropractor for at least two years immediately prior to application in New Mexico. The board shall, as soon as practicable but no later than thirty days after a person files an application for a license accompanied by any required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-3-16, enacted by Laws 1968, ch. 3, § 8; 2022, ch. 39, § 25.

### **61-4-9. Privileges and obligations. (Repealed effective July 1, 2028.)**

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 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.

### **61-4-9.1. Advanced practice chiropractic certification registry established. (Repealed effective July 1, 2028.)**

The board shall establish by rule the advanced practice chiropractic certification registry. A chiropractic physician authorized by the board to use the title "certified advanced practice chiropractic physician" shall have prescriptive authority for therapeutic and diagnostic purposes as authorized by statute. Only a chiropractic physician included in the advanced practice chiropractic certification registry may use the title certified advanced practice chiropractic physician, and it is unlawful for a person to use the certified advanced practice chiropractic physician title unless the person is included in the advanced practice chiropractic certification registry. The advanced practice chiropractic certification registry shall include a chiropractic physician who applies for the designation and:

- A. holds a chiropractic license in good standing;
- B. has completed three years of post-graduate clinical chiropractic practice or equivalent clinical experience as established by the board;
- C. has an advanced practice chiropractic certification by a nationally recognized credentialing agency providing credentialing and demonstrated competency by examination and additionally, after December 31, 2012, successful completion of a graduate degree in a chiropractic clinical practice specialty;
- D. has completed a minimum of ninety clinical and didactic contact course hours in pharmacology, pharmacognosy, medication administration and toxicology certified by an examination from an institution of higher education approved by the board and the New Mexico medical board; and
- E. has completed annual continuing education for advanced practice chiropractic physicians as set by the board.

**History:** Laws 2008, ch. 44, § 1.

### **61-4-9.2. Certified advanced practice chiropractic physician authority defined. (Repealed effective July 1, 2028.)**

- A. A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, over-the-counter drugs, vitamins, minerals, enzymes, glandular products, protomorphogens, live cell products,



gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants.

B. A formulary that includes all substances listed in Subsection A of this section, including compounded preparations for topical and oral administration, shall be developed and approved by the board. A formulary for injection that includes the substances in Subsection A of this section that are within the scope of practice of the certified advanced practice chiropractic physician shall be developed and approved by the board. Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval.

**History:** Laws 2008, ch. 44, § 2; 2009, ch. 260, § 1.

### **61-4-9.3. Use of chiropractic name limited. (Repealed effective July 1, 2028.)**

The terms "chiropractor", "chiropractic physician" or "chiropractic" may be used only by persons licensed pursuant to the Chiropractic Physician Practice Act.

**History:** Laws 2008, ch. 44, § 3.

### **61-4-10. Refusal, suspension or revocation of license. (Repealed effective July 1, 2028.)**

A. The board may refuse to issue or may suspend or revoke any license or may censure, reprimand, fine or place on probation and stipulation any licensee 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 the licensee or applicant 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 the licensee's or applicant's practice or advertisements;

(6) is guilty of failing to comply with any of the provisions of the Chiropractic Physician Practice Act or rules and regulations promulgated by the board and filed in accordance with the State Rules Act [Chapter 14, Article 4 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 the licensee's or applicant's skill or the efficacy or value of treatment or remedy prescribed or administered by the licensee or applicant or at the licensee's or applicant's 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 the licensee's or applicant's 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 the licensee or applicant 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 provided 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 provided 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 the licensee's or applicant's 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 or issue investigative subpoenas for the purpose of investigating complaints made to the board regarding chiropractic physicians.

C. All written and oral communication made by any person to the board or an agent of the board relating to actual or potential disciplinary action, including complaints made to the board, are confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]; provided that all information contained in a complaint file is public information and subject to disclosure when the board acts on a complaint.

D. 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; 2006, ch. 18, § 5.

### **61-4-11. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)**

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.

**History:** 1953 Comp., § 67-3-18.1, enacted by Laws 1974, ch. 78, § 13; 1993, ch. 198, § 10.

### **61-4-12. Penalties. (Repealed effective July 1, 2028.)**

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;

(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.

### **61-4-13. Annual renewal of license; fee; notice. (Repealed effective July 1, 2028.)**

A. Except as provided in Section 61-1-34 NMSA 1978, a 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 the licensee that it is necessary to pay the renewal fee as provided in the Chiropractic Physician Practice Act. Proper forms shall accompany the notice, upon which forms the licensee shall make application for the renewal of the 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; 2020, ch. 6, § 12.

### **61-4-14. Failure to renew; cancellation; reinstatement; permissive temporary cancellation. (Repealed effective July 1, 2028.)**

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.

### **61-4-15. Exemptions. (Repealed effective July 1, 2028.)**

The Chiropractic Physician Practice Act 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.

### **61-4-16. Existing licensees. (Repealed effective July 1, 2028.)**

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.

**History:** 1953 Comp., § 67-3-23, enacted by Laws 1968, ch. 3, § 15; 1993, ch. 198, § 14.

### **61-4-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The chiropractic board is terminated on July 1, 2027 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 Chiropractic Physician Practice Act until July 1, 2028. Effective July 1, 2028, the Chiropractic Physician Practice Act 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; 1997, ch. 46, § 4; 2003, ch. 428, § 3; 2009, ch. 96, § 3; 2015, ch. 119, § 3; 2021, ch. 50, § 2.

## **ARTICLE 5**

### **Dentistry (Repealed.)**

**61-5-1 to 61-5-34. Repealed.**

## **ARTICLE 5A**

### **Dental Health Care**

**61-5A-1. Short title.**

Chapter 61, Article 5A NMSA 1978 may be cited as the "Dental Health Care Act".

**History:** Laws 1994, ch. 55, § 1; 2007, ch. 63, § 1.

## **61-5A-2. Repealed.**

**History:** Laws 1994, ch. 55, § 2; 2003, ch. 409, § 1; 2011, ch. 113, § 2; repealed by Laws 2019, ch. 107, § 18.

## **61-5A-3. Definitions.**

As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

B. "board" means the New Mexico board of dental health care;

C. "certified dental assistant" means an individual certified by the dental assisting national board;

D. "collaborative dental hygiene practice" means a New Mexico licensed dental hygienist practicing according to Subsections D through G of Section 61-5A-4 NMSA 1978;

E. "committee" means the New Mexico dental hygienists committee;

F. "community dental health coordinator" means a dental assistant, a dental hygienist or other trained personnel certified by the board as a community dental health coordinator to provide educational, preventive and limited palliative care and assessment services working collaboratively under the general supervision of a licensed dentist in settings other than traditional dental offices and clinics;

G. "consulting dentist" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee;

H. "dental hygiene-focused assessment" means the documentation of existing oral and relevant system conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment;

I. "dental assistant certified in expanded functions" means a dental assistant who meets specific qualifications set forth by rule of the board;

J. "dental hygienist" means an individual who has graduated and received a degree from a dental hygiene educational program that is accredited by the commission on dental accreditation, that provides a minimum of two academic years of dental hygiene

curriculum and that is an institution of higher education; and "dental hygienist" means, except as the context otherwise requires, an individual who holds a license to practice dental hygiene in New Mexico;

K. "dental laboratory" means any place where dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated, altered or repaired by one or more persons under the orders and authorization of a dentist;

L. "dental technician" means an individual, other than a licensed dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair of dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances under the orders and authorization of a dentist;

M. "dental therapist" means an individual who:

(1) is licensed as a dental hygienist;

(2) has provided, in accordance with board rules, evidence to the board that the individual has graduated and received a degree from a dental therapy education program that is accredited by the commission on dental accreditation; and

(3) except as the context otherwise requires, is licensed to practice dental therapy in the state;

N. "dental therapy post-graduate clinical experience" means advanced training in patient management and technical competency:

(1) that is approved by the board, based on educational and supervisory criteria developed by the board and established by board rule;

(2) that is sanctioned by a regionally accredited educational institution with a program accredited by the commission on dental accreditation;

(3) that consists of two thousand hours of advanced training or, if the dental therapy educational program graduate has five years of experience as a dental hygienist, one thousand five hundred hours of advanced training; and

(4) for which the dental therapist may have been compensated;

O. "dental therapy practice agreement" means a contract between a supervising dentist and a dental therapist that outlines the parameters of care, level of supervision and protocols to be followed while performing dental therapy procedures on patients under the supervising dentist's and dental therapist's care;

P. "dentist" means an individual who has graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and,



except as the context otherwise requires, who holds a license to practice dentistry in New Mexico;

Q. "direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

- (1) is physically present throughout the performance of the act;
- (2) orders, controls and accepts full professional responsibility for the act performed; and
- (3) evaluates and approves the procedure performed before the patient departs the care setting;

R. "expanded-function dental auxiliary" means a dental assistant, dental hygienist or other dental practitioner that has received education beyond that required for licensure or certification in that individual's scope of practice and that has been certified by the board as an expanded-function dental auxiliary who works under the direct supervision of a dentist;

S. "federally qualified health center" means a health facility that the United States department of health and human services has deemed to qualify for federal funds as a federally qualified health center;

T. "federally qualified health center look-alike facility" means a health facility that the federal centers for medicare and medicaid services certifies as a federally qualified health center look-alike facility;

U. "general supervision" means the authorization by a dentist of the procedures to be used by a dental therapist, community dental health coordinator, dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by rule of the board;

V. "indirect supervision" means that a dentist, or in certain settings, a dental therapist, dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental therapist, dental hygienist, dental assistant or dental student;

W. "long-term care facility" means a nursing home licensed by the department of health to provide intermediate or skilled nursing care;

X. "non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services;

Y. "nonprofit community dental organization" means a community-supported entity that:

(1) provides clinical dental services primarily to low-income patients or medicaid recipients; and

(2) has demonstrated to the taxation and revenue department that it has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered;

Z. "palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems; and

AA. "teledentistry" means a dentist's, dental hygienist's or dental therapist's use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education.

**History:** Laws 1994, ch. 55, § 3; 2003, ch. 409, § 2; 2011, ch. 113, § 3; 2019, ch. 107, § 1; 2021, ch. 63, § 1.

#### **61-5A-4. Scope of practice.**

A. As used in the Dental Health Care Act, "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, anesthetic or other therapeutic or diagnostic substance or technique by an individual or the individual's agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

(2) representation of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection;

(3) the review of dental insurance claims for therapeutic appropriateness of treatment, including but not limited to the interpretation of radiographs, photographs, models, periodontal records and narratives;

(4) the offering of advice or authoritative comment regarding the appropriateness of dental therapies, the need for recommended treatment or the

efficacy of specific treatment modalities for other than the purpose of consultation to another dentist; or

(5) with specific reference to the teeth, gingivae, jaws or adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to propose, agree or attempt to do or make an examination or give an estimate of cost with intent to, or undertaking to:

(a) perform a physical evaluation of a patient in an office or in a hospital, clinic or other medical or dental facility prior to, incident to and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(b) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(c) diagnose or treat a condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(i) give interpretations or readings of dental radiographs;

(j) provide limited diagnostic and treatment planning via teledentistry; or

(k) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "the practice of dental hygiene" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. A dental hygienist in a collaborative practice may perform the procedures listed in this section without general supervision while the hygienist is in a cooperative working relationship with a consulting dentist, pursuant to rules promulgated by the board and the committee. "The practice of dental hygiene" includes:

(1) prophylaxis, which is the removal of plaque, calculus and stains from the tooth structures as a means to control local irritational factors;

(2) removing diseased crevicular tissue and related nonsurgical periodontal procedures;

(3) except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

(4) except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

(5) applying fluorides and other topical therapeutic and preventive agents;

(6) exposing and assessing oral radiographs for abnormalities;

(7) screening to identify indications of oral abnormalities;

(8) performing dental hygiene-focused assessments;

(9) assessing periodontal conditions; and

(10) such other closely related services as permitted by the rules of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, a dental hygienist may apply preventive topical fluorides and remineralization agents without supervision in public and community medical facilities, schools, hospitals, long-term care facilities and such other settings as the committee may determine by rule ratified by the board, so long as the dental hygienist's license is not restricted pursuant to the Impaired Dentists and Dental Hygienists Act [61-5B-1 to 61-5B-11 NMSA 1978].

D. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met the criteria as the committee shall establish and the board shall ratify may administer local anesthesia under indirect supervision of a dentist.

E. The board may certify a dental hygienist to administer local anesthetic under the general supervision of a dentist if the dental hygienist, in addition to performing dental hygiene as defined in Subsection B of this section:

(1) has administered local anesthesia under the indirect supervision of a dentist for at least two years, during which time the dental hygienist has competently

administered at least twenty cases of local anesthesia and can document this with a signed affirmation by the supervising dentist;

(2) administers local anesthetic under the written prescription or order of a dentist; and

(3) emergency medical services are available in accordance with rules promulgated by the board.

F. A dental hygienist:

(1) may prescribe, administer and dispense a fluoride supplement, topically applied fluoride or topically applied antimicrobial only when the prescribing, administering or dispensing is performed:

(a) under the supervision of a dentist;

(b) pursuant to rules the board and the committee have adopted;

(c) within the parameters of a drug formulary approved by the board in consultation with the board of pharmacy;

(d) within the parameters of guidelines established pursuant to Section 61-5A-10 NMSA 1978; and

(e) in compliance with state laws concerning prescription packaging, labeling and recordkeeping requirements; and

(2) shall not otherwise dispense dangerous drugs or controlled substances.

G. A New Mexico licensed dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and the board.

H. An expanded-function dental auxiliary may perform the following procedures under the direct supervision of a dentist:

(1) placing and shaping direct restorations;

(2) taking final impressions, excluding those for fixed or removable prosthetics involving multiple teeth;

(3) cementing indirect and provisional restorations for temporary use;

(4) applying pit and fissure sealants without mechanical alteration of the tooth;

(5) placing temporary and sedative restorative material in hand-excavated carious lesions and unprepared tooth fractures;

(6) removal of orthodontic bracket cement; and

(7) fitting and shaping of stainless steel crowns to be cemented by a dentist.

I. An expanded-function dental auxiliary may re-cement temporary or permanent crowns with temporary cement under the general supervision of a dentist in a situation that a dentist deems to be an emergency.

J. An expanded-function dental auxiliary may perform other related functions for which the expanded-function dental auxiliary meets the training and educational standards established by the board and that are not expressly prohibited by the board.

K. For the purpose of this section, "collaborative dental hygiene practice" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of this section in a cooperative working relationship with a consulting dentist, but without general supervision as set forth by the rules established and approved by both the board and the committee.

**History:** Laws 1994, ch. 55, § 4; 1999, ch. 292, § 1; 2003, ch. 409, § 3; 2007, ch. 63, § 2; 2011, ch. 113, § 5.

### **61-5A-5. License required; exemptions.**

A. Unless licensed to practice as a dentist under the Dental Health Care Act, 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 the Dental Health Care Act.

B. The following, under the stipulations described, may practice dentistry or an area of dentistry without a New Mexico dental license:

(1) regularly licensed physicians or surgeons are not prohibited from extracting teeth or treating any disease coming within the province of the practice of medicine;

(2) New Mexico licensed dental hygienists and community dental health coordinators may provide those services within their scope of practice that are also within the scope of the practice of dentistry;

(3) any dental student duly enrolled in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;

(4) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and under the indirect supervision of a faculty member of the accredited program who is a licensed dentist, dental hygienist or dental assistant certified in the procedures being taught;

(5) unlicensed persons 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 the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

(6) commissioned dental officers of the uniformed forces of the United States and dentists providing services to the United States public health service, the United States department of veterans affairs or within federally controlled facilities in the discharge of their official duties; provided that such persons who hold dental licenses in New Mexico shall be subject to the provisions of the Dental Health Care Act;

(7) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board if such services are not within the practice of dental hygiene as specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in Subsection F of this section;

(8) a dental therapy student or graduate of a dental therapy educational program enrolled in a board-approved program while engaged in an educational program offered by the dental therapy educational program or dental therapy post-graduate clinical experience in a private office, public clinic or educational institution within the state of New Mexico under the indirect supervision of a licensed dentist; and

(9) a dental therapist who is licensed in New Mexico working under the supervision of a dentist and performing the procedures in accordance with the provisions of Section 9 of this 2019 act.

C. Unless licensed to practice as a dental therapist under the Dental Health Care Act, no person shall:

- (1) practice as a dental therapist;
- (2) use the title, abbreviation "D.T.", letters, figures, signs or devices that indicate the person is a licensed dental therapist; or
- (3) perform any of the acts defined as the practice of dental therapy in the Dental Health Care Act.

D. Unless licensed to practice as a dental hygienist under the Dental Health Care Act, no person shall:

- (1) practice as a dental hygienist;
- (2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or
- (3) perform any of the acts defined as the practice of dental hygiene in the Dental Health Care Act.

E. The following, under the stipulations described, may practice dental hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene license:

- (1) students enrolled in an accredited dental hygiene program engaged in procedures that are part of the curriculum of that program and under the indirect supervision of a licensed faculty member of the accredited program;
- (2) dental assistants and community dental health coordinators working under general supervision who:
  - (a) expose dental radiographs after being certified in expanded functions by the board;
  - (b) perform rubber cup coronal polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;
  - (c) apply fluorides as established by rules of the board; and
  - (d) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and
- (3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement with a consulting dentist.



F. Dental assistants working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the board may:

- (1) expose dental radiographs;
- (2) perform rubber cup coronal polishing that is not represented as a prophylaxis;
- (3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;
- (4) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and
- (5) perform such other related functions that are not expressly prohibited by statute or rules of the board.

G. A community dental health coordinator working under the general supervision of a dentist and in accordance with the rules established by the board may:

- (1) place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;
- (2) collect and transmit diagnostic data and images via telemetric connection;
- (3) dispense and apply medications on the specific order of a dentist;
- (4) provide limited palliative procedures for dental emergencies in consultation with a supervising dentist as allowed by the rules the board has promulgated; and
- (5) perform other related functions for which the community dental health coordinator meets training and educational standards established by the board and that are not expressly prohibited by statute or rules promulgated by the board.

H. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate entity shall:

- (1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or
- (2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

I. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

- (1) government agencies providing dental services within affiliated facilities;
- (2) government agencies engaged in providing public health measures to prevent dental disease;
- (3) spouses of deceased licensed dentists or dental hygienists for a period of one year following the death of the licensee;
- (4) accredited schools of dentistry, dental hygiene and dental assisting providing dental services solely in an educational setting;
- (5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
- (6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
- (7) nonprofit community dental organizations; and
- (8) hospitals licensed by the department of health.

**History:** Laws 1994, ch. 55, § 5; 2003, ch. 409, § 4; 2011, ch. 113, § 6; 2019, ch. 107, § 2.

### **61-5A-5.1. Non-dentist owner; employing or contracting for dental services.**

A. A person, corporation or agency that desires to function as a non-dentist owner in New Mexico shall apply to the board for the proper license and shall adhere to the requirements, re-licensure criteria and fees as established by the rules of the board.

B. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, an individual or corporate entity shall not:

- (1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or
- (2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

**History:** Laws 2003, ch. 409, § 12.

## **61-5A-6. Certification of dental assistants, expanded-function dental auxiliaries and community dental health coordinators.**

A. A certified dental assistant, an expanded-function dental auxiliary, a community dental health coordinator or a dental assistant certified in expanded functions shall be required to adhere to the educational requirements, examinations, recertification criteria and fees as established by rules and regulations of the board. The fee shall be the same for one or more expanded functions.

B. Certificates granted by the board may be revoked, suspended, stipulated or otherwise limited, and a certificate holder may be fined or placed on probation if found guilty of violation of the Dental Health Care Act.

C. No individual shall use the title "C.D.A." unless granted certification by the dental assistant national board.

D. Unless certified to practice as a dental assistant certified in expanded functions or an expanded-function dental auxiliary, no person shall:

(1) practice as a dental assistant certified in expanded functions as defined by rules of the board; or

(2) use the title or represent oneself as an assistant certified in expanded functions or an expanded-function dental auxiliary or use any title, abbreviation, letters, figures, signs or devices that indicate the person is a dental assistant certified in expanded functions or an expanded-function dental auxiliary.

**History:** Laws 1994, ch. 55, § 6; 2011, ch. 113, § 7.

### **61-5A-6.1. Expanded-function dental auxiliary; certification.**

A. The board shall establish academic standards and criteria for certifying dental assistants, dental hygienists or other dental personnel to practice as expanded-function dental auxiliaries. Those standards and criteria shall include a formal curriculum and a certifying examination.

B. The board shall promulgate rules relating to the certification of expanded-function dental auxiliaries pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 2011, ch. 113, § 4.

### **61-5A-7. Dental and dental hygiene districts created.**

For the purpose of selecting members of the board and the committee, there are created five districts composed of the following counties:

A. district I: San Juan, Rio Arriba, Taos, Sandoval, McKinley and Cibola;

B. district II: Colfax, Union, Mora, Harding, San Miguel, Quay, Guadalupe, Santa Fe and Los Alamos;

C. district III: Bernalillo, Valencia and Torrance;

D. district IV: Catron, Socorro, Grant, Sierra, Hidalgo, Luna, Dona Ana and Otero;  
and

E. district V: Lincoln, De Baca, Roosevelt, Chaves, Eddy, Curry and Lea.

**History:** Laws 1994, ch. 55, § 7; 2003, ch. 409, § 5.

### **61-5A-8. Board created.**

A. There is created the nine-member "New Mexico board of dental health care". The board shall consist of five dentists, two dental hygienists and two public members. The dentists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of appointment. The dental hygienist members shall be members of the committee and shall be elected annually to sit on the board by those sitting on the committee. The appointed public members shall be residents of New Mexico and shall have no financial interest, direct or indirect, in the professions regulated in the Dental Health Care Act.

B. The governor may appoint the dentist members from a list of names submitted by the New Mexico dental association. There shall be one member from each district. All board members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dentists and public members shall be for terms of five years. Dentists' appointments shall be made so that the term of one dentist member expires on July 1 of each year. Public members' five-year terms begin at the date of appointment.

D. Any board member failing to attend three board or committee meetings, either regular or special, during the board member's term shall automatically be removed as a member of the board unless excused from attendance by the board for good cause shown. Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings.

E. No board member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

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

G. The board shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The board may also hold special meetings and emergency meetings in accordance with rules of the board upon written notice to all members of the board and the committee.

H. 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; however, the secretary-treasurer may be compensated at the discretion of the board.

I. A simple majority of the board members currently serving shall constitute a quorum, provided at least two of that quorum are not dentist members and three are dentist members.

J. The board shall elect officers annually as deemed necessary to administer its duties and as provided in its rules.

**History:** Laws 1994, ch. 55, § 8; 2003, ch. 408, § 4; 2003, ch. 409, § 6.

### **61-5A-9. Committee created.**

A. There is created the nine-member "New Mexico dental hygienists committee". The committee shall consist of five dental hygienists, two dentists and two public members. The dental hygienists shall be actively practicing and have been licensed practitioners and residents of New Mexico for a period of five years preceding the date of their appointment. The dentists and public members shall be members of the board and shall be elected annually to sit on the committee by those members sitting on the board.

B. The governor may appoint the dental hygienists from a list of names submitted by the New Mexico dental hygienists' association. There shall be one member from each district. All members shall serve until their successors have been appointed. No more than one member may be employed by or receive remuneration from a dental or dental hygiene educational institution.

C. Appointments for dental hygienist members shall be for terms of five years. Appointments shall be made so that the term of one dental hygienist expires on July 1 of each year.

D. Any committee member failing to attend three committee or board meetings, either regular or special, during the committee member's term shall automatically be removed as a member of the committee unless excused from attendance by the committee for good cause shown. Members of the committee not sitting on the board shall not be required or allowed to attend board disciplinary hearings.

E. No committee member shall serve more than two full terms on any state-chartered board whose responsibility includes the regulation of practice or licensure of dentistry or dental hygiene in New Mexico. A partial term of three or more years shall be considered a full term.

F. In the event of any vacancy, the secretary of the committee shall immediately notify the governor, the committee and board members and the New Mexico dental hygienists' association of the reason for its occurrence and action taken by the committee, so as to expedite appointment of a new committee member.

G. The committee shall meet at least four times every year and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart. The committee may also hold special meetings and emergency meetings in accordance with the rules of the board and committee, upon written notification to all members of the committee and the board.

H. Members of the committee 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.

I. A simple majority of the committee members currently serving shall constitute a quorum, provided at least two of that quorum are not hygienist members and three are hygienist members.

J. The committee shall elect officers annually as deemed necessary to administer its duties and as provided in rules and regulations of the board and committee.

**History:** Laws 1994, ch. 55, § 9; 2003, ch. 408, § 5; 2003, ch. 409, § 7.

### **61-5A-10. Powers and duties of the board and committee.**

In addition to any other authority provided by law, the board and the committee, when designated, shall:

A. enforce and administer the provisions of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act [61-5C-1 to 61-5C-6 NMSA 1978];

B. promulgate in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules as necessary to:

(1) regulate the examination and licensure of dentists and dental therapists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry, dental therapy and dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental therapy, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental therapists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

G. grant, deny, review, suspend and revoke licenses to own dental practices and censure, reprimand, fine and place on probation and stipulation non-dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

H. maintain records of the name, address, license number and such other demographic data as may serve the needs of the board of licensees, together with a record of license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines. The board shall make available composite reports of demographic data but shall limit public access to information regarding individuals to their names, addresses, license numbers and license actions or as required by statute;

I. hire and contract for services from persons as necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall be appointed by the chair with the advice and consent of the board or committee and shall include at least one member of the board or committee as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to persons who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

M. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental therapists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act and the Dental Amalgam Waste Reduction Act;

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental therapist or dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued competency requirements for dentists, dental therapists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists.

**History:** Laws 1994, ch. 55, § 10; 2003, ch. 408, § 6; 2003, ch. 409, § 8; 2011, ch. 113, § 8; 2013, ch. 206, § 7; 2019, ch. 107, § 3; 2022, ch. 39, § 26.

### **61-5A-11. Ratification of committee recommendations.**

A. The board shall ratify the recommendations of the committee unless the board makes a specific finding that a recommendation is:

- (1) beyond the jurisdiction of the committee;
- (2) an undue financial impact upon the board; or
- (3) not supported by the record.

B. The board shall provide the necessary expenditures incurred by the committee and the board in implementing and executing the ratified recommendations.

**History:** Laws 1994, ch. 55, § 11.



## **61-5A-12. Dentists; requirements for licensure; specialty license.**

A. All applicants for licensure as a dentist shall have graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and shall have passed the written portion of the dental examination administered by the joint commission on national dental examinations of the American dental association or, if the test is not available, another written examination determined by the board.

B. Applicants for a general license to practice dentistry by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a test covering the laws and rules for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents by administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. These examinations shall include examinations offered by the central regional dental testing service, northeast regional board of dental examiners, southern regional testing agency or western regional examining board or any other comparable practical clinical examination the board approves; provided, however, that the board may disapprove any examination after it considers compelling evidence to support disapproval. Upon an applicant passing the written and clinical examinations and payment in advance of the necessary fees, the board shall issue a license to practice dentistry.

C. The board may issue a general license to practice dentistry, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude.

D. The board may issue a general license to practice dentistry by credentials to an applicant who meets the requirements, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dentistry in New Mexico, of the Dental Health Care Act and rules promulgated pursuant to that act, and who:

(1) has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application; or

(2) is duly licensed by examination as a dentist pursuant to the laws of another state or territory of the United States.

E. The board may issue a specialty license by examination to an applicant who has passed a clinical and written examination given by the board or its examining agents that covers the applicant's specialty. The applicant shall have a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association. The applicant shall also meet all other requirements as established by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

F. The board may issue a specialty license, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States and who has a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude. The applicant shall also meet all other qualifications as deemed necessary by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

**History:** Laws 1994, ch. 55, § 12; 1999, ch. 292, § 2; 2003, ch. 409, § 9; 2011, ch. 113, § 9.

### **61-5A-13. Dental hygienist licensure.**

A. Applicants for licensure shall have graduated and received a degree from an accredited dental hygiene educational program that provides a minimum of two academic years of dental hygiene curriculum and is a post-secondary educational institution accredited by the joint commission on dental accreditation and shall have passed the written portion of the dental hygiene examination administered by the joint commission on national dental examinations of the American dental association or, if this test is not available, another written examination determined by the committee.

B. Applicants for licensure by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a written examination covering the laws and rules for practice in New Mexico. Each written examination shall be supplemented by a practical or clinical examination administered by the committee or its agents that reasonably tests the applicant's qualifications to practice as a dental hygienist. Upon an applicant passing the written and clinical examinations, the board, upon recommendation of the committee, shall issue a license to practice as a dental hygienist.

C. The board, upon the committee's recommendation, shall issue a license to practice as a dental hygienist by credentials without examination, including practical or clinical examination, to an applicant who is a duly licensed dental hygienist by examination under the laws of another state or territory of the United States and whose license is in good standing for the two previous years in that jurisdiction and if the applicant otherwise meets all other requirements of the Dental Health Care Act, including payment of appropriate fees and passing an examination covering the laws and rules pertaining to practice as a dental hygienist in New Mexico.

**History:** Laws 1994, ch. 55, § 13; 1999, ch. 292, § 3; 2003, ch. 409, § 10.

### **61-5A-13.1. Dental therapist licensure; requirements.**

A. The board shall license as a dental therapist any individual who, in accordance with board rules:

- (1) provides evidence of licensure as a dental hygienist;
- (2) provides evidence of having graduated and received a degree from a dental therapy education program accredited by the commission on dental accreditation;
- (3) has passed a written examination covering the statutes and rules relating to the practice of dental therapy in the state within a time frame established in board rules;
- (4) has passed a practical or clinical examination on the practice of dental therapy administered by the board or its agent that reasonably tests the individual's skill in practicing dental therapy; and
- (5) has paid any requisite fees and complied with any other reasonable requirements for licensure as a dental therapist that the board has established by rule.

B. No dentist shall supervise more than three dental therapists at any one time.

**History:** Laws 2019, ch. 107, § 9.

## **61-5A-13.2. Dental therapy; scope of practice; supervision.**

A. A dental therapist shall provide care in accordance with a dental therapy practice agreement; provided that the dental therapy practice agreement is limited to:

- (1) the following activities performed under general supervision:
  - (a) oral evaluation and assessment of dental disease;
  - (b) formulation of an individualized treatment plan as authorized by a supervising dentist;
  - (c) place and shape direct restorations without mechanical preparation;
  - (d) impressions for single-tooth removable prosthesis;
  - (e) temporary cementation;
  - (f) atraumatic restorative therapy;
  - (g) temporary and sedative restorations;
  - (h) extraction of primary teeth without radiological evidence of roots;
  - (i) palliative treatments;
  - (j) fabrication and placement of temporary crowns;
  - (k) recementation of permanent crowns;
  - (l) removal and nonsurgical placement of space maintainers;
  - (m) repairs and adjustments to prostheses;
  - (n) tissue conditioning;
  - (o) administration of analgesics, anti-inflammatory substances and antibiotics that a supervising dentist orders; and
  - (p) other closely related procedures that the board authorizes through rules it has adopted and promulgated; and
- (2) the following activities that a dental therapist performs under indirect supervision or, if the dental therapist has completed a dental therapy post-graduate clinical experience, under general supervision:

(a) preparation and direct restoration of cavities in primary and permanent teeth; and

(b) fitting, shaping and cementing of stainless steel crowns on teeth prepared by a dentist.

B. A dental therapist may treat a patient prior to a dentist's examination or diagnosis, subject to a dental therapy practice agreement.

**History:** Laws 2019, ch. 107, § 10.

### **61-5A-13.3. Dental therapy; practice environments.**

A. A dental therapist shall practice only in the following environments:

- (1) a nonprofit community dental organization;
- (2) a health facility operated by the federal Indian health service;
- (3) a health facility that a tribe operates under Section 638 of the federal Indian Self-Determination and Education Assistance Act;
- (4) a federally qualified health center;
- (5) a facility certified by the federal centers for medicare and medicaid services as a "federally qualified health center look-alike" facility;
- (6) a private residence or a facility in which an individual receives long-term community-based services under the state's medicaid program;
- (7) a long-term care facility;
- (8) a private residence, when exclusively to treat an individual who, due to disease, disability or condition, is unable to receive care in a dental facility; or
- (9) an educational institution engaged in the training of dental therapists accredited by the commission on dental accreditation.

B. The provisions of this section shall not be construed to prohibit, restrict or impose state licensure or regulatory requirements or obligations on the practice of dental therapy:

- (1) on tribal lands; or
- (2) by a dental therapist who is employed by a tribal health program, a federal Indian health program or a federally operated Indian health service health care site.

**History:** Laws 2019, ch. 107, § 11.

### **61-5A-14. Temporary licensure; expedited licensure.**

A. The board or the committee may issue a temporary license to practice dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or the District of Columbia and who is otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

(1) the applicant shall hold a valid license in good standing in another state or territory of the United States or the District of Columbia;

(2) the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

(3) the temporary license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in the secretary-treasurer's discretion, may require. Temporary licensees shall engage in only those activities specified on the temporary license for the time designated, and the temporary license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

(4) the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

(5) the temporary license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

(6) the application for a temporary license under this section shall be accompanied by a license fee; and

(7) the temporary licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act.

B. The board or committee shall issue an expedited license without examination to a dentist or dental hygienist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after a person files an application for a license accompanied by any required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978. If the board issues an expedited license to a person whose prior licensing

jurisdiction did not require examination, the board may require that person to pass an examination before applying for license renewal.

C. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 1994, ch. 55, § 14; 2003, ch. 409, § 11 2022, ch. 39, § 27.

### **61-5A-14.1. Public-service licensure.**

The board or the committee may issue a temporary public-service license to practice dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or who is enrolled as a dental resident in a residency program in this state and the commission on dental accreditation has accredited that program. That applicant shall be otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

A. the applicant for public-service licensure shall hold a valid license in good standing in another state or territory of the United States or be enrolled as a dental resident in a residency program in the state that the commission on dental accreditation has accredited;

B. a temporary public-service license issued to a dental residency student who has not taken and passed a clinical examination accepted by the board shall not be renewed after the student has completed the residency program;

C. the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

D. the public-service license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in the secretary-treasurer's discretion, may require. Public-service licensees shall engage in only those activities specified on the public-service license for the time designated, and the public-service license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

E. the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

F. the public-service license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

G. the application for a public-service license under this section shall be accompanied by a license fee;

H. the public-service licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act; and

I. a dentist or dental hygienist providing dental care services to a charitable dental care project may provide dental care pursuant to a presumptive temporary public-service license valid for a period of no longer than three days. The dentist or dental hygienist shall be otherwise subject to the provisions of this section and board rules governing public-service licensure. This presumptive temporary public-service license is only valid when:

- (1) the dentist or dental hygienist receives no compensation;
- (2) the project is sponsored by an entity that meets the board's definition of "entity" and that the board has approved to undertake the charitable project;
- (3) the dental care is performed within the limits of the license that the dentist or dental hygienist holds in another jurisdiction;
- (4) upon request, the out-of-state dentist or dental hygienist produces any document necessary to verify the dentist's or dental hygienist's credentials; and
- (5) the out-of-state dentist or dental hygienist works under the indirect supervision of a dentist or dental hygienist licensed in this state.

**History:** Laws 2011, ch. 113, § 10.

### **61-5A-15. Content of licenses and certificates; display of licenses and certificates.**

A. 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) if the license is a specialty license, the specialty to which practice is limited;
- (6) the signatures of a majority of the board members; and
- (7) the attestation of the board president and secretary.

B. All dental therapy 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.

C. All dental hygienist 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 committee members; and
- (6) the attestation of the board president and secretary.

D. Certificates issued to dental assistants shall bear:

- (1) a serial number;
- (2) the full name of the assistant;
- (3) the date of issue;
- (4) the date of expiration;

- (5) the expanded functions certified to perform; and
- (6) the attestation of the board secretary.

E. All licenses and certificates shall be displayed in a conspicuous place in the office where the holder practices. The license or certificate shall, upon request, be exhibited to any of the members of the board, the committee or its authorized agent.

**History:** Laws 1994, ch. 55, § 15; 2019, ch. 107, § 4.

### **61-5A-16. License and certificate renewals.**

A. Except as provided in Subsection I of this section, all licensees shall be required to renew their licenses triennially as established by rules of the board.

B. All dental assistants certified in expanded functions, expanded-function dental auxiliaries and community dental health coordinators shall be required to renew their certificates triennially as established by rules of the board.

C. The board or committee may establish a method to provide for staggered triennial terms and may prorate triennial renewal fees and impaired dentist and dental hygienist fees until staggered triennial renewal is established. The fact that a licensee has not received a renewal form from the board or committee shall not relieve the licensee of the duty to renew the license or certificate nor shall such omission on the part of the board or committee operate to exempt the licensee from the penalties for failure to renew the licensee's license or certificate.

D. All licensees shall pay a triennial renewal fee and an impaired dentist and dental hygienist fee, and all licensees shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of license shall state the licensee's full name, business address, the date and number of the license and all other information requested by the board or committee.

F. A licensee who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. A licensee who fails to submit application for triennial renewal between thirty and sixty days of the July 1 deadline may have the licensee's license or certificate suspended. If the licensee renews by that time, the licensee shall be assessed a cumulative late fee.

H. The board or the committee may summarily revoke, for nonpayment of fees or failure to comply with continuing education or continued competency requirements, the

license or certificate of a licensee or certificate holder who has failed to renew the license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and all other information as required by rule of the board. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1994, ch. 55, § 16; 2003, ch. 409, § 13; 2011, ch. 113, § 11.

### **61-5A-17. Retirement and inactive status; reactivation.**

A. A licensee who wishes to retire from practice shall meet all requirements for retirement as set by rules of the board, and, if the licensee is a dental hygienist, the committee. The licensee shall notify the board or the committee in writing before the expiration of the licensee's current license, and the secretary of the board or the committee shall acknowledge the receipt of notice and record it. If, within a period of three years from the date of retirement, the licensee wishes to resume practice, the applicant shall notify the board or the committee in writing and give proof of completing all requirements as prescribed by rules of the board and the committee to reactivate the license.

B. At any time during the three-year period following retirement, a licensee with a retired New Mexico license may request in writing to the board or the committee that the licensee's license be placed in inactive status. Upon the receipt of the application and fees as determined by the board or the committee and with the approval of the board or the committee, the license may be placed in inactive status.

C. A licensee whose license has been placed in inactive status may not engage in any of the activities contained within the scope of practice of dentistry, dental therapy or dental hygiene in New Mexico described in the Dental Health Care Act.

D. Licensees with inactive licenses must renew their licenses triennially and comply with all the requirements set by the board and, if the licensee is a dental hygienist, by the committee.

E. If a licensee with an inactive license wishes to resume active practice, the licensee must notify the board or, if the licensee is a dental hygienist, the committee, in writing and provide proof of completion of all requirements to reactivate the license as

prescribed by rule of the board or the committee. Upon payment of all fees due, the board may reactivate the license and the licensee may resume practice subject to any stipulations of the board or the committee.

F. Inactive licenses must be reactivated or permanently retired within nine years of having been placed in inactive status.

G. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 1994, ch. 55, § 17; 2003, ch. 409, § 14; 2019, ch. 107, § 5.

### **61-5A-18. Practicing without a license; penalty.**

A. Any person who practices dentistry or who attempts to practice dentistry without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice dentistry in New Mexico is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 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 dentistry or attempting to practice dentistry without complying with the Dental Health Care Act shall be a separate violation.

B. Any person who practices as a dental hygienist or who attempts to practice as a dental hygienist without first complying with the provisions of the Dental Health Care Act and without being the holder of a license entitling the practitioner to practice as a dental hygienist in New Mexico is guilty of a misdemeanor and upon conviction shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment for a definite period less than one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of practicing as a dental hygienist or attempting to practice as a dental hygienist without complying with the Dental Health Care Act shall be a separate violation.

C. A person that functions or attempts to function as a non-dentist owner or who is an officer of a corporate entity that functions or attempts to function as a non-dentist owner in New Mexico without first complying with the provisions of the Dental Health Care Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of the Criminal Sentencing Act to imprisonment for a definite period not to exceed one year and, in the discretion of the sentencing court, to a fine not to exceed one thousand dollars (\$1,000), or both. Each occurrence of functioning as a non-dentist owner without complying with the Dental Health Care Act shall be a separate violation.

D. The attorney general or district attorney shall prosecute all violations of the Dental Health Care Act.

E. Upon conviction of any person for violation of any provision of the Dental Health Care Act, the convicting court may, in addition to the penalty provided in this section, enjoin the person from any further or continued violations of the Dental Health Care Act and enforce the order of contempt proceedings.

**History:** Laws 1994, ch. 55, § 18; 2003, ch. 409, § 15.

### **61-5A-19. Reinstatement of revoked or suspended license.**

A. Unless otherwise stated in the order of revocation, a motion for reinstatement of a revoked license may not be filed for a period of at least three years from the effective date of the revocation.

B. If the motion for reinstatement is denied, no further motions for reinstatement shall be considered for a period of one year.

C. A licensee who has been suspended for a specific period of time shall be automatically reinstated at the expiration of the period specified in the order of suspension. The suspended licensee shall automatically be reinstated as of the day after the expiration of the period of suspension; provided that prior to the expiration of such time if the administrative prosecutor has filed with the board or committee the written objections, the suspended licensee shall not be automatically reinstated. Should objections be filed, the petition for reinstatement shall be referred to the board or committee for hearing pursuant to provisions of Subsection E of this section.

D. Procedure for reinstatement of licensees who have been suspended for an indefinite period of time is as follows:

(1) a licensee who has been suspended for an indefinite period of time may, at any time after complying with the conditions of reinstatement, file a petition for reinstatement with the board or committee;

(2) the petition shall be referred to the board or committee for hearing pursuant to provisions of Subsection E of this section; and

(3) if the motion for reinstatement is denied, no further motions for reinstatement will be considered for a period of one year.

E. Procedure for reinstatement hearings is as follows:

(1) applications for reinstatement shall be referred to the board or, if the application is for reinstatement of a license to practice dental hygiene, to the committee for hearing if the applicant meets the criteria set forth in this section;

(2) the board or committee shall schedule a hearing as soon as practical at which the applicant shall have the burden of demonstrating that the applicant has the

moral qualifications, that the applicant is once again fit to resume the practice of dentistry, dental therapy or dental hygiene and that the resumption of the applicant's practice of dentistry, dental therapy or dental hygiene will not be detrimental to the public interest;

(3) the board or committee shall file its findings of fact, conclusions of law and decision within ninety days of the hearing; and

(4) the board's or committee's decision to refuse to reinstate a license shall not be reviewable except for an abuse of discretion.

**History:** Laws 1994, ch. 55, § 19; 2019, ch. 107, § 6.

### **61-5A-20. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, the board and the committee shall establish a schedule of reasonable fees not to exceed the following:

	Dentists	Dental Hygienists
A. licensure by examination	\$1,500	\$1,000
B. licensure by credential	\$3,000	\$1,500
C. specialty license by examination	\$1,500	
D. specialty license by credential	\$3,000	
E. temporary license		
48 hours	\$ 50	\$ 50
six months	\$ 300	\$ 200
12 months	\$ 450	\$ 300
F. application for certification in local anesthesia		\$ 40
G. examination in local anesthesia		\$ 150
H. triennial license renewal	\$ 600	\$ 450
I. late renewal	\$ 100	\$ 100
J. reinstatement of license	\$ 450	\$ 300
K. administrative fees	\$ 300	\$ 300
L. impaired dentist or dental hygienist	\$ 150	\$ 75
M. assistant, expanded-function dental auxiliary or community dental health coordinator certificate		\$ 100
N. application for certification for collaborative practice		\$ 150
O. annual renewal for collaborative practice		\$ 50
P. application for inactive status	\$ 50	\$ 50

Q.	triennial renewal of inactive license	\$ 90	\$ 90
R.	non-dentist owners license (initial)		Non-dentist Owners \$ 300
S.	non-dentist owners license triennial renewal		\$ 150
T.	dental therapist license (initial)		Dental Therapists \$1,000
U.	dental therapist license triennial renewal		\$ 300.

**History:** Laws 1994, ch. 55, § 20; 2003, ch. 409, § 16; 2011, ch. 113, § 12; 2019, ch. 107, § 7; 2020, ch. 6, § 13.

### **61-5A-21. Disciplinary proceedings; application of Uniform Licensing Act.**

A. In accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and rules of the board, the board and, as relates to dental hygienist licensure, committee may fine and may deny, revoke, suspend, stipulate or otherwise limit any license or certificate, including those of licensed non-dentist owners, held or applied for under the Dental Health Care Act, upon findings by the board or the committee that the licensee, certificate holder or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate;

(2) has been convicted of a crime punishable by incarceration in a federal prison or state penitentiary; provided 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;

(3) is guilty of gross incompetence or gross negligence, as defined by rules of the board, in the practice of dentistry, dental therapy, dental hygiene or dental assisting;

(4) is habitually intemperate or is addicted to the use of habit-forming drugs or is addicted to any vice to such degree as to render the licensee unfit to practice;

(5) is guilty of unprofessional conduct as defined by rule;

(6) is guilty of any violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(7) has violated any provisions of the Dental Health Care Act or rule or regulation of the board or, as relates to the practice of dental hygiene, the committee;

(8) is guilty of willfully or negligently practicing beyond the scope of licensure;

(9) is guilty of practicing dentistry, dental therapy or dental hygiene without a license or aiding or abetting the practice of dentistry, dental therapy or dental hygiene by a person not licensed under the Dental Health Care Act;

(10) is guilty of obtaining or attempting to obtain any fee by fraud or misrepresentation or has otherwise acted in a manner or by conduct likely to deceive, defraud or harm the public;

(11) is guilty of patient abandonment;

(12) is guilty of failing to report to the board any adverse action taken against the licensee by a licensing authority, peer review body, malpractice insurance carrier or other entity as defined in rules of the board and the committee;

(13) has had a license, certificate or registration to practice as a dentist, dental therapist or dental hygienist revoked, suspended, denied, stipulated or otherwise limited 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 decision of the jurisdiction taking such disciplinary action will be conclusive evidence; or

(14) has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation.

B. Disciplinary proceedings may be instituted by sworn complaint by any person, including a board or committee member, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

C. Licensees and certificate holders shall bear the costs of disciplinary proceedings unless exonerated.

D. 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.

E. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids or accounting costs when audits are included as a condition of probation.

F. A dentist, dental hygienist or dental therapist practicing teledentistry is subject to the provisions of this section.

**History:** Laws 1994, ch. 55, § 21; 2003, ch. 409, § 17; 2019, ch. 107, § 8; 2021, ch. 63, § 2.



### **61-5A-22. Anesthesia administration.**

A. The board shall establish rules or regulations pertaining to the administration of nitrous oxide analgesia, conscious sedation, deep sedation and general anesthesia by dentists.

B. The board or its agent may evaluate credentials, facilities, equipment, personnel and procedures prior to issuing permits to allow the administration of agents that are utilized in providing analgesia, sedation or general anesthesia and may re-evaluate the same at its discretion.

C. The board may suspend or revoke the license of any dentist who fails to comply with anesthesia related rules or regulations of the board.

**History:** Laws 1994, ch. 55, § 22.

### **61-5A-23. Reporting of settlements and judgments; professional review actions; immunity from civil damages.**

A. All entities that make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of a judgment in a dental 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 and all appropriate professional review actions of licensees.

B. No hospitals, health care entities, insurance carriers or professional review bodies required to report under this section, 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, insurance carrier or professional review body failing to comply with the reporting requirements established in this section shall be subject to a civil penalty not to exceed two thousand dollars (\$2,000).

**History:** Laws 1994, ch. 55, § 23.

### **61-5A-24. Injunction to stop unlicensed dental or dental hygiene practice.**

A. The attorney general, district attorney, the board, the committee or any citizen of any county where any person practices dentistry or dental hygiene 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 or dental hygiene until a valid license to practice dentistry or dental hygiene is secured and any person who has been enjoined who violates the injunction shall be punished for contempt of court, provided that the injunction does not relieve any

person practicing dentistry or dental hygiene without a valid license from a criminal prosecution therefore as provided by law.

B. In charging any person in a complaint for injunction, or in an affidavit, information or indictment with practicing dentistry or dental hygiene 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 or dental hygiene without a valid license, without averring any further or more particular facts concerning the same.

**History:** Laws 1994, ch. 55, § 24.

### **61-5A-25. Protected actions and communications.**

A. No member of the board or the committee or any ad hoc committee appointed by the board or the committee 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 or the committee.

B. All written and oral communication made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board or the committee, shall be confidential communications and are not public records for the purposes of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communications and information acquired, prepared or disseminated by the board or the committee relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed except to the extent necessary to carry out the purposes of the board or the committee or in a judicial appeal from the actions of the board or the committee or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

C. Information contained in complaint files is public information and subject to disclosure when the board or the committee acts on a complaint and issues a notice of contemplated action or reaches a settlement prior to the issuance of a notice of contemplated action.

D. No person or legal entity providing information to the board or the committee, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**History:** Laws 1994, ch. 55, § 25; 2003, ch. 409, § 18.

### **61-5A-26. Fund established.**

A. There is created in the state treasury the "board of dental health care fund".

B. All money received by the board and money collected under the Dental Health Care Act shall be deposited with the state treasurer. The state treasurer shall credit this

money to the board of dental health care fund except money collected for the impaired assessment, which shall be held separate from the board fund. Fees collected by the board from fines shall be deposited in the board of dental health care fund and, at the discretion of the board and the committee, may be transferred into the impaired dentists and dental hygienists fund.

C. Payment out of the board of dental health care 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. Except as provided in Paragraph (7) of Subsection C of Section 3 of this 2017 act, all amounts paid into the board of dental health care 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 Health Care Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Dental Health Care Act.

E. All funds that 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 Health Care Act.

**History:** Laws 1994, ch. 55, § 26; 2003, ch. 409, § 19; 2017 (1st S.S.), ch. 1, § 8.

### **61-5A-27. Criminal Offender Employment Act.**

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 Health Care Act.

**History:** Laws 1994, ch. 55, § 27.

### **61-5A-28. Temporary provision.**

Until revised, rescinded or modified by the board or committee, regulations adopted under the Dental Act shall remain in effect upon enactment of the Dental Health Care Act and be enforced by the board or the committee.

**History:** Laws 1994, ch. 55, § 28.

### **61-5A-29. Licensure or certification under prior law.**

A. Any person licensed as a dentist or hygienist under any prior laws of this state, whose license is valid on the effective date of the Dental Health Care Act, is held to be licensed under the Dental Health Care Act and is entitled to renewal of his license as provided in that act.

B. Any person certified under any prior laws of this state, whose certificate is valid on the effective date of the Dental Health Care Act, is held to be certified under the Dental Health Care Act and is entitled to renewal of his certificate as provided in that act.

**History:** Laws 1994, ch. 55, § 29.

### **61-5A-30. Repealed.**

**History:** Laws 1994, ch. 55, § 42; 1997, ch. 46, § 5; 2003, ch. 409, § 20; 2003, ch. 428, § 4; 2009, ch. 96, § 4; 2015, ch. 119, § 4; repealed by Laws 2023, ch. 15, § 8.

## **ARTICLE 5B**

### **Impaired Dentists and Dental Hygienists**

#### **61-5B-1. Short title.**

Sections 31 [30] through 41 [61-5B-1 to 61-5B-11 NMSA 1978] of this act shall be cited as the "Impaired Dentists and Dental Hygienists Act".

**History:** Laws 1994, ch. 55, § 30.

#### **61-5B-2. Definitions.**

As used in the Impaired Dentists and Dental Hygienists Act:

- A. "board" means the New Mexico board of dental health care;
- B. "dental hygienists committee" means the New Mexico dental hygienists committee;
- C. "dentistry or dental hygiene" means the practice of dentistry or dental hygiene;  
and
- D. "licensee" means a dentist or dental hygienist licensed by the board.

**History:** Laws 1994, ch. 55, § 31; 2003, ch. 409, § 21.

#### **61-5B-3. Grounds for restriction, suspension, revocation, stipulation or other limitation of license.**

The license of any dentist or dental hygienist to practice dentistry or dental hygiene in this state shall be subject to restriction, suspension, revocation, stipulation or may

otherwise be limited in case of inability of the licensee to practice 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 skills;

C. habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978]; or

D. habitual or excessive use or abuse of alcohol.

**History:** Laws 1994, ch. 55, § 32.

#### **61-5B-4. Board or dental hygienists committee; additional powers and duties as related to the Impaired Dentists and Dental Hygienists Act.**

A. If the board or dental hygienists committee has reasonable cause to believe that a person licensed to practice dentistry or dental hygiene is unable to practice with reasonable skill and safety to patients because of a condition described in the Impaired Dentists and Dental Hygienists Act, the board shall cause an examination of such licensee to be made and shall, following the examination, take appropriate action within the provisions of the Impaired Dentists and Dental Hygienists Act.

B. Examination of a licensee pursuant to an order of the board shall be conducted by an examining committee designated by the board. Each examining committee shall be composed of two duly licensed dentists or two duly licensed dental hygienists if the licensee is a dental hygienist and two duly licensed physicians, one of whom shall be a psychiatrist who is knowledgeable and experienced in the field of chemical dependency if a question of mental illness or dependency is involved. Whenever possible, examining committee members shall be selected for their knowledge or experience in the areas of alcoholism, chemical dependency, mental health and geriatrics and may be rehabilitated impaired dentists, dental hygienists or physicians. In designating the members of such examining committee, the board may consider nominations from the New Mexico dental association for the dentist member, the New Mexico dental hygienists' association for dental hygiene members thereof and nomination from the New Mexico medical society for the physician members thereof. No current members of the board, dental hygienists committee or New Mexico board of medical examiners [New Mexico medical board] shall be designated as a member of an examining committee.

**History:** Laws 1994, ch. 55, § 33.

## **61-5B-5. Examination by committee.**

A. The examining committee assigned to examine a licensee pursuant to referral by the board shall conduct an examination of the licensee for the purpose of determining the fitness of the licensee to practice dentistry or dental hygiene 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 licensee examined possesses one or more of the impairments set forth in the Impaired Dentists and Dental Hygienists Act and such impairment does, in fact, affect the ability of the licensee to skillfully and safely practice dentistry or dental hygiene. The examining committee shall order the licensee to appear before it for hearing and give the licensee fifteen 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 licensee 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 licensee necessary to its determination of the fitness of the licensee to practice, the examining committee shall order the licensee to submit to such examination. Any person licensed to practice dentistry or dental hygiene in this state shall, by so practicing or by making or filing an annual registration to practice dentistry or dental hygiene in this state, be deemed to have:

(1) given 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 report of the examining committee to the board or the dental hygienists committee on the grounds of privileged communication.

C. Any licensee who submits to a diagnostic mental or physical examination as ordered by the examining committee shall have a right to designate an accompanying individual to be present at the examination and make an independent report to the board.

D. Failure of a licensee 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 or dental hygienists committee and, unless due to circumstances beyond the control of the licensee, shall be grounds for the immediate and summary suspension by the board of the licensee to practice dentistry or dental hygiene in this state until further order of the board.

**History:** Laws 1994, ch. 55, § 34.

## **61-5B-6. Voluntary restriction of licensure.**

A. A licensee may request in writing to the board a restriction to practice under his existing license, and the board and the dental hygienists committee shall have authority, if it deems appropriate, to attach stipulations to the licensure of the licensee to practice dentistry or dental hygiene within specified limitations and waive the commencement of any proceeding. Removal of a voluntary restriction on licensure to practice dentistry or dental hygiene shall be subject to the procedure for reinstatement of license. As a condition for accepting such voluntary limitation of practice, the board may require each licensee to:

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

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

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

B. Subject to the provisions of the Impaired Dentists and Dental Hygienists Act, a violation of any of the conditions of the voluntary limitation of practice statement by such licensee shall be due cause for the refusal of renewal, or the suspension or revocation, of the license by the board.

**History:** Laws 1994, ch. 55, § 35.

### **61-5B-7. Report to the board or dental hygienists committee; action.**

A. The examining committee shall report to the board or the dental hygienists committee its findings on the examination of the licensee, the determination of the examining committee as to the fitness of the licensee to engage in the practice of dentistry or dental hygiene with reasonable skill and safety to patients, either on a restricted or unrestricted basis, and any intervention 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 or dental hygienists committee may accept or reject the recommendation of the examining committee to permit a licensee to continue to practice with or without any restriction on his licensure to practice dentistry or dental hygiene 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 licensee for restriction of the licensure of the dentist or the dental hygienist to practice dentistry or dental hygiene, any licensee shall be entitled to a hearing before the board under and in accordance with the procedure contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA

1978] and a determination on the evidence as to whether or not restriction, suspension or revocation of licensure shall be imposed.

**History:** Laws 1994, ch. 55, § 36.

### **61-5B-8. Proceedings.**

A. The board may formally proceed against a licensee under the Impaired Dentists and Dental Hygienists Act in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. When the licensee being considered for action is a dental hygienist, the board shall act upon recommendation of the dental hygienists committee on all aspects of procedures in the Impaired Dentists and Dental Hygienists Act.

C. At the conclusion of the hearing, the board or the dental hygienists committee shall make the following findings:

- (1) whether or not the licensee is impaired by one of the grounds for restriction, suspension or revocation listed herein;
- (2) whether or not such impairment does in fact limit the ability of the licensee to practice dentistry or dental hygiene skillfully and safely;
- (3) to what extent such impairment limits the ability of the licensee to practice dentistry or dental hygiene skillfully and safely and whether the board or dental hygienists committee finds that such impairment is such that the license should be suspended, revoked or restricted in the licensee's practice of dentistry or dental hygiene; and
- (4) if the finding recommends suspension or restriction of the ability of the licensee to practice dentistry or dental hygiene, 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.

D. At the conclusion of the hearing, the board or the dental hygienists committee shall make a determination of the merits and may order one or more of the following:

- (1) placement of the licensee on probation on such terms and conditions as it deems proper for the protection of the public;
- (2) suspension or restriction of the license of the licensee to practice dentistry or dental hygiene for the duration of the licensee's impairment;
- (3) revocation of the license of the licensee to practice dentistry or dental hygiene; or



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

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

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

**History:** Laws 1994, ch. 55, § 37.

### **61-5B-9. Reinstatement of license.**

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

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

C. Action of the board on the petition shall be initiated by referral to and examination by the examining committee.

D. The board may, in its discretion, upon written recommendation of the examining committee, restore the licensure of the licensee on a general or limited basis.

**History:** Laws 1994, ch. 55, § 38.

### **61-5B-10. Impaired dentists and dental hygienists treatment program.**

A. The board has the authority to enter into an agreement with a nonprofit corporation to implement an impaired dentists and dental hygienists treatment program.

B. For the purposes of this section, "impaired dentists and dental hygienists treatment program" means a program of care and rehabilitation services provided by those organizations authorized by the board to provide for the detention, intervention and monitoring of an impaired dentist or dental hygienist.

**History:** Laws 1994, ch. 55, § 39.

## **61-5B-11. Impaired dentists and dental hygienists fund created.**

A. There is created an "impaired dentists and dental hygienist fund".

B. The fund shall be initially established by an assessment to all licensees as determined by the board and the dental hygienists committee.

C. All funds received by the board for an impaired assessment, either special or at time of relicensure, shall be deposited with the state treasurer. The state treasurer shall credit this money to the impaired dentists and dental hygienists fund.

D. Payments out of the 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 responsibilities of the board as approved by that department.

E. All amounts paid into the 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 Impaired Dentists and Dental Hygienists Act. All money unused at the end of any fiscal year shall remain in the fund for use in accordance with provisions of the Impaired Dentists and Dental Hygienists Act.

F. Licensees shall be assessed an impaired fee at the time of renewal. The amount of the fee shall be determined by the board and the committee and shall be established to meet the need for enforcing the Impaired Dentists and Dental Hygienists Act.

G. The fund shall be used for the purpose of administration, testing, monitoring, hearings and consultation fees by the board or dental hygienists committee or their agent, which are necessary to enforce the Impaired Dentists and Dental Hygienists Act. It is not the purpose of the fund to pay for treatment of impaired dentists and dental hygienists.

**History:** Laws 1994, ch. 55, § 40.

## **ARTICLE 5C**

### **Dental Amalgam Waste Reduction**

#### **61-5C-1. Short title.**

Sections 1 through 6 [61-5C-1 to 61-5C-6 NMSA 1978] of this act may be cited as the "Dental Amalgam Waste Reduction Act".

**History:** Laws 2013, ch. 206, § 1.

## **61-5C-2. Definitions.**

As used in the Dental Amalgam Waste Reduction Act:

A. "amalgam" means a dental restorative material that is typically composed of mercury, silver, tin and copper, along with other metallic elements, and that is used by a dentist to restore a cavity in a tooth;

B. "amalgam separator" means a device that removes dental amalgam from the waste stream prior to discharge into either the local public wastewater system or a private septic system and that meets a minimum removal efficiency in accordance with international standards contained in *ISO 11143, Dental Equipment-Amalgam Separators*, published by the international organization for standardization; and

C. "dental office" means a fixed physical structure in which dental services are provided to patients by dentists and dental professionals licensed or certified by the New Mexico board of dental health care under the management of a licensed owner, operator or designee.

**History:** Laws 2013, ch. 206, § 2.

## **61-5C-3. Installation of amalgam separator required.**

By December 31, 2014, a dental office shall install an appropriately sized amalgam separator system and, upon inspection for cause, shall demonstrate to the New Mexico board of dental health care proper installation, operation, maintenance and amalgam waste recycling or disposal in accordance with an amalgam separator manufacturer's recommendations. The New Mexico board of dental health care shall consider noncompliance with the Dental Amalgam Waste Reduction Act as unprofessional conduct subject to the penalties and discipline of the board pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978].

**History:** Laws 2013, ch. 206, § 3.

## **61-5C-4. Exemption for certain dental offices.**

An amalgam separator system shall not be required for the offices or clinical site of:

A. a dental office that is not engaged in amalgam placement, removal or modification;

B. an orthodontist;

C. a periodontist;

- D. an oral maxillofacial surgeon;
- E. an oral maxillofacial radiologist;
- F. an oral pathologist; or
- G. a portable dental office without a fixed connection for wastewater discharge.

**History:** Laws 2013, ch. 206, § 4.

### **61-5C-5. Reporting.**

A dental office shall report the model and size of its amalgam separator system within ninety days of installation to its local publicly owned water treatment facility, where applicable, and to the New Mexico board of dental health care. A dental office shall report its compliance and maintain records of the operation, maintenance and recycling or disposal of amalgam waste for every consecutive three-year period following the installation of its amalgam separator system and shall report the information upon request for cause to the New Mexico board of dental health care. The New Mexico board of dental health care shall retain the reported information for review coincident with the board's licensing and renewal functions.

**History:** Laws 2013, ch. 206, § 5.

### **61-5C-6. Enforcement.**

The New Mexico board of dental health care shall initiate disciplinary proceedings for willful and persistent noncompliance with the provisions of the Dental Amalgam Waste Reduction Act.

**History:** Laws 2013, ch. 206, § 6.

## **ARTICLE 6 Medicine and Surgery**

### **61-6-1. Short title; purpose.**

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 rules controlling the granting and use of the privilege to practice medicine and to establish a medical board to implement and enforce the laws and rules.

C. The primary duties and obligations of the medical board are to issue licenses to qualified health care practitioners, including physicians, physician assistants and anesthesiologist assistants, to discipline incompetent or unprofessional physicians, physician assistants or anesthesiologist assistants and to aid in the rehabilitation of impaired physicians, physician assistants and anesthesiologist assistants for the purpose of protecting the public.

**History:** 1978 Comp., § 61-6-1, enacted by Laws 1989, ch. 269, § 1; 2003, ch. 19, § 1; 2021, ch. 54, § 16.

### **61-6-2. New Mexico medical board; appointment; terms; qualifications.**

A. There is created the "New Mexico medical board", consisting of eleven members. The board shall be composed of two public members, one physician assistant and eight reputable physicians, at least two of whom shall be osteopathic physicians and at least two of whom shall be medical physicians. The osteopathic physicians and the medical physicians shall be of known ability, shall be graduates of medical colleges or schools in good standing and shall 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. The physician assistant shall have been a licensed physician assistant and a resident of New Mexico for at least five years immediately preceding the date of appointment. Public members of the board shall be residents of New Mexico, shall not have been licensed by the board as a health care practitioner over which the board has licensure authority and shall have no significant financial interest, direct or indirect, in the occupation regulated.

B. The governor shall appoint the medical physician members from a list of names submitted to the governor by the New Mexico medical society or its authorized governing body or council. The list shall contain five names of qualified medical physicians for each medical physician member to be appointed. Medical physician member vacancies shall be filled in the same manner.

C. The governor shall appoint osteopathic physician members from a list of names submitted to the governor by the New Mexico osteopathic medical association or its authorized governing body or council. The list shall contain five names of qualified osteopathic physicians for each osteopathic physician member to be appointed. Osteopathic physician member vacancies shall be filled in the same manner.

D. The governor shall appoint the physician assistant member from a list of names submitted to the governor by the New Mexico academy of physician assistants or its authorized governing body or council. The list shall contain five names of qualified physician assistants.

E. Members shall be appointed to four-year terms, staggered so that not more than three terms expire in a year. All board members shall hold office until their successors are appointed.

F. A 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; 2003, ch. 19, § 2; 2021, ch. 54, § 17.

### **61-6-3. Meetings of the board; quorum.**

A. The board shall hold four regular meetings every fiscal year.

B. During the second quarter of each year, the board shall hold its annual meeting and shall elect officers.

C. 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 or electronic request of any two members.

D. 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; 2003, ch. 19, § 3; 2021, ch. 54, § 18.

### **61-6-4. Election; duties of officers; reimbursement of board members.**

A. At its annual meeting, the board shall elect a chair, a vice chair and a secretary-treasurer.

B. The chair shall preside over the meetings and affairs of the board.

C. The vice chair shall perform such duties as may be assigned by the chair and shall serve as chair due to the absence or incompetence of the chair.

D. The secretary-treasurer shall be a physician member of the board and shall:

- (1) review applications for licensure and interview applicants to determine eligibility for licensure;
- (2) issue temporary licenses pursuant to Section 61-6-14 NMSA 1978;
- (3) serve on committees related to board activities that require physician participation;
- (4) serve as a consultant on medical practice issues when a board action is not required; and
- (5) perform any other functions assigned by the board or by the chair.

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 through 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 or agents performing interviews of applicants may be compensated at the board's discretion.

**History:** 1978 Comp., § 61-6-4, enacted by Laws 1989, ch. 269, § 4; 2003, ch. 19, § 4; 2021, ch. 54, § 19.

## **61-6-5. Medical board duties and powers.**

The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act [Chapter 61, Article 6C NMSA 1978], the Anesthesiologist Assistants Act [Chapter 61, Article 6D NMSA 1978], the Genetic Counseling Act [61-6A-1 to 61-6A-10 NMSA 1978], the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978], the Polysomnography Practice Act [61-6B-1 to 61-6B-10 NMSA 1978], the Naturopathic Doctors' Practice Act [61-12G-1 to 61-12G-13 NMSA 1978], the Podiatry Act [Chapter 61, Article 8 NMSA 1978] and the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978];

B. promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography

Practice Act, the Naturopathic Doctors' Practice Act, the Podiatry Act and the Naprapathic Practice 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 matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. 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;

H. discipline licensees or deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the law that the board is charged with enforcing;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. 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 a health care profession or occupation over which the board has authority 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;

L. establish continuing education requirements for licensed practitioners over which the board has authority;

M. establish committees as it deems necessary for carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer;

O. establish and maintain rules related to the management of pain based on review of national standards for pain management; and



P. have the authority to waive licensure fees for the purpose of the recruitment and retention of health care practitioners over which the board has authority.

**History:** 1953 Comp., § 67-5-3.2, enacted by Laws 1973, ch. 361, § 2; 1989, ch. 269, § 5; 2003, ch. 19, § 5; 2005, ch. 140, § 5; 2008, ch. 53 § 11; 2008, ch. 54, § 11; 2008, ch 55, § 1; 2011, ch. 31, § 1; 2019, ch. 244, § 15; 2021, ch. 54, § 20; 2022, ch. 39, § 28; 2023, ch. 141, § 1.

## **61-6-6. Definitions.**

As used in the Medical Practice Act:

A. "approved postgraduate training program for physicians" means a program approved by the accreditation council for graduate medical education, the American osteopathic association or other board-approved program;

B. "board" means the New Mexico medical board;

C. "collaboration" means the process by which a licensed physician and a physician assistant jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

D. "licensed physician" means a medical or osteopathic physician licensed under the Medical Practice Act to practice medicine in New Mexico;

E. "licensee" or "health care practitioner" means a medical physician, osteopathic physician, physician assistant, polysomnographic technologist, anesthesiologist assistant, naturopathic doctor, podiatric physician or naprapath licensed by the board to practice in New Mexico;

F. "medical college or school in good standing" for medical physicians 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; and for osteopathic physicians means a college of osteopathic medicine accredited by the commission of osteopathic college accreditation;

G. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

H. "physician assistant" means a health care practitioner who is licensed by the board to practice as a physician assistant and who provides services to patients with the supervision of or in collaboration with a licensed physician as set forth in rules promulgated by the board;

I. "resident" means a graduate of a medical college or school in good standing 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 "fellow" 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 or to practice health care that is under the authority of the board in this state;

(2) offering or undertaking to administer, dispense or prescribe a drug or medicine for the use of another person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe a drug or medicine for the use of another person, except as directed by a licensed physician;

(4) offering or undertaking to perform an operation or procedure upon a 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 a person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of a person in doing any of the things listed in this subsection;

K. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

L. "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 or health care practice;

M. "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 or health care practice; and

N. "United States" means the fifty states, its territories and possessions and the District of Columbia.

**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; 1994, ch. 80, § 1; 1997, ch. 187, § 1; 2001, ch. 96, § 1; 2003, ch. 19, § 6; 2008, ch. 54, § 12; 2011, ch. 31, § 2; 2017, ch. 103, § 1; 2019, ch. 244, § 16; 2021, ch. 54, § 21; 2023, ch. 141, § 2.

### **61-6-7. Repealed.**

**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; 1994, ch. 57, § 13; 1994, ch. 80, § 2; 1997, ch. 187, § 2; 2003, ch. 19, § 7; 2017, ch. 103, § 2; repealed by Laws 2022, ch. 39, § 106.

### **61-6-7.1. Recompiled.**

**History:** 1978 Comp., § 61-6-7.1, enacted by Laws 1989, ch. 9, § 2; recompiled and amended as § 61-6C-2 by Laws 2022, ch. 39, § 30.

### **61-6-7.2. Recompiled.**

**History:** 1978 Comp., § 61-6-7.2, enacted by Laws 1997, ch. 187, § 3; 2003, ch. 19, § 8; 2021, ch. 54, § 22; recompiled and amended as § 61-6C-4 by Laws 2022, ch. 39, § 32.

### **61-6-7.3. Recompiled.**

**History:** 1978 Comp., § 61-6-7.3, enacted by Laws 1997, ch. 187, § 4; recompiled as § 61-6C-5 by Laws 2022, ch. 39, § 105.

#### **61-6-7.4. Recompiled.**

**History:** Laws 2017, ch. 103, § 6; 1978 Comp., § 61-6-7.4, recompiled as § 61-6C-6 by Laws 2022, ch. 39, § 105.

#### **61-6-8 to 61-6-8.1. Repealed.**

#### **61-6-9. Recompiled.**

**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; 1994, ch. 57, § 14; 1994, ch. 80, § 4; 1995, ch. 21, § 1; 1997, ch. 187, § 7; 2003, ch. 19, § 9; 2017, ch. 103, § 3; recompiled and amended as § 61-6C-7 by Laws 2022, ch. 39, § 33.

#### **61-6-10. Recompiled.**

**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; 1997, ch. 187, § 8; 2003, ch. 19, § 10; 2007, ch. 250, § 1; 2017, ch. 103, § 4; recompiled and amended as § 61-6C-8 by Laws 2022, ch. 39, § 34.

#### **61-6-10.1. Recompiled.**

**History:** Laws 2001, ch. 311, § 1; 1978 Comp., § 61-6-10.1, recompiled and amended as § 61-6D-1 by Laws 2022, ch. 39 § 35.

#### **61-6-10.2. Recompiled.**

**History:** Laws 2001, ch. 311, § 2; 2003, ch. 19, § 11; 2003, ch. 302, § 1; 2015, ch. 52, § 1; repealed and reenacted by 2015, ch. 52, § 4; 2021, ch. 54, § 23; 2021, ch. 54, § 24; 1978 Comp., § 61-6-10.2 recompiled as § 61-6D-2 by Laws 2022, ch. 39, § 105.

#### **61-6-10.3. Recompiled.**

**History:** Laws 2001, ch. 311, § 3; 2003, ch. 302, § 2; 2020, ch. 6, § 14; 1978 Comp., § 61-6-10.3, recompiled as § 61-6D-3 by Laws 2022, ch. 39, § 105.

#### **61-6-10.4. Recompiled.**

**History:** Laws 2001, ch. 311, § 4; 1978 Comp., § 61-6-10.4, recompiled as § 61-6D-4 by Laws 2022, ch. 39, § 105.

### **61-6-10.5. Recompiled.**

**History:** Laws 2001, ch. 311, § 5; 2020, ch. 6, § 15; 1978 Comp., § 61-6-10.5, recompiled as § 61-6D-5 by Laws 2022, ch. 39, § 105.

### **61-6-10.6. Recompiled.**

**History:** Laws 2001, ch. 311, § 6; 2021, ch. 54, § 25; 1978 Comp., § 61-6-10.6, recompiled as § 61-6D-6 by Laws 2022, ch. 39, § 105.

### **61-6-10.7. Recompiled.**

**History:** Laws 2001, ch. 311, § 7; 2013, ch. 129, § 1; 1978 Comp., § 61-6-10.7, recompiled as § 61-6D-7 by Laws 2022, ch. 39, § 105.

### **61-6-10.8. Repealed.**

### **61-6-10.9. Recompiled.**

**History:** Laws 2001, ch. 311, § 9; 2003, ch. 302, § 3; 2015, ch. 52, § 2; 1978 Comp., § 61-6-10.9, recompiled and amended as § 61-6D-8 by Laws 2022, ch. 39, § 36.

### **61-6-10.10. Recompiled.**

**History:** Laws 2001, ch. 311, § 10; 1978 Comp., § 61-6-10.10, recompiled as § 61-6D-9 by Laws 2022, ch. 39, § 105.

### **61-6-10.11. Recompiled.**

**History:** Laws 2015, ch. 52, § 3; 2021, ch. 54, § 26; 1978 Comp., § 61-6-10.11, recompiled as § 61-6D-10 by Laws 2022, ch. 39, § 105.

### **61-6-11. Physician licensure.**

A. The board may consider for licensure a person who is of good moral character, is a graduate of an accredited United States or Canadian medical or osteopathic medical school, has passed an examination approved by the board and has completed two years of an approved postgraduate training program for physicians.

B. An applicant who has not completed two years of an approved postgraduate training program for physicians, but who otherwise meets all other licensing requirements, may present evidence to the board of the applicant's other professional experience for consideration by the board in lieu of the approved postgraduate training program. The board shall, in its sole discretion, determine if the professional

experience is substantially equivalent to the required approved postgraduate training program for physicians.

C. A graduate of a board-approved medical or osteopathic medical school located outside the United States or Canada may be granted a license to practice medicine in New Mexico, provided the applicant presents evidence to the board that the applicant is a person of good moral character and provided that the applicant presents satisfactory evidence to the board that the applicant has successfully passed an examination as required by the board and has successfully completed two years of postgraduate medical training in an approved postgraduate training program for physicians. A graduate of a medical school located outside the United States who successfully completes at least two years of an approved postgraduate training program for physicians at or affiliated with an institution located in New Mexico prior to December 30, 2007 and who meets the other requirements of this section may also be granted a license to practice medicine.

D. All applicants for licensure may be required to appear personally before the board or a designated agent for an interview.

E. An applicant for licensure by examination shall not be granted a license if the applicant has taken the examination in two or more steps and has failed to successfully pass the final step within seven years of the date that the first step was passed. An applicant for licensure who holds a medical or osteopathic doctor degree and a doctoral degree in a medically related field must successfully complete the entire examination series within ten years from the date the first step of the examination is passed. The board may, by rule, establish exceptions to the time requirements of this subsection.

F. Every applicant for licensure under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

G. The board may require fingerprints and other information necessary for a state and national criminal background check.

**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; 1994, ch. 80, § 5; 1997, ch. 221, § 2; 2001, ch. 96, § 2; 2003, ch. 19, § 12; 2005, ch. 159, § 1; 2021, ch. 54, § 27.

### **61-6-11.1. Telemedicine license.**

A. The board shall issue a licensed physician a telemedicine license to allow the practice of medicine across state lines to an applicant who holds a full and unrestricted license to practice medicine in another state or territory of the United States. The board shall establish by rule the requirements for licensure; provided that the requirements shall not be more restrictive than those required for expedited licensure.

B. A telemedicine license shall be issued for a period not to exceed three years and may be renewed upon application, payment of fees as provided in Section 61-6-19 NMSA 1978 and compliance with other requirements established by rule of the board.

**History:** Laws 2001, ch. 96, § 10; 2021, ch. 54, § 28; 2023, ch. 190, § 27.

### **61-6-12. Criminal offender's character evaluation.**

The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Medical Practice Act and to all health care practitioners over which the board has licensure authority.

**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; 2021, ch. 54, § 29.

### **61-6-13. Physician expedited licensure.**

A. The board may grant an expedited license to a qualified applicant licensed in another state or territory of the United States, the District of Columbia or a foreign country as provided in Section 61-1-31.1 NMSA 1978. The board shall process the application as soon as practicable but no later than thirty days after the out-of-state medical or osteopathic physician files an application for expedited licensure accompanied by any required fee if the applicant:

(1) holds a license that is current and in good standing issued by another licensing jurisdiction approved by the board; and

(2) has practiced medicine or osteopathy as a licensed physician for at least three years.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require a person to pass an examination before applying for license renewal.

C. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted. The board may require fingerprints and other information necessary for a state and national criminal background check.

**History:** 1978 Comp., § 61-6-13, enacted by Laws 1989, ch. 269, § 9; 1994, ch. 80, § 6; 2001, ch. 96, § 3; 2003, ch. 19, § 13; 2005, ch. 159, § 2; 2021, ch. 54, § 32; 2021, ch. 70, § 8; 2023, ch. 190, § 28.

### **61-6-14. Organized youth camp or school temporary licenses and temporary licenses for out-of-state physicians.**

A. The secretary-treasurer of the board or the board's designee may, either by examination or endorsement, approve a temporary license to practice medicine to an applicant qualified to practice medicine in this state who will be temporarily in attendance at an organized youth camp or school, provided that:

- (1) the practice shall be confined to enrollees, leaders and employees of the camp or school;
- (2) the temporary license shall be issued for a period not to exceed three months from date of issuance; and
- (3) the temporary license may be issued upon written application of the applicant, accompanied by such proof of the qualifications of the applicant as specified by board rule.

B. The secretary-treasurer of the board or the board's designee may approve a temporary license to practice medicine under the supervision of a licensed physician to an 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 in this state. The following provisions shall apply:

- (1) the temporary license may be issued upon written application of the applicant, accompanied by proof of qualifications as specified by rule of the board. A temporary license may be granted to allow the applicant to assist in teaching, conducting research, performing specialized diagnostic and treatment procedures, implementing new technology and for physician educational purposes. A licensee may engage in only the activities specified on the temporary license, and the temporary license shall identify the licensed physician who will supervise the applicant during the time the applicant practices medicine in New Mexico. The supervising licensed 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. 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; 2003, ch. 19, § 14; 2005, ch. 159, § 3; 2021, ch. 54, § 33.

**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.**

A. The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a 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. The board may also refuse to license an applicant who is unable to practice as a physician, practice as a physician assistant, an anesthesiologist assistant, a genetic counselor, a naturopathic practitioner, a naprapathic practitioner or a podiatric physician or practice polysomnography, pursuant to Section 61-7-3 NMSA 1978. All proceedings shall be as required by the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] or the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978].

B. The board may, in its discretion and for good cause shown, place the licensee on probation on the terms and conditions it deems proper for protection of the public, for the purpose of 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 the licensee is competent to practice, 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 the licensee has not complied with the terms of probation, the board may revoke or suspend the license. If a license to practice in this state is suspended, the holder of the license may not practice during the term of suspension. A person whose license has been revoked or suspended by the board and who thereafter practices or attempts or offers to practice in New Mexico, unless the period of suspension has expired or been modified by the board or the 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, but is not limited to because of enumeration, conduct of a licensee that includes the following:

- (1) procuring, aiding or abetting an illegal procedure;
- (2) employing a person to solicit patients for the licensee;

- (3) representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured;
- (4) obtaining a fee by fraud or misrepresentation;
- (5) willfully or negligently divulging a professional confidence;
- (6) conviction of an offense punishable by incarceration in a state penitentiary or federal prison or conviction of a misdemeanor associated with the practice of the licensee. 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 renewal, including cheating on or attempting to subvert the licensing examinations;
- (9) making false or misleading statements regarding the skill of the licensee or the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of a disease or other condition of the human body or mind;
- (10) impersonating another licensee, permitting or allowing a person to use the license of the licensee or practicing as a licensee under a false or assumed name;
- (11) aiding or abetting the practice of a person not licensed by the board;
- (12) gross negligence in the practice of a licensee;
- (13) manifest incapacity or incompetence to practice as a licensee;
- (14) discipline imposed on a licensee by another licensing jurisdiction, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of disciplinary action or sanction taken by another jurisdiction is conclusive evidence of the action;
- (15) the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee;
- (16) fee splitting;
- (17) the prescribing, administering or dispensing 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 or a pattern of conduct otherwise described in this section or in violation of a board rule;
- (20) employing abusive billing practices;
- (21) failure to report to the board any adverse action taken against the licensee by:
- (a) another licensing jurisdiction;
  - (b) a peer review body;
  - (c) a health care entity;
  - (d) a professional or medical society or association;
  - (e) a governmental agency;
  - (f) a law enforcement agency; or
  - (g) a 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 the denial of licensure, surrender of a license or other authorization to practice 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, administering or dispensing of a drug or medicine;
- (27) failure to adequately supervise, as provided by board rule, a medical or surgical assistant or technician or professional licensee who renders health care;
- (28) sexual contact with a patient or person who has authority to make medical decisions for a patient, other than the spouse of the licensee;

(29) conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;

(30) the surrender of a license or withdrawal of an application for a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts or conduct that would constitute grounds for action pursuant to this section;

(31) sexual contact with a former mental health patient of the licensee, other than the spouse of the licensee, within one year from the end of treatment;

(32) sexual contact with a patient when the licensee uses or exploits treatment, knowledge, emotions or influence derived from the current or previous professional relationship;

(33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records;

(34) failure to provide pertinent and necessary medical records to a physician or patient of the physician in a timely manner when legally requested to do so by the patient or by a legally designated representative of the patient;

(35) undertreatment of pain as provided by board rule;

(36) interaction with physicians, hospital personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient;

(37) soliciting or receiving compensation by a physician assistant or anesthesiologist assistant from a person who is not an employer of the assistant;

(38) willfully or negligently divulging privileged information or a professional secret; or

(39) the use of conversion therapy on a minor.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "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 for referring patients, clients or customers to a person, irrespective of any membership, proprietary interest or co-ownership in or with a person to whom the patients, clients or customers are referred;

(3) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(4) "minor" means a person under eighteen years of age; and

(5) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

F. Licensees whose licenses are in a probationary status shall pay reasonable expenses for maintaining probationary status, including laboratory costs when laboratory testing of biological fluids is included as a condition of probation.

**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; 1994, ch. 80, § 7; 1997, ch. 221, § 1; 2001, ch. 96, § 4; 2003, ch. 19, § 15; 2005, ch. 159, § 4; 2008, ch. 53, § 12; 2008, ch. 54, § 13; 2017, ch. 132, § 3; 2021, ch. 54, § 34; 2023, ch. 141, § 3.

### **61-6-15.1. Summary suspension or restriction of license.**

A. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

B. A licensee is not required to comply with a summary action until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

C. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date the licensee requests a hearing.

**History:** Laws 2008, ch. 74, § 1.

### **61-6-16. Reporting of settlements and judgments, professional review actions and acceptance of surrendered license; immunity from civil damages; penalty.**

A. All entities that make payments under a policy of insurance, self-insurance or otherwise in settlement or satisfaction of a judgment in a medical malpractice action or claim, hospitals, health care entities and professional review bodies shall report to the board all payments relating to malpractice actions or claims arising in New Mexico that involve a licensee and that are paid as a direct result of the licensee's care, all appropriate professional review actions of licensees and the acceptance or surrender of clinical privileges by a licensee 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 federal Health Care Quality Improvement Act of 1986, 42 USCA Section 11151.

B. The hospitals required to report under this section, health care entities or professional review bodies that provide such information in good faith shall not be subject to suit for civil damages as a result of providing the information.

C. A 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 ten thousand dollars (\$10,000).

**History:** 1978 Comp., § 61-6-16, enacted by Laws 1989, ch. 269, § 12; 2003, ch. 19, § 16; 2008, ch. 74, § 2.

### **61-6-17. Exceptions to act.**

The Medical Practice Act 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 commissioned corps of the United States public health service or the United States department of veterans affairs 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 further 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 on 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) dentistry;
- (2) podiatry;
- (3) nursing;
- (4) optometry;
- (5) psychology;
- (6) chiropractic;
- (7) pharmacy;
- (8) acupuncture and oriental medicine; or
- (9) physical therapy;

G. an 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;

H. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct supervision or a visiting physician or surgeon operating under the physician's direct supervision a 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 and if the person does not hold the person's own self out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;

I. the practice of the religious tenets of a church in the ministration 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 a person from the operation or enforcement of the sanitary and quarantine laws of the state;

J. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that a change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;

K. a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico-licensed physician on an irregular or infrequent basis, as defined by rule of the board; and

L. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and rule by the board.

**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; 1994, ch. 80, § 8; 1997, ch. 221, § 3; 2000, ch. 44, § 1; 2001, ch. 96, § 5; 2003, ch. 19, § 17; 2017, ch. 103, § 5; 2021, ch. 54, § 35.

### **61-6-17.1. Temporary licensure exemption; out-of-state physicians; out-of-state sports teams.**

A. An individual who is licensed in good standing to practice medicine in another state, and whom the board has not previously found to have violated a provision of the Medical Practice Act, may practice medicine without a license granted by the board if



the individual has a written agreement with an out-of-state sports team to provide care to team members and staff traveling with the team for a specific sporting event to take place in this state; provided that:

(1) the individual has a written agreement with the out-of-state sports team governing body to provide health care services to an out-of-state sports team athlete or staff member at a scheduled sporting event;

(2) the individual's practice is limited to medical care to assist injured and ill players and coordinate appropriate referral to in-state health care providers as needed;

(3) the services to be provided by the individual are within the scope of practice authorized pursuant to the Medical Practice Act and rules of the board;

(4) the individual has professional liability coverage for the duration of the sporting event;

(5) the individual shall not:

(a) provide care or consultation to a resident of this state, other than a member of the out-of-state sports team during a sporting event; or

(b) practice medicine in the state, outside of the sporting event;

(6) the authorization to practice without a board-issued license pursuant to this section shall be valid only during the time of the sporting event, while the individual granted the authorization is providing care to the out-of-state sports team, and is limited to the duration of the sporting event;

(7) the individual or out-of-state sports team shall report to the board any potential:

(a) medical license violation;

(b) practice negligence; or

(c) unprofessional or dishonorable conduct, as those terms are defined in board rules;

(8) the individual's practice of medicine pursuant to this section shall be subject to board oversight, investigation and discipline in accordance with the provisions of the Medical Practice Act; and

(9) the board may report to a licensing board in a state in which an individual practicing medicine pursuant to this section is licensed to practice medicine any findings it makes pursuant to an investigation or disciplinary action that the board undertakes.

B. The board shall adopt and promulgate rules to implement the provisions of this section.

C. As used in this section:

(1) "out-of-state sports team" means an entity or organization:

(a) for which athletes engage in a sporting event;

(b) headquartered or organized under laws other than the laws of New Mexico; and

(c) a majority of whose staff and athletes are residents of another state; and

(2) "sporting event" means a scheduled sporting event involving an out-of-state sports team for which an admission fee is charged to the public, including any preparation or practice related to the activity.

**History:** Laws 2019, ch. 184, § 1; 2021, ch. 54, § 36.

### **61-6-18. Medical students; interns; residents; fellows.**

A. Nothing in the Medical Practice Act 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 the student's course of study.

B. Any intern, resident or fellow who is appointed in a board-approved residency or fellowship training program may pursue such training after obtaining a postgraduate training license from the board. The board may adopt by rule specific education or examination requirements for a postgraduate training license.

C. Any person serving in the assigned rotations and performing the assigned duties in a board-approved residency or fellowship training program accredited in New Mexico may do so for an aggregate period not to exceed eight years or completion of the residency, whichever is shorter.

D. The board may require any applicant for a postgraduate training license required in Subsections B and C of this section to personally appear before the board or a designated member of the board for an interview.

E. Every applicant for a postgraduate training license under this section shall pay the fees required by Section 61-6-19 NMSA 1978.

F. Postgraduate training licenses shall be renewed annually and shall be effective during each year or part of a year of postgraduate training.

**History:** 1978 Comp., § 61-6-18, enacted by Laws 1989, ch. 269, § 14; 1994, ch. 80, § 9; 2005, ch. 159, § 5; 2021, ch. 54, § 37.

### **61-6-18.1. Public service license.**

A. Applicants for a public service license shall meet all requirements for licensure and shall:

- (1) be enrolled in a board-approved residency or fellowship training program either in New Mexico or in another jurisdiction;
- (2) obtain written approval from the training program director of the applicant to pursue a public service practice opportunity outside the residency training program; and
- (3) satisfy other reasonable requirements imposed by the board.

B. A physician with one year of postdoctoral training may apply for a public service license to practice under the direct supervision of a licensed physician or with immediate access to a licensed physician by electronic means when the public service physician is employed in a medically underserved area.

C. A public service license shall expire on September 1 of each year and may be renewed by the board.

D. An applicant for a public service license shall pay the required fees set forth in Section 61-6-19 NMSA 1978.

**History:** 1978 Comp., § 61-6-18.1, enacted by Laws 1994, ch. 80, § 10; 2003, ch. 19, § 18; 2005, ch. 159, § 6; 2021, ch. 54, § 38.

### **61-6-19. Fees.**

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall impose the following fees:

- (1) an application fee not to exceed five hundred dollars (\$500) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;
- (2) an application fee not to exceed five hundred dollars (\$500) for licensure by examination as provided in Section 61-6-11 NMSA 1978;
- (3) a triennial renewal fee not to exceed five hundred dollars (\$500);

- (4) a fee of twenty-five dollars (\$25.00) for placing a physician's license or a physician assistant's license on inactive status;
- (5) a late fee not to exceed one hundred dollars (\$100) for physicians who renew their license within forty-five days after the required renewal date;
- (6) a late fee not to exceed two hundred dollars (\$200) for physicians who renew their licenses between forty-six and ninety days after the required renewal date;
- (7) a reinstatement fee not to exceed seven hundred dollars (\$700) 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;
- (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) a postgraduate training license fee not to exceed fifty dollars (\$50.00) annually;
- (14) an application fee not to exceed one hundred fifty dollars (\$150) for physician assistants applying for initial licensure;
- (15) a licensure fee not to exceed one hundred fifty dollars (\$150) for physician assistants biennial license renewal and registration of supervising or collaborating licensed physician;
- (16) a late fee not to exceed fifty dollars (\$50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;
- (17) a late fee not to exceed seventy-five dollars (\$75.00) for physician assistants who renew their licensure between forty-six and ninety days after the required renewal date;
- (18) a reinstatement fee not to exceed one hundred dollars (\$100) for physician assistants who reinstate an expired license;

(19) a fee not to exceed three hundred dollars (\$300) annually for a physician supervising a clinical pharmacist;

(20) an application and renewal fee for a telemedicine license not to exceed nine hundred dollars (\$900);

(21) a reasonable administrative fee, not to exceed the current cost of application and license or renewal for a license, that may be charged for reprocessing applications and renewals that include minor but significant errors and that would otherwise be subject to investigation and possible disciplinary action; and

(22) a reasonable fee as established by the department of public safety for nationwide and statewide criminal history screening of applicants and licensees.

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; 1994, ch. 80, § 11; 1997, ch. 187, § 9; 1997, ch. 221, § 4; 2001, ch. 96, § 6; 2003, ch. 19, § 19; 2008, ch. 74, § 3; 2017, ch. 103, § 7; 2020, ch. 6, § 16; 2021, ch. 54, § 39.

### **61-6-20. Practicing without license; penalty.**

A. Any person who practices medicine or who attempts to practice medicine without first complying with the provisions of the Medical Practice Act and without being the holder of a license entitling him to practice medicine in New Mexico is guilty of a fourth degree felony.

B. Any person who practices medicine across state lines or who attempts to practice medicine across state lines without first complying with the provisions of the Medical Practice Act and without being the holder of a telemedicine license entitling him to practice medicine across state lines is guilty of a fourth degree felony.

C. Any person convicted pursuant to Subsection A or B of this section shall be sentenced under the provisions of the Criminal Sentencing Act [Chapter 31, Article 18 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; 2001, ch. 96, § 7.

### **61-6-21. Continuing medical education; penalty.**

A. For the purpose of protecting the health and well-being of the residents of this state and for maintaining and continuing informed professional knowledge and awareness, the board shall establish mandatory continuing educational requirements for licensees under its authority.

B. The board may suspend the license of a licensee who fails to comply with continuing medical education or continuing education requirements until the requirements are fulfilled and may take any further disciplinary action if the licensee fails to remediate the deficiencies, including revocation of license.

**History:** 1978 Comp., § 61-6-21, enacted by Laws 1989, ch. 269, § 17; 2003, ch. 19, § 20; 2021, ch. 54, § 40.

### **61-6-22. Injunction to prevent practice without a license.**

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.

### **61-6-23. Investigation; subpoena.**

To investigate a complaint against an applicant or a licensee, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action.

**History:** 1978 Comp., § 61-6-23, enacted by Laws 1989, ch. 269, § 19; 2003, ch. 19, § 21; 2021, ch. 54, § 41.

### **61-6-24. Limitations on actions.**

A. No action that would have any of the effects specified in Sections 61-6-15 and 61-6-15.1 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 that would be the basis of the board's decision.

**History:** 1978 Comp., § 61-6-24, enacted by Laws 1989, ch. 269, § 20; 2008, ch. 74, § 4.

### **61-6-25. False statement; penalty.**

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 [Chapter 31, Article 18 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.

### **61-6-26. Triennial renewal fees; penalty for failure to renew license.**

A. On or before July 1 of every third year, every licensed physician in this state shall apply for a certificate of triennial renewal of license for the ensuing three years. The fact that a licensed physician has not received a renewal form from the board shall not relieve the physician of the duty to renew the license and the omission by the board shall not operate to exempt the physician from the penalties provided by Chapter 61, Article 6 NMSA 1978 for failure to renew his license.

B. All licensed physicians shall pay a triennial renewal fee and impaired physicians fee as provided in Section 61-6-19 NMSA 1978 and shall return the completed renewal form together with the renewal fee and other required documentation.

C. Each application for triennial renewal of license shall state the licensed physician's full name, business address, license number and date and all other information requested by the board.

D. A licensed physician who fails to submit his application for triennial renewal on or before July 1 but who submits his application for triennial renewal by August 15 shall be assessed a late fee as provided in Section 61-6-19 NMSA 1978.

E. A physician who submits the application for triennial renewal between August 16 and September 30 shall be assessed a cumulative late fee as provided in Paragraph (6) of Subsection A of Section 61-6-19 NMSA 1978.

F. After September 30, the board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician who has failed to renew his license.

**History:** 1978 Comp., § 61-6-26, enacted by Laws 1989, ch. 269, § 22; 2001, ch. 96, § 8; 2003, ch. 19, § 22.

### **61-6-27. Issuance and display of renewal certificate.**

The board shall issue to each licensed physician, upon application in accordance with the provisions of the Medical Practice Act 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 licensed physician's name, business address, license date and number and 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 licensed physician 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; 2003, ch. 19, § 23.

### **61-6-28. Licensed physicians; changing location.**

A licensed physician or practitioner under licensure authority of the board or who applies for a license issued by the board who changes the location of the physician's or practitioner's office or residence shall promptly notify the board of the change. Applicants and licensees shall maintain a current address, phone number and email address with the board.

**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; 2003, ch. 19, § 24; 2021, ch. 54, § 42.

### **61-6-29. Repealed.**

### **61-6-30. Restoration of good standing; fees and other requirements.**

A. Before restoring to good standing a license that 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 the current fitness and competence of the applicant to resume practice and may impose terms, conditions or restrictions in its discretion.



B. The authority of the board to impose terms, conditions or restrictions 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 in good standing, the applicant shall pay to the board a reinstatement fee.

**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; 2003, ch. 19, § 25; 2021, ch. 54, § 43.

### **61-6-31. Disposition of funds; New Mexico medical board fund created; method of payments.**

A. The "New Mexico medical board fund" is created.

B. All funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act [Chapter 61, Article 6C NMSA 1978], the Anesthesiologist Assistants Act [Chapter 61, Article 6D NMSA 1978], the Genetic Counseling Act [61-6A-1 to 61-6A-10 NMSA 1978], the Polysomnography Practice Act [61-6B-1 to 61-6B-10 NMSA 1978], the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978], the Naturopathic Doctors' Practice Act [61-12G-1 through 61-12G-13 NMSA 1978], the Podiatry Act [Chapter 61, Article 8 NMSA 1978] and the Naprapathic Practice Act [61-12F-1 to 61-12F-11 NMSA 1978] shall be deposited with the state treasurer, who shall place the same to the credit of the New Mexico medical board fund.

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

D. All amounts in the New Mexico medical board 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, the Anesthesiologist Assistants Act, the Genetic Counseling

Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act, the Podiatry Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

(2) the promotion of medical education and standards in this state within the budgetary limits; and

(3) efforts to recruit and retain medical and osteopathic physicians for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board 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, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act, the Podiatry Act and the Naprapathic Practice Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act, the Naturopathic Doctors' Practice Act, the Podiatry Act and the Naprapathic Practice Act.

**History:** 1978 Comp., § 61-6-31, enacted by Laws 1989, ch. 269, § 27; 2003, ch. 19, § 26; 2008, ch. 53, § 13; 2008, ch. 54, § 14; 2008, ch. 55, § 2; 2011, ch. 31, § 3; 2019, ch. 244, § 17; 2021, ch. 54, § 44; 2023, ch. 141, § 4.

### **61-6-31.1. Board of medical examiners [New Mexico medical board] fund; authorized use.**

Pursuant to Subsection D of Section 61-6-31 NMSA 1978, the board shall authorize expenditures from unexpended and unencumbered cash balances in the board of medical examiners [New Mexico medical board] fund to support an information technology project manager to develop, implement and maintain a web site portal for licensure and a central database for credentialing of health care providers.

**History:** 1978 Comp., § 61-6-31.1, enacted by Laws 2003, ch. 235, § 6.

### **61-6-32. Termination of suspension of license for mental illness; restoration; terms and conditions.**

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 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 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 the privilege upon whatever terms and conditions it deems advisable. If the practitioner fails, refuses or neglects to abide by the terms and conditions, the practitioner's 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; 2021, ch. 54, § 45.

### **61-6-33. Licensure status.**

Upon a verified written request, a licensee may request that the license be put in retirement, inactive or voluntary lapsed status. Upon request for reinstatement of active status, the board may impose conditions as provided in Section 61-6-30 NMSA 1978.

**History:** 1978 Comp., § 61-6-33, enacted by Laws 1989, ch. 269, § 29; 2001, ch. 96, § 9; 2003, ch. 19, § 27.

### **61-6-34. Protected actions; communication.**

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

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 [Chapter 14, Article 2 NMSA 1978]. 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; 1994, ch. 80, § 12.

## **61-6-35. 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; 1997, ch. 46, § 6; 2003, ch. 428, § 5; 2008, ch. 55, § 3; repealed by Laws 2014, ch. 44, § 1.

# **ARTICLE 6A**

## **Genetic Counseling Act**

### **61-6A-1. Short title.**

Sections 1 through 10 [61-6A-1 to 61-6A-10 NMSA 1978] of this act may be cited as the "Genetic Counseling Act".

**History:** Laws 2008, ch. 53, § 1.

### **61-6A-2. Findings and purpose.**

A. The legislature finds that the mapping of the human genome continues to result in the rapid expansion of genetic knowledge and a proliferation of testing for genetic conditions. This has created a need for qualified professional genetic counselors to coordinate assessments, to deliver accurate information to families, to assist families in adjusting to the implications of their diagnoses and to help ensure that genetic information is used appropriately in the delivery of medical care.

B. The purpose of the Genetic Counseling Act is to protect the public from the unprofessional, improper, incompetent and unlawful practice of genetic counseling.

**History:** Laws 2008, ch. 53, § 2.

### **61-6A-3. Definitions.**

As used in the Genetic Counseling Act:

A. "ABGC" means the American board of genetic counseling, a national agency for certification and recertification of genetic counselors, or its successor agency;

B. "ABMG" means the American board of medical genetics, a national agency for certification and recertification of genetic counselors and geneticists with medical or other doctoral degrees, or its successor agency;

C. "board" means the New Mexico medical board;

D. "genetic counseling" means a communication process that may include:

(1) estimating the likelihood of occurrence or recurrence of any potentially inherited or genetically influenced condition or congenital abnormality. "Genetic counseling" may involve:

(a) obtaining and analyzing the complete health history of an individual and family members;

(b) reviewing pertinent medical records;

(c) evaluating the risks from exposure to possible mutagens or teratogens;  
and

(d) determining appropriate genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members;

(2) helping an individual, family or health care provider to:

(a) appreciate the medical, psychological and social implications of a disorder, including its features, variability, usual course and management options;

(b) learn how genetic factors contribute to a disorder and affect the chance for occurrence of the disorder in other family members;

(c) understand available options for coping with, preventing or reducing the chance of occurrence or recurrence of a disorder;

(d) select the most appropriate, accurate and cost-effective methods of diagnosis; and

(e) understand genetic or prenatal tests, coordinate testing for inherited disorders and interpret complex genetic test results; and

(3) facilitating an individual's or family's:

(a) exploration of the perception of risk and burden associated with a genetic disorder; and

(b) adjustment and adaptation to a disorder or the individual's or family's genetic risk by addressing needs for psychological, social and medical support; and

E. "genetic counselor" means a person licensed pursuant to the Genetic Counseling Act to engage in the practice of genetic counseling.

**History:** Laws 2008, ch. 53, § 3.

#### **61-6A-4. License required.**

Unless licensed as a genetic counselor pursuant to the Genetic Counseling Act, a person shall not:

A. engage in the practice of genetic counseling;

B. use the title or make any representation as being a licensed genetic counselor or use any other title, abbreviation, letters, figures, signs or devices that indicate or imply that the person is licensed to practice as a genetic counselor, including a genetic associate, gene counselor or genetic consultant; or

C. advertise, hold out to the public or represent in any manner that the person is authorized to practice genetic counseling.

**History:** Laws 2008, ch. 53, § 4.

#### **61-6A-5. Exemptions.**

A. Nothing in the Genetic Counseling Act is intended to limit, interfere with or prevent a licensed health care professional from practicing within the scope of the professional license of that health care professional; however, a licensed health care professional shall not advertise to the public or any private group or business by using any title or description of services that includes the term "genetic counseling" unless the health care professional is licensed under the Genetic Counseling Act.

B. The Genetic Counseling Act shall not apply to or affect:

(1) a medical physician or an osteopathic physician licensed under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978]; or

(2) a commissioned physician or surgeon serving in the armed forces of the United States or a federal agency.

**History:** Laws 2008, ch. 53, § 5; 2021, ch. 54, § 46.

#### **61-6A-6. Requirements for licensing.**

The board shall grant a license to practice genetic counseling to a person who has:

A. submitted to the board:

(1) a completed application for licensing on the form provided by the board;

(2) required documentation as determined by the board;

- (3) the required fees;
  - (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetence;
  - (5) satisfactory documentation of having earned:
    - (a) a master's degree from a genetic counseling training program that is accredited by the ABGC, or an equivalent as determined by the board; or
    - (b) a doctoral degree from a medical genetics training program that is accredited by the ABMG, or an equivalent as determined by the board; and
  - (6) proof that the applicant is ABGC- or ABMG-certified; and
- B. complied with any other requirements of the board.

**History:** Laws 2008, ch. 53, § 6.

### **61-6A-7. License renewal.**

A. A licensee shall renew the licensee's genetic counseling license biennially by submitting prior to the date established by the board:

- (1) the completed application for license renewal on the form provided by the board; and
- (2) the required fee for annual license renewal.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

C. A sixty-day grace period shall be allowed a 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 annual license renewal; and
- (3) the required late fee.

D. A genetic counselor's 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 reinstatement of an expired license within one year of the date of renewal, the board

shall establish requirements or fees that are in addition to the fee for annual license renewal and may require the former licensee to reapply as a new applicant.

**History:** Laws 2008, ch. 53, § 7.

### **61-6A-8. Temporary license.**

A. The board may issue a temporary license to an applicant who has met all licensure requirements except the examination requirement. The temporary license is valid until the results of the next scheduled examination are available and a license is issued or denied. The temporary license automatically expires if the applicant fails to take the next scheduled examination, or upon release of official examination results if the applicant fails the examination.

B. The board may issue a temporary license to a person licensed in another state or country who:

(1) is in New Mexico temporarily to teach or assist a New Mexico resident licensed to practice genetic counseling; or

(2) met the requirements for licensure in that state, which were equal to or greater than the requirements for licensure in New Mexico at the time the license was obtained in the other state.

C. The board shall not issue a temporary license to a person who qualifies for the temporary license under Subsection A of this section more than two consecutive times within the five-year period immediately following the issuance of the first temporary license.

D. A person practicing genetic counseling under a temporary license shall be supervised by a licensed genetic counselor or physician.

**History:** Laws 2008, ch. 53, § 8.

### **61-6A-9. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable administrative and licensing fees, but an individual fee shall not exceed four hundred dollars (\$400).

**History:** Laws 2008, ch. 53, § 9; 2020, ch. 6, § 17.

### **61-6A-10. Criminal Offender Employment Act.**



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 Genetic Counseling Act.

**History:** Laws 2008, ch. 53, § 10.

## **ARTICLE 6B**

### **Polysomnography Practice Act**

#### **61-6B-1. Short title.**

Sections 1 through 10 [61-6B-1 to 61-6B-10 NMSA 1978] of this act may be cited as the "Polysomnography Practice Act".

**History:** Laws 2008, ch. 54, § 1.

#### **61-6B-2. Definitions.**

As used in the Polysomnography Practice Act:

- A. "board" means the New Mexico medical board;
- B. "committee" means the polysomnography practice advisory committee;
- C. "direct supervision" means that the polysomnographic technologist providing supervision shall be present in the area where the polysomnographic procedure is being performed and immediately available to furnish assistance and direction throughout the performance of the procedure;
- D. "general supervision" means that the polysomnographic procedure is provided under a physician's direction and control, but the physician's presence is not required during the performance of the procedure;
- E. "license" means an authorization issued by the board that permits a person to engage in the practice of polysomnography in the state;
- F. "licensed provider" means a licensed physician, licensed physician assistant, licensed certified nurse practitioner or licensed psychologist;
- G. "licensee" means a person licensed by the board to engage in the practice of polysomnography;
- H. "polysomnographic student" means a person who is enrolled in an educational program that is accredited by the commission on accreditation of allied health education programs, as provided in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography

Practice Act, and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;

I. "polysomnographic technician" means a person who has graduated from an accredited educational program described in Section 5 of the Polysomnography Practice Act but has not yet passed the national certifying examination given by the board of registered polysomnographic technologists, who has obtained a temporary permit from the board and who may provide sleep-related services under the general supervision of a licensed physician;

J. "polysomnographic technologist" means a person who is credentialed by the board of registered polysomnographic technologists and is licensed by the board to engage in the practice of polysomnography under the general supervision of a licensed physician;

K. "polysomnographic trainee" means a person who is enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine and who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the person's educational program;

L. "practice of polysomnography" means the performance of diagnostic and therapeutic tasks, under the general supervision of a licensed physician, including:

(1) monitoring and recording physiologic activity and data during the evaluation or treatment of sleep-related disorders, including sleep-related respiratory disturbances, by applying appropriate techniques, equipment and procedures, including:

(a) continuous or bi-level positive airway pressure titration on patients using a nasal or oral or a nasal and oral mask or appliance that does not extend into the trachea or attach to an artificial airway, including the fitting and selection of a mask or appliance and the selection and implementation of treatment settings;

(b) supplemental low-flow oxygen therapy that is less than ten liters per minute using nasal cannula or continuous or bi-level positive airway pressure during a polysomnogram;

(c) capnography during a polysomnogram;

(d) cardiopulmonary resuscitation;

(e) pulse oximetry;

(f) gastroesophageal pH monitoring;

(g) esophageal pressure monitoring;

(h) sleep staging, including surface electroencephalography, surface electrooculography and surface submental electromyography;

(i) surface electromyography;

(j) electrocardiography;

(k) respiratory effort monitoring, including thoracic and abdominal movement;

(l) respiratory plethysmography;

(m) arterial tonometry and additional measures of autonomic nervous system tone;

(n) snore monitoring;

(o) audio or video monitoring;

(p) body movement monitoring;

(q) nocturnal penile tumescence monitoring;

(r) nasal and oral airflow monitoring;

(s) body temperature monitoring; and

(t) use of additional sleep-related diagnostic technologies as determined by a rule adopted by the board;

(2) observing and monitoring physical signs and symptoms, general behavior and general physical response to polysomnographic evaluation or treatment and determining whether initiation, modification or discontinuation of a treatment regimen is warranted;

(3) analyzing and scoring data collected during the monitoring described in Paragraphs (1) and (2) of this subsection for the purpose of assisting a licensed provider in the diagnosis and treatment of sleep and wake disorders that result from developmental defects, the aging process, physical injury, disease or actual or anticipated somatic dysfunction;

(4) implementing a written or verbal order from a licensed provider that requires the practice of polysomnography;

(5) educating a patient regarding the treatment regimen that assists that patient in improving the patient's sleep; and

(6) initiating and monitoring treatment, under the orders of a licensed provider, for sleep-related breathing disorders by providing continuous positive airway pressure and bi-level positive airway pressure devices and accessories, including masks that do not extend into the trachea or attach to an artificial airway, to a patient for home use, together with educating the patient about the treatment and managing the treatment; and

M. "sleep-related services" means acts performed by polysomnographic technicians, polysomnographic trainees, polysomnographic students and other persons permitted to perform these services under the Polysomnography Practice Act, in a setting described in Subsection D of Section 4 [61-6B-4 NMSA 1978] of the Polysomnography Practice Act, that would be considered the practice of polysomnography if performed by a polysomnographic technologist.

**History:** Laws 2008, ch. 54, § 2.

### **61-6B-3. License required; exceptions; practice limitations; applicability.**

A. On and after July 1, 2010, a person who is engaged in the practice of polysomnography must have a valid polysomnographic technologist license issued by the board. It shall be unlawful for a person to engage in the practice of polysomnography after that date unless the person has a valid polysomnographic technologist license issued by the board.

B. Prior to July 1, 2010, any person who is engaged in the practice of polysomnography without being licensed under the Polysomnography Practice Act shall not be deemed to be in violation of that act.

**History:** Laws 2008, ch. 54, § 3.

### **61-6B-4. Exemptions.**

A. The following classes of persons may provide sleep-related services without being licensed as a polysomnographic technologist:

(1) a polysomnographic technician under the general supervision of a licensed physician for no more than two years from the date of the person's graduation from one of the accredited programs described in Section 5 [61-6B-5 NMSA 1978] of the Polysomnography Practice Act; provided that the board may grant a one-time extension of up to one year beyond the original two-year period;

(2) a polysomnographic trainee who may provide sleep-related services under the direct supervision of a polysomnographic technologist as a part of the trainee's educational program while actively enrolled in an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine;

(3) a polysomnographic student who may provide uncompensated sleep-related services under the direct supervision of a polysomnographic technologist as a part of the student's educational program while actively enrolled in a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs; and

(4) a person, other than a respiratory care practitioner licensed under the Respiratory Care Act [Chapter 61, Article 12B NMSA 1978], credentialed in one of the health-related fields accepted by the board of registered polysomnographic technologists, who may provide sleep-related services under the direct supervision of a polysomnographic technologist for a period of up to one year while obtaining the clinical experience necessary to be eligible to take the examination given by the board of registered polysomnographic technologists.

B. Before providing any sleep-related services:

(1) a polysomnographic technician shall obtain a temporary permit from the board and when providing services shall wear a badge that appropriately identifies the person as a polysomnographic technician;

(2) a polysomnographic trainee shall give notice to the board that the trainee is enrolled in an accredited sleep technologist educational program accredited by the American academy of sleep medicine. When providing services, the trainee shall wear a badge that appropriately identifies the person as a polysomnographic trainee;

(3) a person who is obtaining clinical experience pursuant to Paragraph (4) of Subsection A of this section shall give notice to the board that the person is working under the direct supervision of a polysomnographic technologist in order to gain the experience to be eligible to take the examination given by the board of registered polysomnographic technologists. When providing services, the person shall wear a badge that appropriately identifies that the person is obtaining clinical experience; and

(4) a polysomnographic student shall wear a badge that appropriately identifies the person as a polysomnographic student.

C. A licensed dentist shall make or direct the making and use of any oral appliance used in the practice of polysomnography and shall evaluate the structures of a patient's oral and maxillofacial region for purposes of fitting the appliance.

D. The practice of polysomnography shall take place only in a hospital, a stand-alone sleep laboratory or sleep center or in a patient's home in accordance with a licensed provider's order; provided that the scoring of data and the education of patients may take place in settings other than in a hospital, sleep laboratory, sleep center or patient's home.

E. The Polysomnography Practice Act shall not apply to:

(1) a physician licensed under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(2) diagnostic electroencephalograms conducted in accordance with the guidelines of the American clinical neurophysiology society;

(3) a person who is employed in the practice of polysomnography by a federal government facility or agency in New Mexico; or

(4) a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, who renders services within the scope of the person's license or other regulatory authority; provided that the person does not represent that the person is a polysomnographic technologist.

**History:** Laws 2008, ch. 54, § 4.

### **61-6B-5. Requirements for licensing.**

A. The board shall grant a license to engage in the practice of polysomnography to a person who has submitted to the board:

- (1) a completed application for licensing on the form provided by the board;
- (2) required documentation as determined by the board;
- (3) except as provided in Section 61-1-34 NMSA 1978, the required fees;
- (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetence;
- (5) satisfactory documentation of either:

(a) graduation from a polysomnographic educational program that is accredited by the commission on accreditation of allied health education programs;

(b) graduation from a respiratory care educational program that is accredited by the commission on accreditation of allied health education programs and completion of the curriculum for a polysomnography certificate established and accredited by the committee on accreditation for respiratory care of the commission on accreditation of allied health education programs;

(c) graduation from an electroneurodiagnostic technologist educational program with a polysomnographic technology track that is accredited by the commission on accreditation of allied health education programs; or

(d) successful completion of an accredited sleep technologist educational program that is accredited by the American academy of sleep medicine; provided, however, this optional requirement shall not be available after the date on which there are at least three polysomnographic technologist educational programs in New Mexico that have been accredited by the commission on accreditation of allied health education programs for at least the two years immediately preceding that date; and

(6) satisfactory documentation of having:

(a) passed the national certifying examination given by the board of registered polysomnographic technologists or having passed a national certifying examination equivalent to the board of registered polysomnographic technologists' examination as determined by a rule adopted by the New Mexico medical board;

(b) been credentialed by the board of registered polysomnographic technologists or by another national entity equivalent to the board of polysomnographic technologists as determined by rule adopted by the New Mexico medical board;

(c) met any additional educational or clinical requirements established by the board pursuant to rule; and

(d) met all other requirements of the Polysomnography Practice Act.

B. A person who is engaged in the practice of polysomnography on July 1, 2008 shall be eligible for a license under the Polysomnography Practice Act without meeting the educational requirement of Paragraph (5) of Subsection A of this section, provided that the person meets the requirements of Paragraph (6) of Subsection A of this section.

C. The board may require:

(1) a personal interview with an applicant to evaluate that person's qualifications for a license; and

(2) fingerprints and other information necessary for a state and national criminal background check.

**History:** Laws 2008, ch. 54, § 5; 2020, ch. 6, § 18.

### **61-6B-6. License renewal.**

A. A licensee shall renew the licensee's polysomnographic technologist's license biennially by submitting prior to the date established by the board:

(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 competence as a requirement for renewal.

C. A sixty-day grace period shall be allowed a 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 late fee.

D. A polysomnographic technologist's 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 reinstatement of an expired license within one year of the date of renewal, the board shall establish 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:** Laws 2008, ch. 54, § 6.

### **61-6B-7. License; contents; display; fees.**

A. A license issued by the board shall contain the name of the person to whom it is issued, the date and number of the license and other information the board may require.

B. The most recent address contained in the board's records for each licensee is the address deemed sufficient for purposes of service of process and correspondence and notice from the board. Any licensee whose address changes shall, within thirty days of the change, notify the board of the address change.

C. A licensee who wishes to retire from the practice of polysomnography shall file with the board an affidavit, in a form to be furnished by the board, stating the date on which the person retired from practice and other information the board may require. If that person wishes to reenter the practice of polysomnography, the person shall meet requirements established by the board for license renewal.

D. A licensee shall display the license in the office or place in which the licensee practices in a location clearly visible to patients.

E. Except as provided in Section 61-1-34 NMSA 1978, the board shall establish license and administrative fees, but no individual fee shall exceed five hundred dollars (\$500).



**History:** Laws 2008, ch. 54, § 7; 2020, ch. 6, § 19.

**61-6B-8. Committee; creation; organization; per diem and mileage; removal.**

A. The "polysomnography practice advisory committee" is created to advise the board on all matters related to the Polysomnography Practice Act. The board shall provide administrative and financial support to the committee.

B. The committee shall have five members, who are residents of New Mexico, appointed by the board as follows:

(1) two members who are credentialed by the board of registered polysomnographic technologists; provided that when the New Mexico medical board begins issuing licenses, this category of committee members shall be three licensed polysomnographic technologists, with the then-sitting members in this category being given a reasonable amount of time to become licensed;

(2) one licensed physician who is certified in sleep medicine by a national certifying body recognized by the American academy of sleep medicine;

(3) one person whose background is at the discretion of the board; and

(4) one member of the public who is not economically or professionally associated with the health care field.

C. Term-length conditions for appointments to the committee are:

(1) for initial appointments, two members each for four-year, three-year and two-year terms and one member for a one-year term;

(2) for regular appointments after the initial appointments, four-year terms;

(3) for a vacancy appointment, the balance of the term; and

(4) for any one member, no more than two terms, including an initial appointment term; provided that a member shall continue to serve on the committee until a replacement is appointed.

D. The committee shall elect annually a chairperson and other officers as the committee determines to be necessary.

E. The committee shall meet at least twice per calendar year and otherwise as often as necessary to conduct business, with four members constituting a quorum and meetings subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

F. Members of the committee shall be reimbursed as nonsalaried public officers pursuant to the Per Diem and Mileage Act [10-8-1 to 10-8-8 NMSA 1978], and members shall receive no other compensation, perquisite or allowance for their service on the committee.

G. The board may remove from office a member of the committee for neglect of duties required by the Polysomnography Practice Act, malfeasance in office, incompetence or unprofessional conduct.

**History:** Laws 2008, ch. 54, § 8.

### **61-6B-9. Board; committee; powers and duties.**

A. The board, with the advice of the committee, shall have powers regarding licensing of polysomnographic technologists, temporary permitting of polysomnographic technicians, approval of polysomnography curricula, approval of degree programs in polysomnography and any other matters that are necessary to ensure the training and licensing of competent polysomnographic technologists.

B. The board, with the advice of the committee, shall hold hearings and adopt rules regarding:

- (1) the licensing of polysomnographic technologists, the practice of polysomnography and the minimum qualifications and hours of clinical experience and standards of care required for being licensed as a polysomnographic technologist;
- (2) criteria for continuing education requirements;
- (3) the manner in which records of examinations and treatments shall be kept and maintained;
- (4) professional conduct, ethics and responsibility;
- (5) disciplinary actions, including the denial, suspension or revocation of or the imposition of restrictions or conditions on a license, and the circumstances that require disciplinary action;
- (6) a means to provide information to all polysomnographic technologists licensed in the state;
- (7) the inspection of the business premises of a licensee when the board determines that an inspection is necessary;
- (8) the investigation of complaints against licensees or persons holding themselves out as engaging in the practice of polysomnography in the state;

- (9) the publication of information for the public about licensees and the practice of polysomnography in the state;
- (10) an orderly process for reinstatement of a license;
- (11) criteria for acceptance of polysomnography credentials or licenses issued in other jurisdictions;
- (12) criteria for advertising or promotional materials; and
- (13) any matter necessary to implement the Polysomnography Practice Act.

**History:** Laws 2008, ch. 54, § 9.

### **61-6B-10. Offenses; criminal penalties.**

A person who engages in the practice of polysomnography without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 2008, ch. 54, § 10.

## **ARTICLE 6C Physician Assistants**

### **61-6C-1. Short title.**

Chapter 61, Article 6C NMSA 1978 may be cited as the "Physician Assistant Act".

**History:** 1978 Comp., § 61-6C-1, enacted by Laws 2022, ch. 39, § 29.

### **61-6C-2. Definitions.**

As used in the Physician Assistant Act:

A. "administer" means to apply a prepackaged drug directly to the body of a patient by any means;

B. "board" means the New Mexico medical board;

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 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;

E. "licensed physician" means a medical or osteopathic physician; and

F. "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, the prescriber's 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; recompiled and amended as § 61-6C-2 by Laws 2022, ch. 39, § 30.

### **61-6C-3. Licensure as a physician assistant; scope of practice; biennial registration of supervision; license renewal; fees.**

A. The board may license as a physician assistant a qualified person who has graduated from a physician assistant program accredited by the national accrediting body as established by rule of the board in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and has passed a physician assistant national certifying examination as established by rule. The board may also license as a physician assistant a person who passed the physician assistant national certifying examination administered by the national commission on certification of physician assistants prior to 1986.

B. A person shall not perform, attempt to perform or hold the person's own self out as a physician assistant without first applying for and obtaining a license from the board.

C. Physician assistants may prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] pursuant to rules adopted by the board after consultation with the board of pharmacy if the prescribing, administering, dispensing and distributing are done with the supervision of a licensed physician or in collaboration with a licensed physician. The distribution process shall comply with state laws concerning prescription packaging, labeling and recordkeeping requirements.

D. A physician assistant shall perform only the acts and duties that are within the physician assistant's scope of practice.

E. An applicant for licensure as a physician assistant shall complete application forms supplied by the board and shall pay a licensing fee as provided in Section 61-6-19 NMSA 1978.

F. A physician assistant shall biennially submit proof of current certification by the national commission on certification of physician assistants or another certifying agency

designated by the board and shall renew the license and registration of supervision of the physician assistant with the board.

G. A physician assistant shall not practice medicine until the physician assistant has established a supervising or collaborating relationship with a licensed physician in accordance with rules promulgated by the board.

H. Each biennial renewal of licensure shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978.

**History:** 1978 Comp., § 61-6C-3, enacted by Laws 2022, ch. 39, § 31.

#### **61-6C-4. Physician assistant; inactive license.**

A. A physician assistant license shall expire every two years on a date established by the board.

B. A physician assistant who notifies the board in writing on forms prescribed by the board may elect to place the physician assistant's license on an inactive status. A physician assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as a physician assistant.

C. A physician assistant who engages in practice while the physician assistant's license is lapsed or on inactive status is practicing without a license, and this is grounds for discipline pursuant to the Physician Assistant Act and Medical Practice Act [Chapter 61, Article 6 NMSA 1978] in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

D. A physician assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Physician Assistant Act and the Medical Practice Act.

E. The board may, in its discretion, summarily suspend for nonpayment of fees the license of a physician assistant who has not renewed the physician assistant's license within ninety days of expiration.

F. A physician assistant who has not submitted an application for renewal on or before the license expiration date, but who has submitted an application for renewal within forty-five days after the license expiration date, shall be assessed a late fee.

G. A physician assistant who has not submitted an application for renewal between forty-six and ninety days after the expiration date shall be assessed a late fee.

**History:** 1978 Comp., § 61-6-7.2, enacted by Laws 1997, ch. 187, § 3; 2003, ch. 19, § 8; 2021, ch. 54, § 22; recompiled and amended as § 61-6C-4 by Laws 2022, ch. 39, § 32.

## **61-6C-5. Exemption from licensure.**

A. A physician assistant student enrolled in a physician assistant or surgeon assistant educational program accredited by the committee on allied health education and accreditation or by its successor shall be exempt from licensure while functioning as a physician assistant student.

B. A physician assistant employed by the federal government while performing duties incident to that employment is not required to be licensed as a physician assistant.

**History:** 1978 Comp., § 61-6-7.3, enacted by Laws 1997, ch. 187, § 4; recompiled as § 61-6C-5 by Laws 2022, ch. 39, § 105.

## **61-6C-6. Physician assistant collaboration with licensed physicians; scope of practice; medical malpractice insurance.**

A. A physician assistant may perform the acts and duties that are within the physician assistant's scope of practice in collaboration with a licensed physician, if the physician assistant has:

(1) completed three years of clinical practice as a physician assistant with the supervision of a licensed physician; and

(2) complied with rules adopted by the board establishing qualifications for when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician.

B. A physician assistant practicing in collaboration with a licensed physician shall, at a minimum, maintain a policy of malpractice liability insurance that will qualify the physician assistant under the provisions of the Medical Malpractice Act [Chapter 41, Article 5 NMSA 1978].

**History:** Laws 2017, ch. 103, § 6; 1978 Comp., § 61-6-7.4, recompiled as § 61-6C-6 by Laws 2022, ch. 39, § 105.

## **61-6C-7. Physician assistants; rules.**

The board may promulgate in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for:

A. education, skill and experience for licensure of a person as a physician assistant and providing forms and procedures for biennial license renewal;

B. examining and evaluating an applicant for licensure as a physician assistant as to skill, knowledge and experience of the applicant in the field of medical care;

C. establishing when and for how long physician assistants are permitted to prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] pursuant to rules adopted by the board after consultation with the board of pharmacy;

D. allowing a supervising or collaborating licensed physician to temporarily delegate supervision or collaboration responsibilities for a physician assistant to another licensed physician;

E. establishing when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician; and

F. carrying out all other provisions of the Physician Assistant Act.

**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; 1994, ch. 57, § 14; 1994, ch. 80, § 4; 1995, ch. 21, § 1; 1997, ch. 187, § 7; 2003, ch. 19, § 9; 2017, ch. 103, § 3; recompiled and amended as § 61-6C-7 by Laws 2022, ch. 39, § 33.

### **61-6C-8. Supervising or collaborating licensed physician; responsibility.**

A. As a condition of licensure, all physician assistants practicing in New Mexico shall be supervised by a licensed physician. The physician assistant shall inform the board of the name of the licensed physician under whose supervision the physician assistant will practice. All supervising physicians shall be licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and approved by the board.

B. Every licensed physician supervising a physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the physician assistant the physician supervises. Nothing in this section shall be construed to relieve the physician assistant of responsibility and liability for the acts and omissions of the physician assistant. Rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] pursuant to the Physician Assistant Act shall:

(1) require that a physician assistant whose practice is a specialty care, as defined by the board, shall be supervised by a licensed physician in accordance with requirements established by the board; and

(2) allow a physician assistant whose practice is primary care, as defined by the board, to collaborate with a licensed physician in accordance with requirements established by the board for different practice settings.

C. A physician assistant shall be supervised by or collaborate with a licensed physician in accordance with rules adopted by the board.

**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; 1997, ch. 187, § 8; 2003, ch. 19, § 10; 2007, ch. 250, § 1; 2017, ch. 103, § 4; recompiled and amended as § 61-6C-8 by Laws 2022, ch. 39, § 34.

## **ARTICLE 6D**

### **Anesthesiologist Assistants**

#### **61-6D-1. Short title.**

Chapter 61, Article 6D NMSA 1978 may be cited as the "Anesthesiologist Assistants Act".

**History:** Laws 2001, ch. 311, § 1; 1978 Comp., § 61-6-10.1, recompiled and amended as § 61-6D-1 by Laws 2022, ch. 39, § 35.

#### **61-6D-2. Definitions.**

As used in the Anesthesiologist Assistants Act:

A. "anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology or the American osteopathic board of anesthesiology or is board eligible and who has completed a residency in anesthesiology within the last three years or who has foreign certification determined by the board to be the substantial equivalent;

B. "anesthesiologist assistant" means a skilled person licensed by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of that anesthesiologist assistant;

C. "applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;

D. "board" means the New Mexico medical board; and

E. "license" means an authorization to practice as an anesthesiologist assistant.



**History:** Laws 2001, ch. 311, § 2; 2003, ch. 19, § 11; 2003, ch. 302, § 1; 2015, ch. 52, § 1; repealed and reenacted by 2015, ch. 52, § 4; 2021, ch. 54, § 23; 2021, ch. 54, § 24; 1978 Comp., § 61-6-10.2 recompiled as § 61-6D-2 by Laws 2022, ch. 39, § 105.

### **61-6D-2. Definitions. (Effective July 1, 2025.)**

*As used in the Anesthesiologist Assistants Act:*

A. *"anesthesiologist" means a physician licensed to practice medicine in New Mexico who has successfully completed an accredited anesthesiology graduate medical education program, who is board certified by the American board of anesthesiology, the American osteopathic board of anesthesiology or is board eligible, who has completed a residency in anesthesiology within the last three years or who has foreign certification determined by the board to be the substantial equivalent and who is an employee of the department of anesthesiology of a medical school in New Mexico;*

B. *"anesthesiologist assistant" means a skilled person licensed by the board as being qualified by academic and practical training to assist an anesthesiologist in developing and implementing anesthesia care plans for patients under the supervision and direction of the anesthesiologist who is responsible for the performance of that anesthesiologist assistant;*

C. *"applicant" means a person who is applying to the board for a license as an anesthesiologist assistant;*

D. *"board" means the New Mexico medical board; and*

E. *"license" means an authorization to practice as an anesthesiologist assistant.*

**History:** Laws 2001, ch. 311, § 2; 2003, ch. 19, § 11; 2003, ch. 302, § 1; 2015, ch. 52, § 1; repealed and reenacted by 2015, ch. 52, § 4; 2021, ch. 54, § 24; 1978 Comp., § 61-6-10.2 recompiled as § 61-6D-2 by Laws 2022, ch. 39, § 105; 2023, ch. 91, § 1.

### **61-6D-3. Licensure; registration; anesthesiologist assistant; scope of authority.**

A. The board may license qualified persons as anesthesiologist assistants.

B. A person shall not perform, attempt to perform or hold the person's own self out as an anesthesiologist assistant until the person is licensed by the board as an anesthesiologist assistant and has registered the anesthesiologist assistant's supervising licensed anesthesiologist in accordance with board regulations.

C. An anesthesiologist assistant may assist the supervising anesthesiologist in developing and implementing an anesthesia care plan for a patient. In providing

assistance to the supervising anesthesiologist, an anesthesiologist assistant may do any of the following:

- (1) obtain a comprehensive patient history and perform a physical exam and present the history and exam findings to the supervising anesthesiologist who shall conduct a pre-anesthetic interview and evaluation;
- (2) pretest and calibrate anesthesia delivery systems;
- (3) monitor, obtain and interpret information from anesthesia delivery systems and anesthesia monitoring equipment;
- (4) assist the supervising anesthesiologist with the implementation of medically accepted monitoring techniques;
- (5) establish basic and advanced airway interventions, including intubation of the trachea and performing ventilatory support;
- (6) administer intermittent vasoactive drugs;
- (7) start and adjust vasoactive infusions;
- (8) administer anesthetic drugs, adjuvant drugs and accessory drugs;
- (9) assist the supervising anesthesiologist with the performance of epidural anesthetic procedures and spinal anesthetic procedures;
- (10) administer blood, blood products and supportive fluids;
- (11) participate in administrative activities and clinical teaching activities;
- (12) participate in research activities by performing the same procedures that may be performed under Paragraphs (1) through (10) of this subsection; and
- (13) provide assistance to cardiopulmonary resuscitation teams in response to life-threatening situations.

D. An applicant shall complete an application form provided by the board and shall submit the completed form and, except as provided in Section 61-1-34 NMSA 1978, the application fee to the board.

**History:** Laws 2001, ch. 311, § 3; 2003, ch. 302, § 2; 2020, ch. 6, § 14; 1978 Comp., § 61-6-10.3, recompiled as § 61-6D-3 by Laws 2022, ch. 39, § 105.

#### **61-6D-4. Annual registration of employment; employment change.**

A. Upon becoming licensed, the board shall register the anesthesiologist assistant on the anesthesiologist assistants' roster, including his name, address and other board-required information and the anesthesiologist assistant's supervising anesthesiologist's name and address.

B. Annually, each anesthesiologist assistant shall register with the board, providing the anesthesiologist assistant's current name and address, the name and address of the supervising anesthesiologist for whom he is working and any additional information required by the board. Failure to register annually will result in the anesthesiologist assistant being required to pay a late fee or having his license placed on inactive status.

C. Every two years, each licensed anesthesiologist assistant in the state shall submit proof of completion of board-required continuing education to the board.

D. The registration of an anesthesiologist assistant shall be void upon changing his supervising anesthesiologist, until the anesthesiologist assistant registers a new supervising anesthesiologist with the board, accompanied by a change in supervision fee, in an amount to be determined by the board.

**History:** Laws 2001, ch. 311, § 4; 1978 Comp., § 61-6-10.4, recompiled as § 61-6D-4 by Laws 2022, ch. 39, § 105.

### **61-6D-5. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be submitted as appropriate to the board:

A. an application fee, not to exceed one hundred fifty dollars (\$150);

B. a license renewal fee, not to exceed one hundred dollars (\$100) paid once every two years upon application for renewal of an anesthesiologist assistant's license;

C. a late fee not to exceed twenty-five dollars (\$25.00), if the anesthesiologist assistant fails to renew the license by July 1 of the renewal year; and

D. a change in supervision fee, not to exceed fifty dollars (\$50.00), but in no case shall the change in supervision fee exceed one-half of the license renewal fee.

**History:** Laws 2001, ch. 311, § 5; 2020, ch. 6, § 15; 1978 Comp., § 61-6-10.5, recompiled as § 61-6D-5 by Laws 2022, ch. 39, § 105.

### **61-6D-6. Inactive license.**

A. An anesthesiologist assistant who notifies the board in writing on forms prescribed by the board may elect to place the anesthesiologist assistant's license on

inactive status. An anesthesiologist assistant with an inactive license shall be excused from payment of renewal fees and shall not practice as an anesthesiologist assistant.

B. An anesthesiologist assistant who engages in practice while the anesthesiologist assistant's license is lapsed or on inactive status is practicing without a license and is subject to disciplinary action pursuant to the Anesthesiologist Assistants Act and Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

C. An anesthesiologist assistant requesting restoration from inactive status shall pay the current renewal fee and fulfill the requirement for renewal pursuant to the Anesthesiologist Assistants Act.

**History:** Laws 2001, ch. 311, § 6; 2021, ch. 54, § 25; 1978 Comp., § 61-6-10.6, recompiled as § 61-6D-6 by Laws 2022, ch. 39, § 105.

### **61-6D-7. Exemption from licensure.**

A. An anesthesiologist assistant student enrolled in an anesthesiologist assistant educational program accredited by the commission on accreditation of allied health education programs or its successor is exempt from licensure while functioning as an anesthesiologist assistant student; provided that the anesthesiologist assistant student is supervised by an anesthesiologist, a licensed anesthesiologist assistant or a second-year, third-year or fourth-year resident anesthesiologist.

B. An anesthesiologist assistant employed by the federal government is not required to be licensed as an anesthesiologist assistant pursuant to the Anesthesiologist Assistants Act while performing duties incident to that employment.

**History:** Laws 2001, ch. 311, § 7; 2013, ch. 129, § 1; 1978 Comp., § 61-6-10.7, recompiled as § 61-6D-7 by Laws 2022, ch. 39, § 105.

### **61-6D-8. Rules.**

A. The board may adopt in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] reasonable rules:

(1) for setting qualifications of education, skill and experience for licensure of a person as an anesthesiologist assistant;

(2) for providing procedures and forms for licensure and annual registration;

(3) for examining and evaluating applicants for licensure as an anesthesiologist assistant regarding the required skill, knowledge and experience in developing and implementing anesthesia care plans under supervision;

(4) for allowing a supervising anesthesiologist to temporarily delegate supervisory responsibilities for an anesthesiologist assistant to another anesthesiologist;

(5) for allowing an anesthesiologist assistant to temporarily serve under the supervision of an anesthesiologist other than the supervising anesthesiologist with whom the anesthesiologist assistant is registered; and

(6) to carry out the provisions of the Anesthesiologist Assistants Act [61-6-10.1 to 61-6-10.10 NMSA 1978].

B. The board shall not adopt a rule allowing an anesthesiologist assistant to perform procedures outside the anesthesiologist assistant's scope of practice.

C. The board shall adopt rules:

(1) establishing requirements for anesthesiologist assistant licensing, including:

(a) completion of a graduate level training program accredited by the commission on accreditation of allied health education programs;

(b) successful completion of a certifying examination for anesthesiologist assistants administered by the national commission for the certification of anesthesiologist assistants; and

(c) current certification by the American heart association in advanced cardiac life-support techniques;

(2) establishing minimum requirements for continuing education of not less than forty hours every two years;

(3) requiring adequate identification of the anesthesiologist assistant to patients and others;

(4) requiring the presence, except in cases of emergency, and the documentation of the presence, of the supervising anesthesiologist in the operating room during induction of a general anesthetic and during emergence from a general anesthetic, the presence of the supervising anesthesiologist within the operating suite and immediate availability to the operating room at other times when the anesthetic procedure is being performed and requiring that the anesthesiologist assistant comply with the above restrictions;

(5) requiring the supervising anesthesiologist to ensure that all activities, functions, services and treatment measures are properly documented in written form by the anesthesiologist assistant. The anesthesia record shall be reviewed, countersigned and dated by the supervising anesthesiologist;

(6) requiring the anesthesiologist assistant to inform the supervising anesthesiologist of serious adverse events;

(7) establishing that the number of anesthesiologist assistants a supervising anesthesiologist may supervise at one time, except in emergency cases, shall not exceed four anesthesiologist assistants; and

(8) within twelve months of the date on which the Anesthesiologist Assistants Act becomes effective, providing for enhanced supervision at the commencement of an anesthesiologist assistant's practice.

**History:** Laws 2001, ch. 311, § 9; 2003, ch. 302, § 3; 2015, ch. 52, § 2; 1978 Comp., § 61-6-10.9, recompiled and amended as § 61-6D-8 by Laws 2022, ch. 39, § 36; 2023, ch. 91, § 2.

### **61-6D-9. Supervising anesthesiologist; responsibilities.**

A. Supervising anesthesiologists shall be licensed to practice pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] and shall be approved by the board.

B. The anesthesiologist actually supervising the licensed anesthesiologist assistant at the time is individually responsible and liable for the acts and omissions that the anesthesiologist assistant performs in the scope of his duties. Nothing in the Anesthesiologist Assistants Act relieves a supervising anesthesiologist of the responsibility and liability of his own acts or omissions.

C. An anesthesiologist may have that number of anesthesiologist assistants under his supervision as permitted by the board.

**History:** Laws 2001, ch. 311, § 10; 1978 Comp., § 61-6-10.10, recompiled as § 61-6D-9 by Laws 2022, ch. 39, § 105.

### **61-6D-10. Anesthesiologist assistants; employment conditions.**

An anesthesiologist assistant shall:

A. be a current or future employee of a university in New Mexico with a medical school; or

B. in a practice other than one at a university in New Mexico with a medical school:

(1) be certified as an anesthesiologist assistant by the national commission for certification of anesthesiologist assistants;

(2) practice only in a health facility licensed by the department of health where anesthesiologists who are licensed physicians and who are board-certified as anesthesiologists by the American board of anesthesiology are on staff as employees or contractors;

(3) practice only in a class A county; and

(4) be supervised by a licensed anesthesiologist who is physically present at all times in the health facility while supervising an anesthesiologist assistant.

**History:** Laws 2015, ch. 52, § 3; 2021, ch. 54, § 26; 1978 Comp., § 61-6-10.11, recompiled as § 61-6D-10 by Laws 2022, ch. 39, § 105; 2023, ch. 91, § 3.

## **ARTICLE 7**

### **Impaired Health Care Provider**

#### **61-7-1. Short title.**

Chapter 61, Article 7 NMSA 1978 may be cited as the "Impaired Health Care Provider Act".

**History:** 1953 Comp., § 67-42-1, enacted by Laws 1976, ch. 3, § 1; recompiled as 1953 Comp., § 67-8A-1; 1995, ch. 96, § 1.

#### **61-7-2. Definition.**

As used in the Impaired Health Care Provider Act, "board" means a board or department that licenses, registers or certifies health care providers.

**History:** 1953 Comp., § 67-42-2, enacted by Laws 1976, ch. 3, § 2; recompiled as 1953 Comp., § 67-8A-2; 1995, ch. 96, § 2; 2001, ch. 188, § 1.

#### **61-7-3. Grounds for restriction, suspension or revocation of license; registration or certification.**

The license, registration or certification of any health care provider to practice in this state shall be subject to restriction, suspension or revocation in case of inability of the health care provider to practice 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 [Chapter 30, Article 31 NMSA 1978], or alcohol.

**History:** 1953 Comp., § 67-42-3, enacted by Laws 1976, ch. 3, § 3; recompiled as 1953 Comp., 67-8A-3; 1995, ch. 96, § 3.

#### **61-7-4. Health care provider boards; additional powers and duties.**

A. If the board has reasonable cause to believe that a health care provider licensed, registered or certified to practice in this state is unable to practice 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 health care provider and shall, following the examination, take appropriate action within the provisions of the Impaired Health Care Provider Act.

B. The appropriate board shall designate three licensed health care providers to be members of an examining committee.

**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; 1995, ch. 96, § 4.

#### **61-7-5. Examination by committee.**

A. The examining committee assigned to examine a health care provider pursuant to referral by the board as provided in Section 61-7-4 NMSA 1978 shall conduct an examination of the health care provider for the purpose of determining the health care provider's fitness to practice 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 health care provider 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 health care provider to skillfully or safely practice. The examining committee shall order the health care provider to appear before it for examination and give the health care provider 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 health care provider either personally or by registered or certified mail with return receipt requested.

B. If an examining committee, in its discretion, deems a mental or physical examination of the health care provider necessary to its determination of the fitness of the health care provider to practice, the committee shall order the health care provider to submit to such examination. Any person licensed, registered or certified to practice in this state shall, by so practicing or by making or filing of registration to practice in this state, be deemed to have:



(1) given consent to submit to mental or physical examination when so directed by an examining committee; and

(2) waived all objections to the admissibility of an examining committee's report to the board on the grounds of privileged communication.

C. Any health care provider ordered to an examination before an examining committee pursuant to the provisions of Subsection A of this section may present the results of an independent mental or physical examination to the committee.

D. Any health care provider who submits to a diagnostic mental or physical examination as ordered by an examining committee shall have a right to designate another health care provider to be present at the examination and make an independent report to the board.

E. Failure of a health care provider to comply with an examining committee order made pursuant to provisions of 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 health care provider, shall be grounds for the immediate and summary suspension by the board of the health care provider's license, registration or certification to practice 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; 1995, ch. 96, § 5.

### **61-7-6. Voluntary restriction of licensure.**

A health care provider may request in writing to the board a restriction of the license, registration or certification to practice. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the license, registration or certification of the health care provider to practice within specified limitations and waive the commencement of any proceeding pursuant to provisions of Section 61-7-8 NMSA 1978. Removal of a voluntary restriction on licensure to practice shall be subject to the procedure for reinstatement of license, registration or certification 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; 1995, ch. 96, § 6.

### **61-7-7. Report to the board; action.**

A. An examining committee shall report to the board its findings on the examination of the person as provided in Section 61-7-5 NMSA 1978, the determination of the committee as to the fitness of the person to engage in practice 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 an examining committee regarding a health care provider's ability to continue to practice with or without any restriction on the license, registration or certification or may refer the matter back to an examining committee for further examination and report.

C. In the absence of a voluntary agreement by a health care provider as provided in Section 61-7-6 NMSA 1978 for restriction of the license, registration or certification of the person to practice, any person 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 restriction, suspension or revocation of license, registration or certification 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; 1995, ch. 96, § 7.

### **61-7-8. Proceedings.**

A. The board may formally proceed against a health care provider under the Impaired Health Care Provider Act 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 a hearing, the board shall make the following findings:

(1) whether the health care provider 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 health care provider's ability to practice skillfully or safely;

(3) to what extent the impairment limits the health care provider's ability to practice skillfully or safely and whether the board finds that the impairment is such that the health care provider's license, registration or certification should be suspended, revoked or restricted; and

(4) if the finding in Paragraph (3) of this subsection recommends suspension or restriction of the health care provider's ability to practice, 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 a hearing, the board shall make a determination of the merits and may order one or more of the following:

(1) placement of the health care provider 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 health care provider to practice for the duration of the impairment;

(3) revocation of the license, registration or certification of the health care provider to practice; or

(4) reinstatement of the health care provider's license, registration or certification to practice without restriction.

D. The board may temporarily suspend the license, registration or certification of any health care provider without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or 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 health care provider's continuation in practice would constitute an imminent danger to public health and safety. The health care provider shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

E. Neither the record of the proceeding nor any order entered against a health care provider may be used against the health care provider 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; 1995, ch. 96, § 8.

### **61-7-9. Reinstatement of license.**

A health care provider whose license, registration or certification has been restricted, suspended or revoked pursuant to provisions of the Impaired Health Care Provider Act, voluntarily or by action of the board, shall have a right, at reasonable intervals, to petition for reinstatement and to demonstrate that the health care provider can resume the competent practice 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 and upon written recommendation of the examining committee, restore the license, registration or certification of the health care provider 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; 1995, ch. 96, § 9.

### **61-7-10. Judicial review.**

All orders of the board made pursuant to provisions of Subsection C of Section 61-7-8 NMSA 1978 shall be subject to judicial review as provided for in 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; 1995, ch. 96, § 10.

### **61-7-11. Protected action and communication.**

There shall be no liability on the part of and no action for damages against:

A. any member of an examining committee of the board for any action undertaken or performed by such member within the scope of the functions or such committee or board under the Impaired Health Care Provider Act when acting in good faith and in the reasonable belief that the action taken is warranted; or

B. any person providing information to an examining 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; 1995, ch. 96, § 11.

### **61-7-12. Impaired health care provider treatment program.**

A. The board has the authority to enter into an agreement to implement an impaired health care provider treatment program.

B. For the purposes of this section, "impaired health care provider 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 health care providers.

**History:** 1978 Comp., § 61-7-12, enacted by Laws 1987, ch. 204, § 2; 1995, ch. 96, § 12.

## **ARTICLE 7A**

### **Nutrition and Dietetics Practices**

#### **61-7A-1. Short title. (Repealed effective July 1, 2028.)**

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.

### **61-7A-2. Legislative findings; purpose of act. (Repealed effective July 1, 2028.)**

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 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.

### **61-7A-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Nutrition and Dietetics Practice Act:

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.

#### **61-7A-4. License required; exemptions. (Repealed effective July 1, 2028.)**

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.

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.

### **61-7A-5. Board created. (Repealed effective July 1, 2028.)**

A. There is created the "nutrition and dietetics practice board", administratively attached to the regulation and licensing department. The board shall consist of five members who are New Mexico residents and who are appointed by the governor for staggered three-year terms. Three members shall be licensed dietitians or nutritionists with at least three years of nutrition or dietetics practice in New Mexico and two members shall represent the public. There shall be at least one dietitian and at least one nutritionist on the board at all times. 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. 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 by the governor.

C. No board member shall serve more than two full terms.

D. 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 two or more members of the board. Three members, at least two of whom are professional members and at least one of whom is a public member, shall constitute a quorum. Any member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member.

E. 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; 1996, ch. 51, § 1.

### **61-7A-6. Board; duties. (Repealed effective July 1, 2028.)**

A. The board shall:

- (1) develop and administer an appropriate examination for qualified applicants;
- (2) evaluate the qualifications of applicants for licensure under the Nutrition and Dietetics Practice Act;
- (3) issue licenses to applicants who meet the requirements of the Nutrition and Dietetics Practice Act;
- (4) investigate persons engaging in practices that may violate the provisions of the Nutrition and Dietetics Practice Act;
- (5) 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];
- (6) adopt an annual budget;
- (7) adopt a code of ethics; and
- (8) adopt in accordance with the Uniform Licensing Act and file in accordance with the State Rules Act [Chapter 14, Article 4 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 three-fifths 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; 1996, ch. 51, § 2.

### **61-7A-7. Licensure; requirements. (Repealed effective July 1, 2028.)**

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 that 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.

C. Notwithstanding the provisions of Subsections A and B of this section, the board shall issue a license to an applicant who pays all required fees and who successfully passes a state examination, as established in Subsection A of Section 61-7A-6 NMSA 1978.

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 [on-site] 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; 1996, ch. 51, § 3.

### **61-7A-8. Licensure by credentials. (Repealed effective July 1, 2028.)**

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.

**History:** Laws 1989, ch. 387, § 8.

### **61-7A-9. Provisional permit. (Repealed effective July 1, 2028.)**

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.

### **61-7A-10. License renewal; continuing education requirements. (Repealed effective July 1, 2028.)**

A. Every person licensed under the Nutrition and Dietetics Practice Act 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.

### **61-7A-11. Fees. (Repealed effective July 1, 2028.)**

A. Except as provided in Section 61-1-34 NMSA 1978, 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; 2020, ch. 6, § 20.

### **61-7A-12. Nutrition and dietetics fund created; disposition; method of payment. (Repealed effective July 1, 2028.)**

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 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.

### **61-7A-13. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)**

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 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.

### **61-7A-14. Penalty; enforcement. (Repealed effective July 1, 2028.)**

A. Violation of any provision of the Nutrition and Dietetics Practice Act 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.

### **61-7A-15. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The nutrition and dietetics practice board is terminated on July 1, 2027 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 until July 1, 2028. Effective July 1, 2028, the Nutrition and Dietetics Practice Act is repealed.

**History:** Laws 1989, ch. 387, § 15; 1996, ch. 51, § 4; 1997, ch. 46, § 7; 2005, ch. 208, § 5; 2015, ch. 119, § 5; 2021, ch. 50, § 3.

## **ARTICLE 8 Podiatry**

### **61-8-1. Short title.**

Chapter 61, Article 8 NMSA 1978 may be cited as the "Podiatry Act".

**History:** 1953 Comp., § 67-6-1, enacted by Laws 1977, ch. 221, § 1; 1998, ch. 24, § 1.

### **61-8-2. Definitions.**

As used in the Podiatry Act:

A. "board" means the New Mexico medical board;

B. "committee" means the podiatry advisory committee;

C. "foot and ankle radiation technologist" means a person who takes x-rays of the foot and ankle under the supervision of a podiatric physician;

D. "podiatric physician" means a podiatric physician licensed under the Podiatry Act to practice podiatry in New Mexico; and

E. "practice of podiatry" means engaging in that primary health care profession, the members of which examine, diagnose, treat and prevent by medical, surgical and

biomechanical 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 podiatric physician, pursuant to the laws of this state, is defined as a physician and surgeon within the scope of the podiatric physician license.

**History:** 1953 Comp., § 67-6-2, enacted by Laws 1977, ch. 221, § 2; 1998, ch. 24, § 2; 2023, ch. 141, § 5.

### **61-8-3. License required.**

Unless licensed as a podiatric physician pursuant to the provisions of the Podiatry Act or exempted from that act pursuant to Section 61-8-4 NMSA 1978, no person shall practice podiatry.

**History:** 1953 Comp., § 67-6-3, enacted by Laws 1977, ch. 221, § 3; 1998, ch. 24, § 3; 2023, ch. 141, § 6.

### **61-8-4. Persons exempted.**

The Podiatry Act 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. The provisions of the Podiatry Act do not conflict with existing laws regulating the practice of the healing arts in this state; and
- D. 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; 1998, ch. 24, § 4.

#### **61-8-4.1. Criminal offender's character evaluation.**

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.

**History:** 1978 Comp., § 61-8-4.1, enacted by Laws 1986, ch. 90, § 1.

### **61-8-5. Podiatry advisory committee created; members; qualifications; terms; vacancies.**

A. The "podiatry advisory committee" is created to advise the board regarding licensure of podiatric physicians and efforts to recruit and retain podiatric physicians for practice in this state. The committee shall consist of three members, one member who shall be the executive director of the New Mexico podiatric medical association serving as an ex-officio member and two members who shall be podiatric physicians licensed to practice in New Mexico who have been actively engaged in the practice of podiatry for at least three consecutive years immediately prior to their appointments.

B. Members of the committee shall be appointed by the board from a list of names submitted to the board by the New Mexico podiatric medical association or its authorized governing body or council. The list shall be submitted to the board within thirty days of a vacancy and shall contain at least three qualified podiatric physicians for each member to be appointed. Member vacancies shall be filled in the same manner. Committee members shall serve until their successors have been appointed and qualified.

**History:** 1953 Comp., § 67-6-5, enacted by Laws 1977, ch. 221, § 5; 1979, ch. 385, § 1; 1991, ch. 189, § 11; 1998, ch. 24, § 5; 2003, ch. 408, § 7; 2023, ch. 141, § 7.

### **61-8-6. Board and committee organization; meetings; compensation; powers and duties.**

A. The committee shall hold meetings in a frequency necessary to conduct business and shall meet at the request of the board. Meetings of the committee shall be subject to the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

B. Members of the committee are entitled to reimbursement 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.

C. The board, with the advice of the committee, shall:

- (1) administer and enforce the provisions of the Podiatry Act;
- (2) promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules for the implementation and enforcement of the provisions of the Podiatry Act;
- (3) adopt and use a seal;
- (4) conduct hearings, administer oaths and take testimony on matters within the board's jurisdiction;

- (5) keep an accurate record of its meetings, receipts and disbursements;
- (6) keep records of the name, address and license number of licensed podiatric physicians together with a record of license renewals, suspensions and revocations;
- (7) grant, deny, renew, suspend or revoke licenses to practice podiatry or take other actions provided in Section 61-1-3 NMSA 1978 in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Podiatry Act;
- (8) promulgate rules setting standards of preliminary and professional qualifications for the practice of podiatry;
- (9) promulgate rules for the examination, licensure and regulation of podiatric assistants. The rules shall include definitions and limitations on the practice of podiatric assistants, qualifications for applicants for licensure, an initial license fee in an amount not to exceed two hundred fifty dollars (\$250) and a renewal fee not to exceed one hundred dollars (\$100) per year, provisions for the regulation of podiatric assistants and provisions for the suspension or revocation of licenses;
- (10) determine by rule all qualifications and requirements for applicants seeking licensure as podiatric physicians or podiatric assistants;
- (11) promulgate rules for the examination and licensure as foot and ankle radiation technologists, which shall include definitions and limitations on the practice of foot and ankle radiation technologists, qualifications for applicants for licensure, an initial license fee in an amount not to exceed two hundred fifty dollars (\$250) and a renewal fee not to exceed one hundred dollars (\$100) per year, provisions for the regulation of foot and ankle radiation technologists and provisions for the suspension or revocation of licenses; and
- (12) require fingerprints, or other biometric identification, and other information necessary for a state and national criminal background check as a condition for licensure.

**History:** 1953 Comp., § 67-6-6, enacted by Laws 1977, ch. 221, § 6; 1998, ch. 24, § 6; 2003, ch. 408, § 8; 2022, ch. 39, § 37; 2023, ch. 141, § 8.

### **61-8-7. Repealed.**

**History:** 1953 Comp., § 67-6-7, enacted by Laws 1977, ch. 221, § 7; 1998, ch. 24, § 7; 1978 Comp., § 61-8-7, repealed by Laws 2023, ch. 141, § 19.

### **61-8-8. Qualifications for licensure as a podiatric physician.**



A. Each applicant for licensure as a podiatric physician shall furnish evidence satisfactory to the board that the applicant:

- (1) has reached the age of majority;
- (2) has graduated and been awarded a doctor of podiatric medicine degree from a college of podiatric medicine accredited by the American podiatric medical association council on podiatric medical education; and
- (3) has completed, at a minimum, a one-year residency program at a hospital accredited by the American podiatric medical association council on education.

B. Each applicant shall file an application under oath on forms supplied by the board and shall pay the required fees.

C. An applicant for licensure by examination shall submit evidence to the board that the applicant has passed the examinations administered by the national board of podiatry examiners for students graduating from colleges of podiatry and shall furnish the board an official transcript and take clinical and written examinations as the board deems necessary. The examinations shall be in English and the subjects covered by the examinations shall be determined by the board and taken from subjects taught in accredited colleges of podiatric medicine. No applicant for licensure by examination shall be licensed who has not received a passing score on all board-approved examinations.

D. A podiatric physician licensed in another state may, on a temporary basis, consult, advise or cooperate in patient treatment with a podiatric physician licensed in New Mexico, subject to rules promulgated by the board.

**History:** 1953 Comp., § 67-6-8, enacted by Laws 1977, ch. 221, § 8; 1998, ch. 24, § 8; 2022, ch. 39, § 38; 2023, ch. 141, § 9.

### **61-8-9. Expedited licensure by reciprocity.**

A. An applicant for expedited licensure by reciprocity shall meet the qualifications set forth in Section 61-8-8 NMSA 1978, shall file an application under oath on forms supplied by the board that conform to board rules on reciprocity and furnish proof satisfactory to the board of having been licensed by national examination in another licensing jurisdiction. In addition, each applicant for licensure by reciprocity shall:

- (1) furnish the board an affidavit from the applicant's state board showing a valid, unrestricted license and the fact that the applicant has been licensed to practice podiatry and has practiced podiatry for at least three consecutive years immediately preceding the filing of the application for reciprocal licensure and is in good standing with the other licensing jurisdiction; and

(2) pay required fees.

B. The board shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application for licensure by reciprocity, process the application and issue the license in accordance with Section 61-1-31.1 NMSA 1978.

C. The board shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and the foreign countries from which it will accept an applicant for expedited licensure. The board shall post the list of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-6-9, enacted by Laws 1977, ch. 221, § 9; 1998, ch. 24, § 9; 2022, ch. 39, § 39; 2023, ch. 141, § 10.

### **61-8-10. License fees; licensure under prior law; renewal.**

A. Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a podiatric physician shall pay the following fees:

(1) for licensure by examination:

(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; and

(b) an application fee not to exceed six hundred dollars (\$600);

(2) for licensure on the basis of reciprocity, a fee set by the board in an amount not to exceed six hundred dollars (\$600);

(3) for the biennial renewal of license on or before January 1 of the renewal year, a renewal fee set by the board in an amount not to exceed six hundred dollars (\$600);

(4) for the late renewal after January 1 for the ensuing two years, a late charge not to exceed fifty dollars (\$50.00) per month or part thereof commencing on January 2;

(5) 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

(6) for the issuance of a temporary license, a fee not to exceed one hundred dollars (\$100).

B. If any licensee permits the licensee's 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 (3), (4) and (5) 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 renewal within three months after the termination of 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.

**History:** 1953 Comp., § 67-6-10, enacted by Laws 1977, ch. 221, § 10; 1979, ch. 385, § 3; 1989, ch. 185, § 1; 1998, ch. 24, § 10; 2020, ch. 6, § 21; 2023, ch. 141, § 11.

### **61-8-10.1. License renewal; continuing education; penalty for failure to renew.**

A. All licensees shall renew their licenses on or before January 1 of every second year. Upon application for renewal, each licensee shall furnish evidence that the licensee has completed continuing education requirements as set forth in Subsection B of this section.

B. As a condition of renewal, all applicants shall furnish the board with evidence of completion of postgraduate study as required by board rule. Postgraduate study may be obtained from a college of podiatric medicine accredited by the American podiatric medical association, one of its constituent societies or affiliate organizations or other courses approved by the board. This requirement may only be waived for reasons of prolonged illness or other incapacity or during a public health emergency.

C. The board may summarily suspend the license of a podiatric physician who fails to renew the podiatric physician's 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; 1998, ch. 24, § 11; 2023, ch. 141, § 12.

### **61-8-11. Suspension, revocation or refusal of license.**

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

A. making a false statement in any part of an application for licensure, examination or registration pursuant to the provisions of the Podiatry Act;

B. having a disqualifying criminal conviction as determined by the board. As used in this subsection, "disqualifying criminal conviction" means a conviction for a crime that is related to the profession of podiatry;

C. the habitual indulgence in the use of narcotics, alcohol or other substances that impair intellect and judgment to an extent as will, in the opinion of the board, incapacitate a podiatric physician from the proper performance of professional duties;

D. lending the use of one's name to an unlicensed podiatric physician;

E. selling, giving or prescribing any compound or substance containing narcotic drugs or other controlled substances for illegal purposes;

F. the willful violation of a patient's right to confidentiality;

G. gross malpractice or incompetency as defined by board rule; or

H. dishonest or unprofessional conduct as defined by the Podiatry Act or rules adopted pursuant to that act.

**History:** 1953 Comp., § 67-6-11, enacted by Laws 1977, ch. 221, § 11; 1998, ch. 24, § 12; 2023, ch. 141, § 13.

### **61-8-12. Offenses; penalties.**

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) or more than ten thousand dollars (\$10,000) 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 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 "chiropracist", "podiatrist", "podiatric physician", "M.Cp.", "D.S.C.", "D.P.M.", "foot specialist", "foot correctionist", "foot culturist", "foot practipedist", "foot doctor" 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; 1998, ch. 24, § 13; 2023, ch. 141, § 14.

### **61-8-13. Unprofessional conduct.**

Unprofessional conduct pursuant to Subsection H of Section 61-8-11 NMSA 1978 for a podiatric physician licensed under the Podiatry Act includes using false or misleading advertising or making a false or misleading statement in communications with patients or potential patients or using a misleading or deceptive title or designation in a name or title of a podiatric practice.

**History:** 1953 Comp., § 67-6-13, enacted by Laws 1977, ch. 221, § 13; 1998, ch. 24, § 14; 2023, ch. 141, § 15.

### **61-8-14. Limitation on licensure; temporary license.**

A. No license to practice podiatry shall be issued to a corporation, partnership or association; provided, however, that this subsection shall not prohibit licensed podiatric physicians from associating themselves as otherwise allowed by law in a professional corporation, professional limited liability company, partnership or association for the purpose of practicing podiatry.

B. In cases of emergency, as defined by board rule, the board may grant a temporary license to practice podiatry to a person who meets the requirements of Subsections A and B of Section 61-8-8 NMSA 1978. The temporary license shall automatically expire on the date of the next board meeting at which applications for licensure by examination or reciprocity are approved. No person may be issued more than one temporary license pursuant to this provision.

C. To facilitate educational programs, subject to conditions and terms set forth in board rules, the board may grant a temporary license to practice podiatry to a person enrolled and participating in such program.

**History:** 1953 Comp., § 67-6-14, enacted by Laws 1977, ch. 221, § 14; 1998, ch. 24, § 15; 2023, ch. 141, § 16.

### **61-8-15. Privileged communications.**

Medical and other health care-related information concerning a patient obtained by a podiatric physician or by an employee of a podiatric physician during the course of examination, diagnosis or treatment and advice, diagnosis, orders, prescriptions and other health care-related communications from a podiatric physician or an employee of a podiatric physician are confidential communications protected in courts of law and administrative proceedings by the physician-patient privilege.

**History:** 1978 Comp., § 61-8-15, enacted by Laws 1998, ch. 24, § 16; 2023, ch. 141, § 17.

### **61-8-16. Power to enjoin violations.**

Upon final determination that a person has violated a provision of the Podiatry Act, the board or any interested person may, in addition to other remedies provided in that act, petition the district court for an order restraining and enjoining such person from further or continued violation of the Podiatry Act.

**History:** 1953 Comp., § 67-6-16, enacted by Laws 1977, ch. 221, § 16; 1998, ch. 24, § 17.

### **61-8-17. 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; 1997, ch. 46, § 8; 2003, ch. 428, § 6; 2009, ch. 96, § 5; 2015, ch. 119, § 6; repealed by Laws 2023, ch. 15, § 8 and Laws 2023, ch. 141, § 19.

## **ARTICLE 9 Psychologists**

### **61-9-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 9 NMSA 1978 may be cited as the "Professional Psychologist Act".

**History:** 1953 Comp., § 67-30-1, enacted by Laws 1963, ch. 92, § 1; 2002, ch. 100, § 3.

### **61-9-2. Repealed.**

**History:** 1978 Comp., § 61-9-2, enacted by Laws 1989, ch. 41, § 2; repealed by Laws 2019, ch. 19, § 10.

### **61-9-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Professional Psychologist Act:

A. "board" means the New Mexico state board of psychologist examiners;

B. "conditional prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication under the supervision of a supervising clinician pursuant to the Professional Psychologist Act;

C. "independently licensed prescribing clinician" means a licensed physician, osteopathic physician, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist;

D. "person" includes an individual, firm, partnership, association or corporation;

E. "prescribing psychologist" means a licensed psychologist who holds a valid prescription certificate;

F. "prescription certificate" means a document issued by the board to a licensed psychologist that permits the holder to prescribe psychotropic medication pursuant to the Professional Psychologist Act;

G. "psychotropic medication" means a controlled substance or dangerous drug that may not be dispensed or administered without a prescription but is limited to only those agents related to the diagnosis and treatment or management of mental, nervous, emotional, behavioral, substance use or cognitive disorders, including the management of or protection from side effects that are a direct result from the use of those agents, whose use is consistent with the standards of practice for clinical psychopharmacology;

H. "psychologist" means a person who engages in the practice of psychology or holds the person's self out to the public by any title or description of services representing the person as a psychologist, which incorporates the words "psychological", "psychologist", "psychology", or when a person describes the person's self 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;

I. "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 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 a 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;

J. "school" or "college" means a university or other institution of higher education that is regionally accredited and that offers a full-time graduate course of study in psychology as defined by rule of the board or that is approved by the American psychological association; and

K. "supervising clinician" means a licensed physician, osteopathic physician, prescribing psychologist who has at least four years of independent experience prescribing psychotropic medication to treat behavioral and emotional conditions and mental illness, nurse practitioner, psychiatric nurse practitioner or clinical nurse specialist who is supervising a psychologist in the prescribing of psychotropic medication.

**History:** 1953 Comp., § 67-30-3, enacted by Laws 1963, ch. 92, § 3; 1989, ch. 41, § 3; 1993, ch. 12, § 1; 1996, ch. 51, § 5; 1996, ch. 54, § 1; 1999, ch. 106, § 1; 2002, ch. 100, § 4 ; 2019, ch. 19, § 1; 2024, ch. 26, § 1.

#### **61-9-4. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)**

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.

#### **61-9-4.1. License required. (Repealed effective July 1, 2028.)**

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.

**History:** 1978 Comp., § 61-9-4.1, enacted by Laws 1989, ch. 41, § 4; 1993, ch. 12, § 2; 1996, ch. 54, § 2.

#### **61-9-5. State board of examiners; psychology fund. (Repealed effective July 1, 2028.)**



A. There is created a "New Mexico state board of psychologist examiners". The board shall be administratively attached to the regulation and licensing department. The board shall consist 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, of which two members shall be prescribing 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 laypersons and have no significant financial interest, direct or indirect, in the practice of psychology.

B. A member shall hold office until the expiration of the member's appointed term or until a successor is duly appointed. When the term of a member ends, the governor shall appoint a successor for a term of three years. A 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 a board member for misconduct, incompetency or neglect of duty.

C. All money received by the board shall be credited to the "psychology fund". Money in the psychology fund at the end of the fiscal year shall not revert to the general fund and shall be used in accordance with the provisions of the Professional Psychologist Act. The 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:** 1978 Comp., § 61-9-5, enacted by Laws 1989, ch. 41, § 5; 1993, ch. 251, § 1; 1996, ch. 51, § 6; 1996, ch. 54, § 3; 2003, ch. 408, § 9; 2024, ch. 26, § 2.

### **61-9-5.1. Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)**

A. A member of the board or person working on behalf of the board shall not be civilly liable or subject to civil damages for any good faith action undertaken or performed within the proper functions of the board.

B. All written and oral communications made by a person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14,

Article 2 NMSA 1978]. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

- (1) to the extent necessary to carry out the board's functions;
- (2) as needed for judicial review of the board's actions; or
- (3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communications and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Professional Psychologist Act shall be public records pursuant to the provisions of the Inspection of Public Records Act.

**History:** Laws 1996, ch. 54, § 12; 2003, ch. 428, § 7.

### **61-9-6. Board; meeting; powers. (Repealed effective July 1, 2028.)**

A. The board shall, annually in the month of July, hold a meeting and elect from its membership a chair, vice chair and secretary-treasurer. The board shall meet at other times as it deems necessary or advisable or as deemed necessary and advisable by the chair 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 a meeting or hearing.

B. The board may:

(1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry into effect the provisions of the Professional Psychologist Act. The rules shall include a code of conduct for psychologists and psychologist associates in the state;

(2) adopt a seal, and the administrator shall have the care and custody of the seal;

(3) examine for, approve, deny, revoke, suspend and renew the licensure of psychologist and psychologist associate applicants as provided in the Professional Psychologist Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(4) conduct hearings in accordance with the Uniform Licensing Act upon complaints concerning the disciplining of a psychologist or psychologist associate; and

(5) cause the prosecution and enjoinder of persons violating the Professional Psychologist Act and incur related necessary expenses.

C. Within sixty days after the close of each fiscal year, the board shall submit a written 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 psychologists and psychologist associates to whom licenses have been granted; cases heard and decisions rendered in relation to the work of the board; the recommendations of the board as to future policies, including the appropriate application of technology for supervision; 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; 1996, ch. 51, § 7; 1996, ch. 54, § 4; 2003, ch. 408, § 10; 2021, ch. 93, § 1; 2022, ch. 39, § 40.

### **61-9-7. Fees; license renewal. (Repealed effective July 1, 2028.)**

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. Except as provided in Section 61-1-34 NMSA 1978, the board shall set the charge for an application fee of up to six hundred dollars (\$600) to applicants for licensure under Sections 61-9-9 through 61-9-11.1 NMSA 1978.

C. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish the renewal cycle.

D. A licensee shall renew a license biennially on or before July 1 by remitting to the board the renewal fee set by the board not exceeding six hundred dollars (\$600) 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 the 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; 2006, ch. 6, § 1; 2020, ch. 6, § 22.

### **61-9-8. Records. (Repealed effective July 1, 2028.)**

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. Except as provided otherwise in the Professional Psychologist Act, the records of the board are public records and are available to the public in accordance with the Public Records Act [Chapter 14, Article 3 NMSA 1978].

**History:** 1953 Comp., § 67-30-7, enacted by Laws 1963, ch. 92, § 7; 1989, ch. 41, § 8; 1996, ch. 54, § 5.

### **61-9-9. Licensure of psychologists without examination. (Repealed effective July 1, 2028.)**

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.

### **61-9-10. Licensure of psychologists from other areas; expedited licensure. (Repealed effective July 1, 2028.)**

A. Except as provided in Section 61-9-10.1 NMSA 1978 for temporary or other provisional licensure that is not an expedited license, upon application accompanied by a fee as required by the Professional Psychologist Act, the board shall, without written or oral examination, issue an expedited license to a person who furnishes, upon a form and in such manner as the board prescribes, evidence to the board that the person has been licensed or certified as a psychologist or prescribing psychologist by another licensing jurisdiction for two years. An applicant seeking a license shall demonstrate to the board that the training and education received by the applicant is equivalent to the

requirements for a doctoral degree in psychology as provided in the Professional Psychologist Act; that the applicant holds a valid, unrestricted license and is in good standing with the licensing board of that licensing jurisdiction; and the applicant has practiced psychology for at least two years immediately prior to application in New Mexico.

B. The board shall, as soon as practicable but not later than thirty days after an out-of-state licensee files an application for an expedited license, process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

D. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The rule shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-30-9, enacted by Laws 1963, ch. 92, § 9; 1989, ch. 41, § 10; 2006, ch. 6, § 2; 2009, ch. 51, § 1; 2019, ch. 19, § 2; 2021, ch. 93, § 2; 2022, ch. 39, § 41.

### **61-9-10.1. Provisional and temporary licensure. (Repealed effective July 1, 2028.)**

A. A temporary license may be issued to an applicant previously licensed in another jurisdiction and in good standing whose out-of-state license meets current licensing criteria for New Mexico. A temporary license shall be valid for six months and is not subject to extension or renewal, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act [Chapter 12, Article 10A NMSA 1978] and directly impacts the applicant; in which case, an applicant's temporary license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

B. The granting of a temporary license to the applicant does not include issuance of a conditional prescription certificate unless the board finds the applicant meets the requirements of Section 61-9-17.1 NMSA 1978.

C. A provisional license may be issued to an applicant never previously licensed and who does not meet New Mexico's experience requirements for psychology licensure, but who otherwise meets criteria for education and training. A provisionally

licensed psychologist must practice under the supervision of a New Mexico licensed psychologist until fully licensed. A provisional license shall be valid for eighteen months and is not subject to extension or renewal, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

**History:** Laws 2006, ch. 6, § 5; 2021, ch. 93, § 3.

### **61-9-11. Licensure; examination. (Repealed effective July 1, 2028.)**

A. The board shall issue a license as a psychologist to an applicant who files an application upon a form and in such manner as the board prescribes and, except as provided in Section 61-1-34 NMSA 1978, pays any fee required by the Professional Psychologist Act, and who furnishes evidence to the board that the applicant:

- (1) has reached the age of majority;
- (2) is not in violation of any of the provisions of the Professional Psychologist Act and the rules adopted pursuant to that act;
- (3) is a graduate of:
  - (a) a doctoral program that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; or
  - (b) a doctoral program outside the United States or Canada that is equivalent to a program in Subparagraph (a) of this paragraph and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; the board shall promulgate by rule a list of board-approved credential inspection and verification services to appraise foreign degree programs;
- (4) has had at least two years of supervised experience in psychological work; provided that:
  - (a) up to one year of the supervised experience may be obtained in predoctoral practicum hours overseen by a graduate training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology boards;
  - (b) up to one year of the supervised experience may be obtained in a predoctoral internship approved by the American psychological association;

(c) up to one-half year of the supervised experience may be obtained in a predoctoral internship that is not approved by the American psychological association; and

(d) any portion of the required supervised experience not satisfied pursuant to Subparagraphs (a), (b) and (c) of this paragraph shall be obtained in postdoctoral psychological work;

(5) demonstrates professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a total raw score of 140 (seventy percent), before January 1, 1993 or, if after January 1, 1993, a score equal to or greater than the passing score recommended by the association of state and provincial psychology boards;

(6) demonstrates an awareness and knowledge of New Mexico cultures to the board; and

(7) passes such jurisprudence examination as may be given by the board through an online testing and scoring mechanism.

B. Upon investigation of the application and other evidence submitted, including a criminal background check, 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 at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, the applicant may apply for reexamination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

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; 1996, ch. 54, § 6; 1999, ch. 106, § 2; 2006, ch. 6, § 3; 2009, ch. 51, § 2; 2011, ch. 135, § 1; 2020, ch. 6, § 23; 2021, ch. 93, § 4.

**61-9-11.1. Psychologist associates; licensure; examination.  
(Repealed effective July 1, 2028.)**

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 prescribes and, except as provided in Section 61-1-34 NMSA 1978, accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that the applicant:

(1) has reached the age of majority and is not in violation of any of the provisions of the Professional Psychologist Act and the rules and regulations adopted pursuant to that act;

(2) holds a master's degree in psychology from a department of psychology of a school or college;

(3) demonstrates professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a score equivalent to or greater than the statistical mean as reported by the association of state and provincial psychology boards for all master's-level candidates taking the examination on that occasion;

(4) demonstrates awareness and knowledge of New Mexico cultures to the board; and

(5) passes such jurisprudence examination as may be given by the board through an online testing and scoring mechanism.

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 at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, the applicant may apply for reexamination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

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; 1996, ch. 54, § 7; 2003, ch. 428, § 8; 2006, ch. 6, § 4; 2020, ch. 6, § 24; 2021, ch. 93, § 5.

### **61-9-11.2. Criminal background checks. (Repealed effective July 1, 2028.)**

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Professional Psychologist Act;

(2) requiring applicants for licensure to be fingerprinted only upon initial licensure;

(3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

**History:** Laws 2009, ch. 51, § 4; 2019, ch. 209, § 5.

### **61-9-12. License. (Repealed effective July 1, 2028.)**

The board shall issue a license signed by the chairman and vice chairman or their designee 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; 1996, ch. 54, § 8.

### **61-9-13. Denial, revocation or suspension of license. (Repealed effective July 1, 2028.)**

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board, by an affirmative vote of at least five of its eight members, shall withhold, deny, revoke or suspend a psychologist or psychologist associate license issued or applied for in accordance with the provisions of the Professional Psychologist Act or otherwise discipline a psychologist or psychologist associate upon proof that the applicant, psychologist or psychologist associate:

(1) has been convicted of a felony or an offense involving moral turpitude, the record of conviction being conclusive evidence thereof;

(2) is using a drug, substance or alcoholic beverage to an extent or in a manner dangerous to the psychologist or psychologist associate, any other person or the public or to an extent that the use impairs the psychologist's or psychologist associate's 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 the psychologist's or psychologist associate's 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 the psychologist's or psychologist associate's name or license issued under the Professional Psychologist Act to be used in connection with a 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 the provisions of the Professional Psychologist Act;

(9) has violated any code of conduct adopted by the board;

(10) has been disciplined by another state for acts similar to acts described in this subsection, and a certified copy of the record of discipline of the state imposing the discipline is conclusive evidence;

- (11) is incompetent to practice psychology;
- (12) has failed to furnish to the board or its representative information requested by the board;
- (13) has abandoned patients or clients;
- (14) has failed to report to the board adverse action taken against the licensee by:
  - (a) another licensing jurisdiction;
  - (b) a professional psychologist association of which the psychologist or psychologist associate is or has been a member;
  - (c) a government agency; or
  - (d) a court for actions or conduct similar to acts or conduct that would constitute grounds for action as described in this subsection;
- (15) has failed to report to the board surrender of a license or other authorization to practice psychology in another jurisdiction or surrender of membership on a health care staff or in a professional association following a disciplinary investigation, or in lieu of or while under a disciplinary investigation, by any of those authorities for acts or conduct that would constitute grounds for action as defined in this subsection;
- (16) has failed to adequately supervise a psychologist associate or a licensed psychologist holding a conditional prescription certificate;
- (17) has employed abusive billing practices;
- (18) has aided or abetted the practice of psychology by a person not licensed by the board; or
- (19) uses conversion therapy on a minor.

B. A person who has been refused a license or whose license has been restricted or suspended under the provisions of this section may reapply for licensure after more than two years have elapsed from the date the restriction or suspension is terminated.

C. As used in this section:

- (1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change

behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** 1953 Comp., § 67-30-12, enacted by Laws 1963, ch. 92, § 12; 1983, ch. 334, § 5; 1989, ch. 41, § 14; 1996, ch. 54, § 9; 2009, ch. 51, § 3; 2017, ch. 132, § 4; 2019, ch. 19, § 3; 2022, ch. 39, § 42.

### **61-9-14. Violation and penalties. (Repealed effective July 1, 2028.)**

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.

### **61-9-15. Injunctive proceedings. (Repealed effective July 1, 2028.)**

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.

### **61-9-16. Scope of act. (Repealed effective July 1, 2028.)**

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;

(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; or

(3) the activities of an applicant working under supervision seeking licensure pursuant to the Professional Psychologist Act.

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. Nothing in the Professional Psychologist Act shall be construed to prevent an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

F. Specifically exempted from the Professional Psychologist Act are:

(1) alcohol or drug abuse counselors working under appropriate supervision for a nonprofit corporation, association or similar entity;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) 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;

(4) students enrolled in a graduate-level counselor and therapist training program and rendering services under supervision;

(5) 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;

(6) pastoral counselors with master's or doctoral degrees, who are certified by the American association of pastoral counselors; and

(7) 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; 1996, ch. 54, § 10.

### **61-9-17. Drugs; medicines. (Repealed effective July 1, 2028.)**

A. Except as provided in Subsections B and C of this section, psychologists or psychologist associates shall not administer or prescribe drugs or medicine or in any manner engage in the practice of medicine as defined by the laws of this state.

B. A licensed psychologist holding a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician pursuant to the Professional Psychologist Act.

C. A prescribing psychologist may prescribe psychotropic medication pursuant to the Professional Psychologist Act.

**History:** 1953 Comp., § 67-30-16, enacted by Laws 1963, ch. 92, § 16; 1983, ch. 334, § 7; 1989, ch. 41, § 17; 2002, ch. 100, § 5; 2019, ch. 19, § 4.

#### **61-9-17.1. Conditional prescription certificate; prescription certificate; application; requirements; rulemaking by board; issuance, denial, renewal and revocation of certification. (Repealed effective July 1, 2028.)**

A. A psychologist may apply to the board for a conditional prescription certificate. The application shall be made on a form approved by the board and be accompanied by evidence satisfactory to the board that the applicant:

(1) has completed a doctoral program in psychology from an accredited institution of higher education or professional school, or, if the program was not accredited at the time of the applicant's graduation, that the program meets professional standards determined acceptable by the board;

(2) holds a current license to practice psychology in New Mexico;

(3) has successfully completed pharmacological training from an institution of higher education approved by the board and the New Mexico medical board or from a provider of continuing education approved by the board and the New Mexico medical board;

(4) has passed a national certification examination approved by the board and the New Mexico medical board that tests the applicant's knowledge of pharmacology in the diagnosis, care and treatment of mental disorders;

(5) within the five years immediately preceding the date of application, has successfully completed an organized program of education approved by the board and the New Mexico medical board and consisting of didactic instruction of no less than four hundred fifty classroom hours in at least the following core areas of instruction:

(a) neuroscience;

(b) pharmacology;

(c) psychopharmacology;

(d) physiology;

(e) pathophysiology;

(f) appropriate and relevant physical and laboratory assessment; and

(g) clinical pharmacotherapeutics;

(6) within the five years immediately preceding the date of application, has been certified by each of the applicant's supervising independently licensed prescribing clinicians as having successfully completed a supervised and relevant clinical experience, approved by the board and the New Mexico medical board, of:

(a) no less than an eighty-hour practicum in clinical assessment and pathophysiology under the supervision of an independently licensed prescribing clinician; and

(b) an additional supervised practicum of at least four hundred hours treating no fewer than one hundred patients with mental disorders, the practica to have been supervised by any one or a combination of a psychiatrist or other appropriately trained independently licensed prescribing clinician and determined by the board and the New Mexico medical board to be sufficient to competently train the applicant in the treatment of a diverse patient population. One-to-one supervision shall be provided either face-to-face, telephonically or by video conference;

(7) has malpractice insurance in place, sufficient to satisfy the rules adopted by the board and the New Mexico medical board, that will cover the applicant during the period the conditional prescription certificate is in effect; and

(8) meets all other requirements, as determined by rule of the board, for obtaining a conditional prescription certificate.



B. The board shall issue a conditional prescription certificate if it finds that the applicant has met the requirements of Subsection A of this section. The certificate shall be valid for a period of two years, at the end of which the holder may again apply pursuant to the provisions of Subsection A of this section. A psychologist with a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician subject to the following conditions:

(1) the psychologist shall continue to hold a current license to practice psychology in New Mexico and continue to maintain malpractice insurance;

(2) the psychologist shall notify the board of the name of the psychologist's supervising clinician; and

(3) a supervising clinician shall notify the supervising clinician's own licensing board of the name of each psychologist under the supervising clinician's supervision.

C. A supervising clinician shall not be liable for the acts of a psychologist under the supervising clinician's supervision unless the injury or loss arises from those acts under the direction and control of the supervising clinician.

D. A psychologist may apply to the board for a prescription certificate. The application shall be made on a form approved by the board and be accompanied by evidence satisfactory to the board that the applicant:

(1) has been issued a conditional prescription certificate and has successfully completed two years of prescribing psychotropic medication as certified by the supervising clinician;

(2) has successfully undergone a process of independent peer review approved by the board and the New Mexico medical board;

(3) holds a current license to practice psychology in New Mexico;

(4) has malpractice insurance in place, sufficient to satisfy the rules adopted by the board, that will cover the applicant as a prescribing psychologist; and

(5) meets all other requirements, as determined by rule of the board, for obtaining a prescription certificate.

E. The board shall issue a prescription certificate if it finds that the applicant has met the requirements of Subsection D of this section. A psychologist with a prescription certificate may prescribe psychotropic medication pursuant to the provisions of the Professional Psychologist Act if the psychologist:

(1) continues to hold a current license to practice psychology in New Mexico and continues to maintain malpractice insurance; and

(2) annually satisfies the continuing education requirements for prescribing psychologists, as set by the board, which shall be no fewer than twenty hours each year.

F. The board shall promulgate rules providing for the procedures to be followed in obtaining a conditional prescription certificate, a prescription certificate and renewals of a prescription certificate. The board may set reasonable application and renewal fees.

G. The board shall promulgate rules establishing the grounds for denial, suspension or revocation of conditional prescription certificates and prescription certificates authorized to be issued pursuant to this section, including a provision for suspension or revocation of a license to practice psychology upon suspension or revocation of a certificate. Actions of denial, suspension or revocation of a certificate shall be in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** Laws 2002, ch. 100, § 6; 2019, ch. 19, § 5; 2024, ch. 26, § 3.

### **61-9-17.2. Prescribing practices. (Repealed effective July 1, 2028.)**

A. A prescribing psychologist or a psychologist with a conditional prescription certificate may administer and prescribe psychotropic medication within the recognized scope of the profession, including the ordering and review of laboratory tests in conjunction with the prescription, for the treatment of mental disorders.

B. When prescribing psychotropic medication for a patient, the prescribing psychologist or the psychologist with a conditional prescription certificate shall maintain an ongoing collaborative relationship with the health care practitioner who oversees the patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition and significant changes in the patient's medical or psychological condition are discussed.

C. The ongoing collaborative relationship shall be maintained pursuant to guidelines developed by the board and the New Mexico medical board, which shall optimize patient care.

D. The guidelines shall ensure that the prescribing psychologist or the psychologist with a conditional prescription certificate and the health care practitioner coordinate, and collaborate on, the care of the patient to provide optimal care. Nothing in this subsection shall require a prescribing psychologist or psychologist with a conditional prescription certificate to give prior notice to or obtain prior approval from a health care practitioner to prescribe psychotropic medication to a patient with whom the prescribing psychologist has established a psychologist-patient relationship; provided that the psychologist provides written notice of the prescription to the health care practitioner within twenty-four hours of its issuance to such patient.

E. If a prescribing psychologist or psychologist with a conditional prescription certificate deems it necessary to prescribe drugs for the management of or protection from side effects that are a direct result of psychotropic medication, the prescribing psychologist or psychologist with a conditional prescription certificate shall notify and discuss with the health care practitioner who oversees the patient's general medical care within twenty business days of issuance of the prescription.

F. A psychologist with a conditional prescription certificate may prescribe and administer psychotropic medication injections under the supervision of a supervising clinician and upon completion of board-approved training.

G. A prescribing psychologist may prescribe and administer psychotropic medication injections upon completion of board-approved training.

H. A committee composed of two prescribing psychologist members of the board or their designees and two members of the New Mexico medical board or their designees shall be established and, pursuant to the guidelines, shall evaluate licensing complaints against prescribing psychologists and report its findings and recommendations to each board for appropriate action. The committee shall develop education requirements for expanded practice and present these requirements to each board for approval. The committee shall conduct quarterly reviews of and provide a quarterly report to the respective boards regarding the prescribing psychologist scope of practice expansion that permits prescribing authority to manage or protect from side effects that are a direct result of psychotropic medication.

I. A prescription written by a prescribing psychologist or a psychologist with a conditional prescription certificate shall:

- (1) comply with applicable state and federal laws;
- (2) be identified as issued by the psychologist as "psychologist certified to prescribe"; and
- (3) include the psychologist's board-assigned identification number.

J. A prescribing psychologist or a psychologist with a conditional prescription certificate shall not delegate prescriptive authority to any other person. Records of all prescriptions shall be maintained in patient records.

K. When authorized to prescribe controlled substances, a prescribing psychologist or a psychologist with a conditional prescription certificate shall file with the board in a timely manner all individual federal drug enforcement administration registrations and numbers. The board and the New Mexico medical board shall maintain current records on every psychologist, including federal registrations and numbers.

L. The board shall provide to the board of pharmacy and the New Mexico medical board an annual list of prescribing psychologists and psychologists with conditional prescription certificates that contains the information agreed upon among the board, the New Mexico medical board and the board of pharmacy. The board shall promptly notify the board of pharmacy of psychologists who are added to or deleted from the list.

M. For the purpose of this section:

(1) "collaborative relationship" means a cooperative working relationship between a prescribing psychologist or a psychologist with a conditional prescription certificate and a health care practitioner in the provision of patient care, including diagnosis and cooperation in the management and delivery of physical and mental health care; and

(2) "health care practitioner" means a physician, osteopathic physician, nurse practitioner, physician assistant or clinical nurse specialist.

**History:** Laws 2002, ch. 100, § 7; 2019, ch. 19, § 6; 2024, ch. 26, § 4.

### **61-9-17.3. Prescription monitoring program; board to promulgate rules. (Repealed effective July 1, 2028.)**

By January 1, 2020, the board shall promulgate rules to carry out the provisions of the prescription monitoring program established by Section 26-1-16.1 NMSA 1978 insofar as that program applies to prescribing psychologists.

**History:** Laws 2019, ch. 19, § 8.

### **61-9-18. Privileged communications. (Repealed effective July 1, 2028.)**

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.

### **61-9-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The New Mexico state board of psychologist examiners is terminated on July 1, 2027 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 Professional Psychologist Act until July 1, 2028. Effective July 1, 2028, the Professional Psychologist Act 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; 1996, ch. 51, § 8; 1996, ch. 54, § 11; 1997, ch. 46, § 9; 2003, ch. 428, § 9; 2009, ch. 96, § 6; 2015, ch. 119, § 7; 2021, ch. 50, § 4.

## **ARTICLE 9A**

### **Counseling and Therapy**

#### **61-9A-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 9A NMSA 1978 may be cited as the "Counseling and Therapy Practice Act".

**History:** Laws 1993, ch. 49, § 1; 1999, ch. 161, § 1.

#### **61-9A-2. Purpose. (Repealed effective July 1, 2028.)**

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.

#### **61-9A-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Counseling and Therapy Practice Act:

A. "accredited institution" means a university or college accredited by an accrediting agency of institutions of higher education;

B. "appraisal" means selecting, administering, scoring and interpreting instruments designed to assess a person'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; "appraisal" shall not be construed to permit the performance of any act that a counselor or a therapist is not educated, trained and licensed to perform;

C. "appropriate clinical supervision" means, as defined by rule, supervision provided by a licensed:

- (1) professional clinical mental health counselor;
- (2) marriage and family therapist;
- (3) professional art therapist;
- (4) psychiatrist;
- (5) clinical psychologist;
- (6) clinical nurse specialist in psychiatry;
- (7) independent social worker with two years of mental health and supervised clinical experience; or
- (8) alcohol and drug abuse counselor with three years of work experience in the field of alcohol and drug abuse prior to providing supervision;

D. "appropriate clinical supervisor for substance abuse associate" means a person who has education and experience specific to the career track of the associate and has training in transmitting knowledge, skills and attitudes through a relational process that includes direct oversight of the clinical work;

E. "approved clinical supervisor" means a person who is a licensed professional clinical mental health counselor, licensed marriage and family therapist, licensed professional art therapist, licensed psychiatrist, licensed clinical psychologist, clinical nurse specialist in psychiatry or licensed independent social worker and provides supervision to a licensed mental health counselor or therapist;

F. "art therapy" means the rendering of art therapy principles whereby communication is facilitated through therapeutic counseling and art media. This involves the application of the principles of human development and psychological theories, which are implemented in the full spectrum of models of assessment and treatment, including psychodynamics and cognitive, interpersonal and other therapeutic means to individuals, couples, families, groups and communities for the promotion of optimal mental health;

G. "board" means the counseling and therapy practice board;

H. "client contact hours" means the face-to-face time spent with a client to appraise, assess, evaluate, diagnose, treat psychopathology and provide counseling services;

I. "clinical counseling" means the rendering of counseling services involving the application of principles of psychotherapy, human development, learning theory, diagnosis, treatment and the etiology of mental illness and dysfunctional behavior to individuals, couples, families or groups for the purpose of assessing and treating psychopathology and promoting optimal mental health;

J. "consultation" means the voluntary, nonsupervisory relationship between professionals or other pertinent persons, in application of scientific counseling, guidance and human development principles and procedures to provide assistance in understanding and resolving a current or potential problem that the consultee may have in relation to a third party, be it an individual, group, family or organization;

K. "counselor training and education" means a process that prepares counselors and therapists in both didactic and clinical aspects of counseling;

L. "course" means an integrated, organized course of study, which encompasses a minimum of one school semester or equivalent hours;

M. "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;

N. "counseling-related field" as defined by rule, means a degree in guidance counseling, mental health-community counseling or agency counseling; psychology, clinical psychology or counseling psychology; human services; family services; human and family studies; art therapy; or art education with an emphasis in art therapy;

O. "department" means the regulation and licensing department or the division of the department designated to administer the counseling and therapy practice board;

P. "diagnosis and treatment planning" means assessing, analyzing and providing diagnostic descriptions of mental, emotional or behavioral conditions; exploring possible solutions; and developing and implementing a treatment plan for mental, emotional and psychosocial adjustment or development. "Diagnosis and treatment planning" shall not be construed to permit the performance of any act that counselors or therapists are not educated, trained and licensed to perform;

Q. "evaluation" means the act of making informed decisions based on the use and analysis of pertinent data;

R. "internship" means a distinctly defined, pre-graduate, supervised clinical experience in which the student refines, enhances and integrates professional knowledge with basic counselor or therapist skills appropriate to the student's program and preparation for postgraduate professional placement;

S. "licensure" means the process by which a state agency or government grants permission to an individual to engage in a given profession and to use the designated title of that profession after the applicant has attained the minimal degree of competency necessary to ensure that the public health, safety and welfare are reasonably well protected;

T. "marriage and family therapy" means the assessment, diagnosis and treatment of nervous and mental disorders, whether cognitive, affective or behavioral, within the context of marriage and family systems;

U. "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 mental disorders;

V. "practicum" means a distinctly defined, supervised clinical experience in which the student develops basic counselor or therapist skills and integrates professional knowledge, which practicum is completed prior to or concurrent with an internship;

W. "program" means a structured sequence of curricular and clinical experiences housed within an academic unit;

X. "referral" means evaluating and identifying the needs of a client to determine the advisability of referrals to other specialists, advising the client of such judgments and communicating as requested or deemed appropriate to such referral sources;

Y. "research" means a systematic effort to collect, analyze and interpret quantitative or qualitative data that describe how social characteristics, behavior, emotions, cognition, disabilities, mental disorders and interpersonal transactions among individuals, couples, families and organizations interact;

Z. "standard" means a minimal criterion that must be met; and

AA. "substance abuse-related field" means a degree in guidance counseling, mental health-community counseling, agency counseling, psychology, clinical psychology, counseling psychology, human services, family services, human and family studies, social work, art therapy or art education with appropriate clinical background and two hundred seventy-six clock hours in education or training in alcohol and drug abuse counseling.

**History:** Laws 1993, ch. 49, § 3; 1996, ch. 61, § 1; 1999, ch. 161, § 2; 2003, ch. 422, § 1; 2005, ch. 210, § 1; 2021, ch. 99, § 1; 2022, ch. 39, § 43.

**61-9A-4. License or registration required. (Repealed effective July 1, 2028.)**



A. Unless licensed or registered to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of professional mental health counseling;
- (2) the practice of professional clinical mental health counseling;
- (3) marriage and family therapy;
- (4) professional art therapy;
- (5) counseling as a licensed mental health counselor;
- (6) counseling as a licensed associate marriage and family therapist; or
- (7) counseling as a registered independent mental health counselor.

B. Unless licensed to practice under the Counseling and Therapy Practice Act, no person shall engage in:

- (1) the practice of alcohol and drug abuse counseling;
- (2) the practice of alcohol abuse counseling;
- (3) the practice of drug abuse counseling; or
- (4) substance abuse counseling as a substance abuse associate.

**History:** Laws 1993, ch. 49, § 4; 1996, ch. 61, § 2; 1999, ch. 161, § 3; 2003, ch. 422, § 2; 2005, ch. 210, § 2.

### **61-9A-5. Scopes of practice. (Repealed effective July 1, 2028.)**

A. For the purpose of the Counseling and Therapy Practice Act, a person is practicing as a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist, registered independent mental health counselor, registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse associate if the person advertises, offers 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, registered independent mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse counselor associate, or holds out to the public or represents in any manner that the person is licensed or registered to practice as a counselor or therapist enumerated in this section in this state.

B. "Practice of professional clinical mental health counseling" means the application of mental health, psychotherapeutic and human development principles through a therapeutic relationship to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using counseling treatment interventions and strategies.

C. "Practice of professional art therapy" means the licensed practice of counseling or therapy services to individuals, families or groups, of services that use art media as a means of expression and communication to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using counseling or therapy treatment interventions and strategies.

D. "Practice of marriage and family therapy" means the licensed practice of marriage and family therapy services delivered to persons, couples and families treated singly or in groups within the context of family systems to:

(1) achieve the mental, emotional, physical, social, moral, educational, spiritual or career-related development and adjustment of the client throughout the client's life;

(2) diagnose, evaluate, prevent and treat mental, emotional or behavioral disorders and associated distresses that interfere with mental health;

(3) conduct appraisal, assessments and evaluations to establish treatment goals and objectives; and

(4) plan, implement and evaluate treatment plans using marriage and family therapy treatment interventions and strategies.

E. "Practice of licensed professional mental health counselor, licensed mental health counselor, registered independent counselor and licensed associate marriage and family therapist under an appropriate clinical supervisor" consists of rendering counseling services, which may include evaluation, assessment, consultation, diagnosing, development of treatment plans, case management counseling referral, appraisal, crisis intervention education, reporting and record keeping to individuals, couples, families or groups as defined by rule.

F. The scopes of practice of alcohol and drug abuse counseling, or both, consists of rendering treatment and intervention services specific to alcohol and other drug use disorders to persons, couples, families or groups. The services may include evaluation, assessment, diagnosis of chemical abuse and chemical dependency disorders only, consultation, development of treatment plans, case management-counseling, referral, appraisal, crisis intervention, education, reporting and record keeping. Nothing in this scope of practice shall be construed as preventing licensed alcohol and drug abuse counselors from providing screening and referrals for mental health disorders. However, assessment, treatment and diagnosis for such disorders is not within the scope of practice of this license. The practice of these activities will be limited to the individual's level of training, education and supervised experience. The alcohol and drug abuse counselor may provide therapeutic services that may include treatment of clients with co-occurring disorders or dual diagnosis in an integrated behavioral health setting in which a multidisciplinary team has developed a multidisciplinary treatment plan that is co-authorized by an independently licensed counselor or therapist. The treatment of a mental health disorder shall be supervised by an independently licensed counselor or therapist.

G. The scope of practice of a substance abuse associate under the supervision by an appropriate supervisor is limited to supervised work in a public or private institution. The associate may be involved in taking social histories or conducting home studies. The associate utilizes the basic problem-solving process of gathering information, assessing that information at a beginning professional level and developing an intervention plan. The associate may implement the plan and conduct follow-ups pertaining specifically to alcohol and drug abuse counseling. The associate may provide client education and assist a licensed counselor-therapist with group or individual counseling sessions. A substance abuse associate shall not practice independently as a private practitioner.

**History:** Laws 1993, ch. 49, § 5; 1996, ch. 61, § 3; 1999, ch. 161, § 4; 2003, ch. 422, § 3; 2005, ch. 210, § 3; 2007, ch. 166, § 1.

## **61-9A-6. Exemptions. (Repealed effective July 1, 2028.)**

A. Nothing in the Counseling and Therapy Practice Act shall be construed to prevent:

(1) a person who is licensed, certified or regulated under the laws of this state from engaging in activities consistent with the standards and ethics of the person's profession or practice; or

(2) an alternative, metaphysical or holistic practitioner from engaging in nonclinical activities consistent with the standards and codes of ethics of that practice.

B. Specifically exempted from the Counseling and Therapy Practice Act are:

(1) elementary and secondary school counselors acting on behalf of their employer who are otherwise regulated;

(2) peer counselors of domestic violence or independent-living peer counselors working under appropriate supervision in a nonprofit corporation, association or similar entity;

(3) duly ordained, commissioned or licensed ministers of a church providing pastoral services on behalf of a church;

(4) a person who is enrolled in an internship or practicum under appropriate supervision and is in the internship or practicum for the sole purpose of acquiring an advanced degree in mental health counseling, marriage and family therapy or art therapy or a degree in substance abuse counseling;

(5) practitioners of Native American healing arts; and

(6) individuals who serve as peer counselors for a twelve-step recovery program or a similar self-help chemical dependency recovery program that:

(a) does not offer chemical dependency treatment;

(b) does not charge program participants a fee; and

(c) allows program participants to maintain anonymity.

C. Nothing in this section shall be construed to allow an individual whose license has been lost or suspended by the New Mexico counseling and therapy practice board or the New Mexico state board of psychology examiners to avoid such loss or suspension by utilizing this exemption.

**History:** Laws 1993, ch. 49, § 6; 1996, ch. 61, § 4; 1999, ch. 161, § 5; 2003, ch. 422, § 4; 2003, ch. 423, § 1; 2005, ch. 210, § 4.

**61-9A-7. Board created; members; appointment; terms; compensation. (Repealed effective July 1, 2028.)**

A. There is created the "counseling and therapy practice board". The board is administratively attached to the department.

B. The board consists of seven members who are United States citizens, have been New Mexico residents for at least five years prior to their appointment and maintain New Mexico residency during their appointment. Of the seven members:

(1) five members shall be professional members, who shall be a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist and an alcohol and drug abuse counselor, licensed under the Counseling and Therapy Practice Act and shall have engaged in a counselor and therapist practice for at least five years. The professional mental health counselor shall also represent the registered independent and licensed mental health counselors; and

(2) two 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. Members of the board shall be appointed by the governor for staggered terms of four years. A member shall hold office until a 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, the New Mexico art therapy association and the alcohol and drug directors association.

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. The board shall elect annually from its membership a chair and a secretary and other officers as necessary to carry out its duties.

G. The board shall meet once a year and at other times deemed necessary. Other meetings may be called by the chair upon the written request of three members of the board. A simple majority of the board members shall constitute a quorum of the board.

H. Any member failing to attend three meetings after proper notice shall be automatically recommended for removal as a board member, unless excused by the board chair for one of the following reasons:

- (1) extenuating circumstances beyond the member's control, including illness;
- (2) prearranged activities out of town; or
- (3) other severe circumstances that do not allow a member to attend.

**History:** Laws 1993, ch. 49, § 7; 1996, ch. 61, § 5; 1999, ch. 161, § 6; 2003, ch. 422, § 5; 2021, ch. 93, § 6.

### **61-9A-7.1. Actions of board; immunity; certain records not public records. (Repealed effective July 1, 2028.)**

A. No member of the board or person working on behalf of the board shall be civilly liable or subject to civil damages for any good-faith action undertaken or performed within the proper functions of the board.

B. All written and oral communication made by a person to the board relating to actual or potential disciplinary action shall be confidential communication and are not public records for the purposes of the Public Records Act [Chapter 14, Article 3 NMSA 1978]. All data, communication and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except:

- (1) to the extent necessary to carry out the board's functions;
- (2) as needed for judicial review of the board's actions; or
- (3) pursuant to a court order issued by a court of competent jurisdiction.

C. Notwithstanding the provisions of Subsection B of this section, at the conclusion of an actual disciplinary action by the board, all data, communication and information acquired by the board relating to an actual disciplinary action taken against a person subject to the provisions of the Counseling and Therapy Practice Act shall be public records, pursuant to the provisions of the Public Records Act.

**History:** Laws 2005, ch. 210, § 6.

### **61-9A-8. Department duties. (Repealed effective July 1, 2028.)**

The department, with the consultation of the board, shall:

- A. process applications;

B. conduct and review the required examinations;

C. issue licenses and certificates of registration to applicants who meet the requirements of the Counseling and Therapy Practice Act;

D. administer, coordinate and enforce the provisions of the Counseling and Therapy Practice Act and investigate persons engaging in practices that may violate the provisions of that act;

E. approve the selection of primary staff assigned to the board;

F. maintain records, including financial records; and

G. maintain a current register of licensees and registrants as a matter of public record.

**History:** Laws 1993, ch. 49, § 8; 1996, ch. 61, § 6; 2003, ch. 422, § 6; 2005, ch. 210, § 5.

**61-9A-9. Board; powers and duties. (Repealed effective July 1, 2028.)**

A. The board may:

(1) adopt and file in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules necessary to carry out the provisions of the Counseling and Therapy Practice Act;

(2) select and provide for the administration of, at least, semiannual examinations for licensure;

(3) establish the passing scores for examinations;

(4) take any disciplinary action allowed by and in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and necessary to carry out the provisions of the Counseling and Therapy Practice Act;

(5) censure, reprimand or place a licensee or registrant on probation;

(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 registration;

(9) provide for the issuance of licenses;

(10) determine eligibility of individuals for licensure or registration;

(11) set fees for administrative services and registration, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(12) except as provided in Section 61-1-34 NMSA 1978, set fees for licenses, as authorized by the Counseling and Therapy Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

(13) establish criteria for supervision and supervisory requirements, including the appropriate application of technology;

(14) establish a code of ethics; and

(15) establish committees.

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 and periodically review a code of ethics;

(2) review license applications and recommend approval or disapproval;

(3) develop criteria for supervision, including the appropriate application of technology; and

(4) recommend rules.

C. Members of the standards committees or other committees 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:** Laws 1993, ch. 49, § 9; 1996, ch. 61, § 7; 1999, ch. 161, § 7; 2003, ch. 422, § 7; 2020, ch. 6, § 25; 2021, ch. 93, § 7.

**61-9A-10. Professional mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)**



Effective July 1, 2007, the board will no longer license professional mental health counselors. Prior to the effective date, 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 a counseling-related field from an accredited institution and has a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing the required examinations prescribed by the board;

D. has completed one thousand client contact hours of postgraduate professional counseling experience under appropriate clinical supervision consisting of at least one hundred supervision hours; and

E. is of good moral character with conduct consistent with the code of ethics.

**History:** Laws 1993, ch. 49, § 10; 1999, ch. 161, § 8; 2003, ch. 422, § 8; 2005, ch. 210, § 7.

### **61-9A-11. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)**

The board shall issue a license as a professional clinical mental health counselor to a person who files a completed application and, except as provided in Section 61-1-34 NMSA 1978, pays any 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 a counseling or counseling-related field, as defined by rule, from an accredited institution. The applicant shall have a master's degree and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum;

C. demonstrates professional competency by passing the required examination as prescribed by the board;

D. has a minimum of two years of professional clinical counseling experience, including at least three thousand clinical contact hours and at least one hundred hours of appropriate supervision. One thousand client clinical contact hours may be submitted from the applicant's internship or practicum; and

E. observes the code of ethics.

**History:** Laws 1993, ch. 49, § 11; 1999, ch. 161, § 9; 2003, ch. 422, § 9; 2005, ch. 210, § 8; 2020, ch. 6, § 26; 2021, ch. 93, § 8.

### **61-9A-11.1. Professional clinical mental health counselor; requirements for licensure. (Repealed effective July 1, 2028.)**

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 within the July 1, 2005 through July 1, 2007 period and who submits satisfactory evidence that the applicant:

A. has reached the age of twenty-one;

B. holds a current professional mental health counselor license;

C. holds a master's or doctoral degree from an accredited institution;

D. demonstrates professional competency by satisfactorily passing the required examinations as prescribed by the board;

E. has a minimum of three thousand hours of client contact experience, including at least one hundred hours of face-to-face supervision or a minimum of ten thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision; and

F. is of good moral character with conduct consistent with the code of ethics.

**History:** Laws 1999, ch. 161, § 10; 2003, ch. 422, § 10; 2005, ch. 210, § 9.

### **61-9A-11.2. Repealed.**

**History:** Laws 2003, ch. 422, § 11; repealed Laws 2005, ch. 210, § 21.

### **61-9A-12. Marriage and family therapist; requirements for licensure. (Repealed effective July 1, 2028.)**

The board shall issue a license as a marriage and family therapist to a 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 and meets the requirements of the marriage and family therapy core curriculum, as defined by rule, in marriage and family therapy from an accredited institution;

C. demonstrates professional competency by passing the examinations as prescribed by the board;

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 clinical supervision, of which one hundred hours of such supervision was on an individual basis; and

E. observes the code of ethics.

**History:** Laws 1993, ch. 49, § 12; 1999, ch. 161, § 11; 2003, ch. 422, § 12; 2005, ch. 210, § 10; 2021, ch. 93, § 9.

### **61-9A-12.1. Licensed associate marriage and family therapist or counselor; requirements for licensure. (Repealed effective July 1, 2028.)**

The board shall issue a license as an associate marriage and family therapist or counselor to a 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 or counselor from an accredited institution and meets the requirements of the marriage and family therapy or counselor core curriculum, as defined by rule;

C. has arranged for appropriate clinical supervision, as defined by rule, to meet the requirements for a licensed associate marriage and family therapist;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. observes the code of ethics.

**History:** Laws 2005, ch. 210, § 11; 2021, ch. 93, § 10.

### **61-9A-13. Professional art therapist; requirements for licensure. (Repealed effective July 1, 2028.)**

The board shall issue a license as a professional art therapist to a 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 passing an examination as prescribed by the board;

C. holds a master's or doctoral degree in art therapy, counseling or counseling-related field from an accredited institution or nationally approved art therapy program with a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the art therapy core curriculum;

D. meets the art therapy core curriculum as defined by rule;

E. has completed a minimum of two years post-graduate professional experience, three thousand client contact hours and one hundred hours of post-graduate experience under appropriate supervision. Seven hundred clinical client contact hours may be from the applicant's internship or practicum program beyond the requirements in Subsection C of this subsection. Supervision shall be under a New Mexico-licensed professional art therapist or certified board therapist for at least fifty percent of the working hours; and

F. observes the code of ethics.

**History:** Laws 1993, ch. 49, § 13; 1999, ch. 161, § 12; 2003, ch. 422, § 13; 2005, ch. 210, § 12; 2007, ch. 166, § 2; 2021, ch. 93, § 11.

### **61-9A-14. Requirements for licensed mental health counselor. (Repealed effective July 1, 2028.)**

The board shall issue a license as a mental health associate 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 either a master's or doctoral degree from an accredited institution in a counseling or counseling-related field, as defined by rule and a total of no less than forty-eight graduate semester hours or seventy-two quarter hours in the core curriculum;

C. has arranged for an appropriate clinical supervision plan and a postgraduate experience plan, as defined by rule, to meet the licensing requirements for a:

(1) professional art therapist;

- (2) professional mental health counselor; or
- (3) professional clinical mental health counselor;

D. demonstrates professional competence by passing an examination within the applicant's discipline as prescribed by the board; and

E. observes the code of ethics.

**History:** Laws 1993, ch. 49, § 14; 1999, ch. 161, § 13; 2003, ch. 422, § 14; 2005, ch. 210, § 13; 2021, ch. 93, § 12.

### **61-9A-14.1. Substance abuse associate; requirements for licensure. (Repealed effective July 1, 2028.)**

A. Effective July 1, 2005, the board shall license as a substance abuse associate any person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant as defined by rule:

- (1) observes the code of ethics;
- (2) has reached the age of twenty-one;
- (3) holds an associate degree in a counseling, counseling-related field or substance abuse-related field from an accredited institution and has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse counseling; and
- (4) has arranged for an appropriate supervision plan, as defined by rule, to meet the requirements for licensure as a substance abuse associate.

B. The applicant shall also provide two letters of recommendation.

**History:** Laws 1996, ch. 61, § 8; 1999, ch. 161, § 14; 2003, ch. 422, § 15; 2005, ch. 210, § 14; 2021, ch. 93, § 13.

### **61-9A-14.2. Alcohol and drug abuse counselor; requirements for licensure. (Repealed effective July 1, 2028.)**

Effective July 1, 2005, the board shall license as an alcohol and drug abuse counselor a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant, as defined by rule:

A. observes the code of ethics;

B. has reached the age of twenty-one;

C. demonstrates professional competency by passing the required examinations prescribed by the board; and

D. has one of the following combinations of education and experience:

(1) an associate degree in counseling, a counseling-related field or a substance abuse-related field from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling, six hours of professional ethics, three years and three thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and two hundred hours of appropriate supervision;

(2) a baccalaureate degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling and six hours of professional ethics, two years and two thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and one hundred hours of appropriate supervision; or

(3) a master's degree in counseling, a counseling-related field or a substance abuse-related field, as defined by rule, from an accredited institution, and education and training that includes two hundred seventy-six clock hours with ninety hours in each of the fields of alcohol and drug abuse counseling and six hours of professional ethics, one year and one thousand client contact hours under appropriate supervision of experience in the practice of alcohol and drug abuse counseling and fifty hours of appropriate supervision hours.

**History:** Laws 1999, ch. 161, § 15; 2003, ch. 422, § 16; 2005, ch. 210, § 15; 2007, ch. 166, § 3; 2021, ch. 93, § 14.

### **61-9A-14.3. Alcohol and drug abuse counselor; requirements for grandfathered licensure. (Repealed effective July 1, 2028.)**

A. Effective July 1, 2007 through July 1, 2010, the board shall license as an alcohol and drug abuse counselor a person who holds a current certified alcohol and drug abuse counselor certification issued between July 1, 1996 and July 1, 2010 and files a completed application accompanied by the required fees and submits satisfactory evidence that the applicant:

(1) is of good moral character with conduct consistent with the code of ethics;

(2) has reached the age of twenty-one;

(3) has submitted evidence of having participated in a total of six thousand client contact hours and three hundred supervised face-to-face hours; and

(4) has completed two hundred seventy-six clock hours of education or training that includes ninety hours in each area of the fields of alcohol and drug abuse counseling and six hours of training in professional ethics acquired within two years of receipt of the application.

B. An applicant who meets the requirements of Subsection A of this section will not be required to complete an examination.

**History:** Laws 2007, ch. 166, § 4.

#### **61-9A-14.4. Licensed substance abuse associates; medical assistance; reimbursement for services.**

The secretary of human services shall adopt and promulgate rules to allow a behavioral health agency employing a substance abuse associate licensed in accordance with the Counseling and Therapy Practice Act to be reimbursed for the following services provided to medical assistance recipients within the licensed substance abuse associate's scope of practice under clinical supervision:

A. providing interventions directly to individuals, couples, families and groups;

B. employing practice theory and research findings;

C. providing screening, assessment, consultation, development of treatment plans, case management, counseling, referral, appraisal, crisis intervention, education, reporting or recordkeeping pertaining specifically to alcohol and drug abuse counseling;

D. providing generalist services in the role of educator, assistant or mediator;

E. taking a social history; and

F. conducting a home study.

**History:** Laws 2019, ch. 92, § 1.

#### **61-9A-15. Examinations. (Repealed effective July 1, 2028.)**

A. Applicants who have met the requirements for licensure shall be scheduled for the next appropriate examinations following the approval of the application. The board shall establish the board-approved examinations application deadline and the requirements for reexamination if the applicant has failed the examinations.

B. The examinations shall cover subjects appropriate to the scope of practice as a licensed mental health counselor, a licensed associate marriage and family therapist, a professional mental health counselor, a professional clinical mental health counselor, a marriage and family therapist, a professional art therapist or an alcohol and drug abuse counselor.

**History:** Laws 1993, ch. 49, § 15; 1996, ch. 61, § 10; 2003, ch. 422, § 17; 2005, ch. 210, § 16.

### **61-9A-16. Temporary licensure. (Repealed effective July 1, 2028.)**

A. 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 61-9A-10, 61-9A-11, 61-9A-11.1, 61-9A-12, 61-9A-12.1, 61-9A-13, 61-9A-14, 61-9A-14.1 or 61-9A-14.2 NMSA 1978. The temporary license shall be valid no more than sixty days after the results of the next examination become available. If the individual should fail to take or pass those examinations, the temporary license shall automatically expire and the applicant will not be reissued a temporary license.

B. Notwithstanding the provisions of Subsection A of this section, as deemed necessary by the board, an applicant for licensure pursuant to the Counseling and Therapy Practice Act may be issued a temporary license for a period not to exceed six months or for a period of time necessary for the board to ensure that the applicant has met licensure requirements as set out in that act.

**History:** Laws 1993, ch. 49, § 16; 2003, ch. 422, § 18; 2006, ch. 5, § 1.

### **61-9A-17 to 61-9A-21.1. Repealed.**

### **61-9A-22. Expedited licensure by credentials. (Repealed effective July 1, 2028.)**

A. The board shall issue an expedited license in the same licensure level to a person who:

- (1) files a completed application accompanied by the required fees;
- (2) submits evidence that the applicant holds a valid, unrestricted license in a counseling-related field issued by another licensing jurisdiction;
- (3) is in good standing with that licensing jurisdiction with no disciplinary action pending or brought against the applicant within the past two years;



(4) has practiced in New Mexico for at least two years immediately prior to application; and

(5) possesses a master's or doctoral degree in counseling or a counseling-related field from an accredited institution.

B. As soon as practicable but no later than thirty days after an out-of-state licensee files an application for a license, the board shall process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require that person to pass the required examination before applying for license renewal.

D. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

E. Applicants who do not meet the licensure by credential requirements must meet the current licensure requirements for a regular license.

**History:** Laws 1993, ch. 49, § 22; 1999, ch. 161, § 16; 2003, ch. 422, § 19; 2005, ch. 210, § 17; 2006, ch. 5, § 2; 2021, ch. 93, § 15; 2022, ch. 39, § 44.

### **61-9A-23. License and registration renewal. (Repealed effective July 1, 2028.)**

A. Each licensee or registrant shall renew his license or registration biennially by submitting a renewal application on a form provided by the board and complying with all renewal requirements. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish this renewal cycle and charge the proportionate license fee for that period.

B. If a license is not renewed by the expiration date, the licensee or registrant will be considered expired and will refrain from practicing. The licensee or registrant may renew within a thirty-day grace period by submitting payment of the renewal fee, late fee and compliance with all renewal requirements. Upon receipt of payment and continuing education unit requirements, the licensee and registrant may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed professional counselor from the requirements for renewal.

C. If continuing education unit requirements are not completed within the licensing period and by the expiration date, the license or registration will be considered expired and the licensee or registrant will refrain from practicing.

D. Failure to renew a license or registration within thirty days from the date of expiration as provided in this section shall cause the license or registration to automatically expire. Reinstatement of an expired license or registration will require the licensee to reapply, submit all necessary documentation and meet all current standards for licensure.

E. A person licensed or registered under the Counseling and Therapy Practice Act who wishes to retire from practice shall notify the board in writing before the expiration of his current license or registration. If, within a period of five years from the year of retirement, the licensee or registrant wishes to resume practice, the licensee or registrant shall so notify the board in writing, and upon giving proof of completing such continuing education as prescribed by rule of the board and the payment of a renewal license fee and reinstatement fee, his license or registration shall be restored to him in full effect.

**History:** Laws 1993, ch. 49, § 23; 1999, ch. 161, § 17; 2003, ch. 422, § 20; 2005, ch. 210, § 18.

### **61-9A-24. License and registration fees. (Repealed effective July 1, 2028.)**

Applicants for licensure or registration shall pay fees set by the board in an amount not to exceed:

A. for application for initial licensure, seventy-five dollars (\$75.00), which is not refundable;

B. for licensure or renewal as a professional mental health counselor or registered independent mental health counselor, three hundred dollars (\$300);

C. for licensure or renewal as a clinical professional mental health counselor, marriage and family therapist or professional art therapist, four hundred twenty dollars (\$420);

D. for registration or renewal as a registered mental health counselor, licensed mental health counselor, licensed associate marriage and family therapist or registered independent 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 registration, twenty-five dollars (\$25.00);

G. for failure to renew a license or registration within the allotted grace period, a late penalty fee not to exceed one hundred dollars (\$100);

H. reasonable administrative fees; and

I. for licensure, registration or renewal as an alcohol and drug abuse counselor, an alcohol abuse counselor, a drug abuse counselor or a substance abuse associate, two hundred dollars (\$200).

**History:** Laws 1993, ch. 49, § 24; 1996, ch. 61, § 11; 1999, ch. 161, § 18; 2003, ch. 422, § 21; 2005, ch. 210, § 19.

### **61-9A-25. Fund created. (Repealed effective July 1, 2028.)**

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 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.

### **61-9A-26. License and registration; denial, suspension and revocation. (Repealed effective July 1, 2028.)**

A. In accordance with the procedures established by the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board may deny, suspend or revoke any license or registration held or applied for under the Counseling and Therapy Practice Act, or take any other action provided for in the Uniform Licensing Act, 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 registration 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 illicitly been using any controlled substances, as defined in the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], or using a mood-altering substance or alcoholic beverage to an extent or in a manner dangerous to the licensee, registrant or applicant or any other person or the public or to an extent that the use impairs the licensee's, registrant's or applicant's ability to perform the work of a counselor or therapist practitioner;
- (6) has violated any provision of the Counseling and Therapy Practice Act or regulations adopted by the board;
- (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;
- (10) has had a license or registration to practice as a counselor, therapist or other mental health practitioner 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;
- (11) knowingly and willfully practices beyond the scope of practice, as defined by the board; or
- (12) uses conversion therapy on a minor.

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. 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.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** Laws 1993, ch. 49, § 26; 1996, ch. 61, § 12; 1999, ch. 161, § 19; 2005, ch. 210, § 20; 2017, ch. 132, § 5.

### **61-9A-27. Privileged communications. (Repealed effective July 1, 2028.)**

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.

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 [Chapter 32A NMSA 1978] or to those matters pertaining to citizens as protected under the Adult Protective Services Act [27-7-14 to 27-7-31 NMSA 1978].

**History:** Laws 1993, ch. 49, § 27.

### **61-9A-28. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)**

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.

**History:** Laws 1993, ch. 49, § 28.

### **61-9A-29. Injunctive proceedings. (Repealed effective July 1, 2028.)**

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.

**History:** Laws 1993, ch. 49, § 29.

### **61-9A-30. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The counseling and therapy practice board is terminated on July 1, 2027 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the

provisions of the Counseling and Therapy Practice Act until July 1, 2028. Effective July 1, 2028, the Counseling and Therapy Practice Act is repealed.

**History:** Laws 1993, ch. 49, § 30; 1999, ch. 161, § 20; 2005, ch. 208, § 6; 2015, ch. 119, § 8; 2021, ch. 50, § 5; 2021, ch. 99, § 2.

## **ARTICLE 10**

### **Osteopathic Medicine (Repealed.)**

#### **61-10-1. Repealed.**

**History:** Laws 1933, ch. 117, § 1; 1941 Comp., § 51-801; 1953 Comp., § 67-8-1; Laws 1955, ch. 42, § 1; 1975, ch. 296, § 1; 1978 Comp., § 61-10-1, repealed by Laws 2016, ch. 90, § 29.

#### **61-10-1.1. Repealed.**

**History:** Laws 2016, ch. 90, § 1; repealed by Laws 2021, ch. 54, § 49.

#### **61-10-1.2. Repealed.**

**History:** Laws 2016, ch. 90, § 2; repealed by Laws 2021, ch. 54, § 49.

#### **61-10-2. Repealed.**

**History:** 1953 Comp., § 67-8-1.1, enacted by Laws 1974, ch. 78, § 16; 2016, ch. 90, § 3; 1978 Comp., § 61-10-2, repealed by Laws 2021, ch. 54, § 49.

#### **61-10-3. Repealed.**

**History:** Laws 1933, ch. 117, § 2; 1941 Comp., § 51-802; 1953 Comp., § 67-8-2; Laws 1975, ch. 296, § 2; 2016, ch. 90, § 4; 1978 Comp., § 61-10-3, repealed by Laws 2021, ch. 54, § 49.

#### **61-10-4. Repealed.**

**History:** Laws 1933, ch. 117, § 3; 1941 Comp., § 51-803; 1953 Comp., § 67-8-3; 1978 Comp., § 61-10-4, repealed by Laws 2021, ch. 54, § 49.

#### **61-10-5. Repealed.**

**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; 2003, ch. 408, § 11; 1978 Comp., § 61-10-5, repealed and reenacted by Laws 2016, ch. 90, § 5; repealed by Laws 2021, ch. 54, § 49.

### **61-10-5.1. Repealed.**

**History:** Laws 2016, ch. 90, § 21; repealed by Laws 2021, ch. 54, § 49.

### **61-10-6. Repealed.**

**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; 1978 Comp., § 61-10-6, repealed and reenacted by Laws 2016, ch. 90, § 6; repealed by Laws 2021, ch. 54, § 49.

### **61-10-6.1. Repealed.**

**History:** 1978 Comp., § 61-10-6.1, enacted by Laws 1989, ch. 371, § 3; repealed and reenacted by Laws 2016, ch. 90, § 7; 2019, ch. 68, § 4; 2020, ch. 6, § 27; repealed by Laws 2021, ch. 54, § 49.

### **61-10-7. Repealed.**

**History:** 1953 Comp., § 67-8-5.1, enacted by Laws 1977, ch. 155, § 1; 1978 Comp., § 61-10-7, repealed and reenacted by Laws 2016, ch. 90, § 8; repealed by Laws 2021, ch. 54, § 49.

### **61-10-7.1. Repealed.**

**History:** Laws 2019, ch. 184, § 2; repealed by Laws 2021, ch. 54, § 49.

### **61-10-8. Repealed.**

**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; 2016, ch. 90, § 9; 1978 Comp., § 61-10-8, repealed by Laws 2021, ch. 54, § 49.

### **61-10-9. Repealed.**

### **61-10-10. Repealed.**

**History:** Laws 1933, ch. 117, § 8; 1941 Comp., § 51-808; 1953 Comp., § 67-8-8; Laws 1975, ch. 296, § 7; 1978 Comp., § 61-10-10, repealed by Laws 2021, ch. 54, § 49.



## **61-10-11. Repealed.**

**History:** Laws 1933, ch. 117, § 9; 1941 Comp., § 51-809; 1953 Comp., § 67-8-9; Laws 1975, ch. 296, § 8; 2016, ch. 90, § 10; 1978 Comp., § 61-10-11, repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.1. Repealed.**

**History:** Laws 2016, ch. 90, § 19; repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.2. Repealed.**

**History:** Laws 2016, ch. 90, § 22; repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.3. Repealed.**

**History:** Laws 2016, ch. 90, § 23; repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.4. Repealed.**

**History:** Laws 2016, ch. 90, § 24; repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.5. Repealed.**

**History:** Laws 2016, ch. 90, § 25; repealed by Laws 2021, ch. 54, § 49.

### **61-10-11.6. Repealed.**

**History:** Laws 2019, ch. 19, § 9; repealed by Laws 2021, ch. 54, § 49.

## **61-10-12. Repealed.**

**History:** Laws 1933, ch. 117, § 10; 1941 Comp., § 51-810; 1953 Comp., § 67-8-10; Laws 1975, ch. 296, § 9; 2016, ch. 90, § 11; 1978 Comp., § 61-10-12, repealed by Laws 2021, ch. 54, § 49.

## **61-10-13. Repealed.**

**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; repealed by Laws 2016, ch. 90, § 29.

## **61-10-14. Repealed.**

**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; 1978 Comp., § 61-10-14, repealed by Laws 2021, ch. 54, § 49.

### **61-10-15. Repealed.**

**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; 1978 Comp., § 61-10-15, repealed and reenacted by Laws 2016, ch. 90, § 12; repealed by Laws 2021, ch. 54, § 49.

### **61-10-15.1. Repealed.**

**History:** Laws 2016, ch. 90, § 20; 2017, ch. 132, § 6; repealed by Laws 2021, ch. 54, § 49.

### **61-10-16. Repealed.**

**History:** Laws 1933, ch. 117, § 14; 1941 Comp., § 51-814; 1953 Comp., § 67-8-14; Laws 1975, ch. 296, § 12; 1978 Comp., § 61-10-16, repealed by Laws 2021, ch. 54, § 49.

### **61-10-16.1. Repealed.**

**History:** Laws 2016, ch. 90, § 18; repealed by Laws 2021, ch. 54, § 49.

### **61-10-17. Repealed.**

**History:** Laws 1933, ch. 117, § 15; 1941 Comp., § 51-815; 1953 Comp., § 67-8-15; Laws 1975, ch. 296, § 13; 2016, ch. 90, § 13; 1978 Comp., § 61-10-17, repealed by Laws 2021, ch. 54, § 49.

### **61-10-18. Repealed.**

**History:** Laws 1933, ch. 117, § 16; 1941 Comp., § 51-816; 1953 Comp., § 67-8-16; 2016, ch. 90, § 14; 1978 Comp., § 61-10-18, repealed by Laws 2021, ch. 54, § 49.

### **61-10-19. Repealed.**

**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; 2016, ch. 90, § 15; 1978 Comp., § 61-10-19, repealed by Laws 2021, ch. 54, § 49.

### **61-10-20. Repealed.**

**History:** 1953 Comp., § 67-8-17.2, enacted by Laws 1971, ch. 140, § 2; 1977, ch. 108, § 2; 2016, ch. 90, § 16; 1978 Comp., § 61-10-20, repealed by Laws 2021, ch. 54, § 49.

### **61-10-21. Repealed.**

**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; 2016, ch. 90, § 17; 1978 Comp., § 61-10-21, repealed by Laws 2021, ch. 54, § 49.

### **61-10-22. 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; 1997, ch. 46, § 10; 2003, ch. 428, § 10; 2009, ch. 96, § 7; 2015, ch. 119, § 9; 2016, ch. 90, § 26; repealed by Laws 2021, ch. 54, § 49.

## **ARTICLE 10A**

### **Osteopathic Physicians' Assistants (Repealed.)**

#### **61-10A-1. Repealed.**

**History:** Laws 1979, ch. 26, § 1; repealed by Laws 2016, ch. 90, § 29.

#### **61-10A-2. Repealed.**

**History:** Laws 1979, ch. 26, § 2; 1989, ch. 9, § 6; repealed by Laws 2016, ch. 90, § 29.

#### **61-10A-3. Repealed.**

**History:** Laws 1979, ch. 26, § 3; repealed by Laws 2016, ch. 90, § 29.

#### **61-10A-4. Repealed.**

**History:** Laws 1979, ch. 26, § 4; 1989, ch. 9, § 7; 1994, ch. 57, § 15; 1994, ch. 80, § 13; 1997, ch. 187, § 10; repealed by Laws 2016, ch. 90, § 29.

##### **61-10A-4.1. Repealed.**

**History:** 1978 Comp., § 61-10A-4.1, enacted by Laws 1989, ch. 9, § 8; 1997, ch. 187, § 11; repealed by Laws 2016, ch. 90, § 29.

##### **61-10A-4.2. Repealed.**

**History:** 1978 Comp., § 61-10A-4.2, enacted by Laws 1997, ch. 187, § 12; repealed by Laws 2016, ch. 90, § 29.

### **61-10A-4.3. Repealed.**

**History:** 1978 Comp., § 61-10A-4.3, enacted by Laws 1997, ch. 187, § 13; repealed by Laws 2016, ch. 90, § 29.

### **61-10A-5. Repealed.**

**History:** Laws 1979, ch. 26, § 5; repealed by Laws 2016, ch. 90, § 29.

### **61-10A-6. Repealed.**

**History:** Laws 1979, ch. 26, § 6; 1989, ch. 9, § 9; 1989, ch. 371, § 8; 1994, ch. 57, § 16; 1994, ch. 80, § 14; 1997, ch. 187, § 14; repealed by Laws 2016, ch. 90, § 29.

### **61-10A-7. Repealed.**

**History:** Laws 1979, ch. 26, § 7; 2007, ch. 250, § 2; repealed by Laws 2016, ch. 90, § 29.

## **ARTICLE 11**

### **Pharmacy**

#### **61-11-1. Short title.**

Chapter 61, Article 11 NMSA 1978 may be cited as the "Pharmacy Act".

**History:** 1953 Comp., § 67-9-33, enacted by Laws 1969, ch. 29, § 1; 1997, ch. 131, § 1.

#### **61-11-1.1. Legislative findings; purpose of act.**

A. The legislature finds that the practice of pharmacy in New Mexico is a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. The legislature finds further that it is a matter of public interest and concern that the practice of pharmacy as defined in the Pharmacy Act merit and receive the confidence of the public, and that only qualified persons be permitted to engage in the practice of pharmacy so that the quality of drugs and related devices distributed in New Mexico is ensured.

B. The purpose of the Pharmacy Act is to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy, including the licensure of pharmacists and pharmacist interns and registration of pharmacy technicians; the licensure, control and regulation of all sites or persons, in or out of state, who distribute, manufacture or sell drugs or devices used in the dispensing and administration of drugs in New Mexico; and the regulation and

control of such other materials as may be used in the diagnosis, treatment and prevention of injury, illness or disease of a patient or other person.

**History:** Laws 1997, ch. 131, § 2.

## **61-11-2. Definitions.**

As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to other persons authorized by law to receive the information, regardless of whether the information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in an official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or a function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

- (6) drug-drug interactions;
- (7) adverse drug reactions; and
- (8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to a drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by a state, territory or possession of the United States who, within the limits of the person's license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of the drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means nonnarcotic 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;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "outsourcing facility" means a facility at one geographic location or address that engages in the compounding of sterile drugs, is licensed by the board and, in accordance with board rules, is currently registered with the United States food and drug administration as an outsourcing facility;

U. "patient counseling" means the oral communication by the pharmacist of information to a patient or the patient's agent or caregiver regarding proper use of a drug or device;

V. "person" means an individual, corporation, partnership, association or other legal entity;

W. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

X. "pharmacist" means a person who is licensed as a pharmacist in this state;

Y. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Z. "pharmacy" means a place of business licensed by the board where drugs are compounded or dispensed and pharmaceutical care is provided;

AA. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

BB. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

CC. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of dangerous drug therapy, devices or supplies for prescribed drug therapy for health conditions, including diabetes; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; the ordering, performing and interpreting of tests provided for in Section 2 of this 2023 act that are authorized by the federal food and drug administration and other tests waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988, as amended; and the maintenance of proper records consistent with the standard of care in general medical practice;

DD. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the licensed practitioner's agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, the



prescriber's 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;

EE. "repackager" means a person that repackages a drug, including a medicinal gas, and that, in accordance with board rules, has a valid registration as a drug establishment with the United States food and drug administration;

FF. "significant adverse drug event" means a drug-related incident that may result in harm, injury or death to the patient;

GG. "third-party logistics provider" means a person that provides or coordinates warehousing or other logistics services of a product in interstate commerce on behalf of a manufacturer, wholesale distributor or dispenser of a product but which person does not take ownership of the product nor have responsibility to direct the sale or disposition of the product; and

HH. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including own-label distributors, private-label distributors, jobbers, brokers, manufacturers' 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; 1997, ch. 131, § 3; 1999, ch. 298, § 3; 2001, ch. 50, § 3; 2019, ch. 98, § 1; 2023, ch. 95, § 1.

### **61-11-3. Criminal offender's character evaluation.**

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.

**History:** 1953 Comp., § 67-9-34.1, enacted by Laws 1974, ch. 78, § 17.

### **61-11-4. Board created; members; qualifications; terms; vacancies; removal.**

A. There is created the "board of pharmacy". The board shall be administratively attached to the regulation and licensing department. 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. 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. One pharmacist member shall be appointed from each pharmacy district. A 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 be appointed by the governor to 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 profession regulated. A vacancy in a public member's term 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 and made in such a manner that not more than two public members' terms shall expire on July 1 of each year.

D. One member of the board shall be a pharmacist appointed at large from a list submitted to the governor by the New Mexico society of health systems pharmacists. The member shall be appointed by the governor to a term of five years. A vacancy in the member's 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 health systems 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, De Baca, 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. A board member shall not serve more than two full terms, consecutive or otherwise.

G. A board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove a member of the board for neglect of a duty required by law, for incompetency or for unprofessional conduct and shall remove a board member who violates a provision of the Pharmacy Act.

**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; 1997, ch. 131, § 4; 2003, ch. 408, § 12.

### **61-11-5. Board meetings; quorum; officers; bonds; expenses.**

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. 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; 1997, ch. 131, § 5.

### **61-11-6. Powers and duties of board.**

A. The board shall:

(1) promulgate rules in accordance with the provisions of the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists;

(5) provide for the issuance and renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

(9) 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 [Chapter 30, Article 31 NMSA 1978];

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define the executive director's duties and responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) 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;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) 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 money of the board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state;

(18) promulgate rules that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, emergency prescription dispensing, drug regimen review and patient counseling in each practice setting;

(19) promulgate, after approval by the New Mexico medical board and the board of nursing, rules and protocols for the prescribing of dangerous drug therapy, including vaccines and immunizations, and the appropriate notification of the primary or appropriate physician of the person receiving the dangerous drug therapy; and

(20) have the authority to authorize emergency prescription dispensing.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section 61-11-14 NMSA 1978;

(2) provide by rule for the electronic transmission of prescriptions; and

(3) delegate its authority to the executive director to authorize emergency prescription dispensing procedures during civil or public health emergencies.

**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; 1997, ch. 131, § 6; 2001, ch. 50, § 4; 2005, ch. 152, § 5; 2022, ch. 39, § 45.

### **61-11-6.1. Criminal background checks.**

A. The board may adopt rules that provide for criminal background checks for all new licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Pharmacy Act;

(2) requiring applicants for licensure to be fingerprinted;

(3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

**History:** Laws 2007, ch. 79, § 3.

### **61-11-6.2. Prior authorization request form; development.**

A. On or before January 1, 2014, the board shall jointly develop with the insurance division of the public regulation commission a uniform prior authorization form that, notwithstanding any other provision of law, a prescribing practitioner in the state shall use to request prior authorization for coverage of prescription drugs. The uniform prior authorization form shall:

(1) not exceed two pages;

(2) be made electronically available on the web site of the insurance division and on the web site of each health insurer, plan or health maintenance organization that uses the form;

(3) be developed with input received from interested parties pursuant to at least one public meeting; and

(4) take into consideration the following:

(a) any existing prior authorization forms that the federal centers for medicare and medicaid services or the human services department [health care authority department] has developed; and

(b) any national standards pertaining to electronic prior authorization for prescription drugs.

B. As used in this section, "prescribing practitioner" means a person that is licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

**History:** Laws 2013, ch. 170, § 3.

## **61-11-7. Drug dispensation; limitations.**

A. The Pharmacy Act does not prohibit:

(1) a hospital or state or county institution or clinic without the services of a staff pharmacist from acquiring and having in its possession a dangerous drug for the purpose of dispensing if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a consulting pharmacist, and if the consulting pharmacist is not available, the withdrawal of a 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 a patient;

(2) 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 a hospital, institution or clinic in a form suitable for the preparation of the solution;

(3) the sale of nonnarcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(4) the sale of drugs intended for veterinary use; provided that if the 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 pursuant to Subsection B of Section 61-11-14 NMSA 1978;

(5) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of the agents;

(6) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of the agents;

(7) pharmacy technicians from providing assistance to pharmacists;

(8) a pharmacist from prescribing dangerous drug therapy, including vaccines and immunizations, under rules and protocols adopted by the board after approval by the New Mexico medical board and the board of nursing;

(9) a pharmacist from exercising the pharmacist's professional judgment in refilling a prescription for a prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time; or

(10) the possession, storage, distribution, dispensing, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978.

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 requiring 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; 1995, ch. 20, § 9; 1997, ch. 131, § 7; 2001, ch. 50, § 5; 2016, ch. 45, § 2; 2016, ch. 47, § 2.

### **61-11-8. Drug records to be kept.**

Records shall be kept by all persons licensed pursuant to the Pharmacy Act 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 the licensee 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; 1997, ch. 131, § 8.

### **61-11-9. Qualifications for licensure as a pharmacist by examination.**



A. An applicant for licensure as a pharmacist by examination shall:

- (1) have reached the age of majority and not be addicted to the use of drugs or alcohol;
- (2) be a graduate of a school or college of pharmacy approved by the board;
- (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 approved by the board; and
- (5) pass an examination approved 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 approved by the board.

C. The board shall issue a license when the applicant's application has been filed with and approved by the board and the applicant has paid the required fees and has met the requirements of this section.

**History:** 1953 Comp., § 67-9-40, enacted by Laws 1969, ch. 29, § 8; 1973, ch. 32, § 1; 1992, ch. 19, § 4; 1997, ch. 131, § 9.

### **61-11-9.1. Surety bonds.**

A. The board may require surety bonds or other equivalent means of security, as approved by the board, that are provided by a third party such as insurance, an irrevocable letter of credit or funds deposited in a trust account or financial institution, to secure payment for any administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by board rule or disciplinary action.

B. Surety bonds or other equivalent means of security as approved by the board and required in this section shall apply to initial applicants or renewal applicants as a condition for obtaining or maintaining licensure as a drug manufacturer, nonresident pharmacy, wholesale drug distributor, outsourcing facility, repackager or third-party logistics provider.

C. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security authorized in this section.

D. The board may waive the surety bond or other requirements of this section if it determines that it is in the best interest of the public to do so. Such waivers may be granted under conditions established by board rule.

E. Manufacturers distributing their own products that have been licensed or approved by the food and drug administration and pharmacy warehouses that are engaged only in intracompany transfers are exempt from this section.

F. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups when such separate locations or affiliated companies or groups are required to apply for or renew their drug manufacturer, nonresident pharmacy, wholesale drug distributor, outsourcing facility, repackager or third-party logistics provider license with the board.

**History:** Laws 2007, ch. 79, § 4; 2019, ch. 98, § 2.

### **61-11-10. Reciprocal licensure.**

The board may issue a license, with or without examination, to a person who:

A. is licensed as a pharmacist by examination in another state that under equivalent conditions will grant reciprocal licensure to persons licensed 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 licensure by examination under the provisions of the Pharmacy Act. 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; 1997, ch. 131, § 10.

### **61-11-11. Pharmacist intern; qualifications for licensure.**

The classification of pharmacist intern is established. An applicant for licensure as a pharmacist intern shall:

A. be not less than eighteen years of age and not be addicted to the use of drugs or alcohol;

B. have satisfactorily completed educational requirements established by rules of the board in a school or college of pharmacy approved by the board; and

C. meet other requirements established by regulation of the board.

**History:** 1953 Comp., § 67-9-42, enacted by Laws 1969, ch. 29, § 10; 1997, ch. 131, § 11; 2019, ch. 98, § 3.

### **61-11-11.1. Pharmacy technician; qualifications; duties.**

A. The classification of pharmacy technician is established. An applicant for registration as a pharmacy technician shall:

- (1) be at least eighteen years of age and not addicted to drugs or alcohol;
- (2) complete initial training as required by regulations of the board that includes on-the-job and related education commensurate with the tasks to be performed by the pharmacy technician; and
- (3) if the potential duties of the pharmacy technician will include the preparation of sterile products, complete an additional one hundred hours of experiential training as required by regulations of the board.

B. Permissible activities for pharmacy technicians under the supervision of a pharmacist include:

- (1) the preparation, mixing, assembling, packaging and labeling of medications;
- (2) processing routine orders of stock supplies;
- (3) preparation of sterile products;
- (4) filling of a prescription or medication order that entails counting, pouring, labeling or reconstituting medications; and
- (5) tasks assigned by the supervising pharmacist that do not require his professional judgment.

C. The supervising pharmacist shall observe and direct the pharmacy technician to a sufficient degree to assure the accurate completion of the activities of the pharmacy technician and shall provide a final check of all aspects of the prepared product and document the final check before dispensing.

D. The supervising pharmacist shall be responsible for the tasks performed by the pharmacist technician and subject to discipline for failure to appropriately supervise the performance of the pharmacist technician.

**History:** Laws 1997, ch. 131, § 12; 2005, ch. 152, § 7.

### **61-11-12. License fees.**

A. Except as provided in Section 61-1-34 NMSA 1978, an applicant for licensure as a pharmacist or pharmacist intern or registration as a pharmacy technician shall pay the following fees, which fees shall not be returnable:

(1) for initial licensure as a pharmacist, a fee set by the board not to exceed four hundred dollars (\$400); provided that if the applicant fails a portion of an examination, reexamination is subject to the same fee as the first examination;

(2) for initial licensure as a pharmacist intern, a fee not to exceed twenty-five dollars (\$25.00); and

(3) for initial registration as a pharmacy technician, a fee not to exceed twenty-five dollars (\$25.00).

B. The board shall issue a license or registration to each successful applicant and enter the successful applicant's name and pertinent information in the registry maintained by the board.

C. Every registration or license shall have the seal of the board affixed and be signed by the board chair.

**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; 1997, ch. 131, § 13; 2020, ch. 6, § 28.

### **61-11-13. Renewal; revocation.**

A. The renewal date for each licensee shall be the last day of the licensee's birth month, as set by rule of the board. Any person who intends to continue practice shall file an application for renewal prior to that date and, except as provided in Section 61-1-34 NMSA 1978, pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars (\$150) per year; provided, however, that the board shall prorate a renewal fee charged for a period of less than a full year. The license of a pharmacist failing to renew the pharmacist's license on or before the date set by the board shall automatically expire, and the license shall not be reinstated except upon reapplication and payment of a one hundred dollar (\$100) reinstatement fee and all delinquent renewal fees.

B. A 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 the pharmacist's 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 the pharmacist has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to the pharmacist's application for reinstatement. Pharmacists regularly engaged in teaching in an approved school or college of pharmacy, 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 a pharmacist's license 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 license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license 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. An application for renewal of a certificate of registration as a pharmacy technician or license 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) per year.

**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; 1997, ch. 131, § 14; 2001, ch. 50, § 6; 2020, ch. 6, § 29.

#### **61-11-14. Pharmacy licensure; classes of licenses; requirements; fees; revocation.**

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in an activity in this state requiring licensure by the board shall apply to the board for the proper license and shall meet the requirements of the board and pay the fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

- (1) retail pharmacy;
- (2) nonresident pharmacy;
- (3) wholesale drug distributor;
- (4) drug manufacturer;
- (5) hospital pharmacy;
- (6) industrial health clinic;
- (7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities;

(13) wholesaler, retailer or distributor 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, outsourcing facility license, repackager license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

(14) returned drugs processors;

(15) drug research facilities;

(16) drug warehouses;

(17) contact lens sellers;

(18) medicinal gas repackagers;

(19) medicinal gas sellers;

(20) outsourcing facilities;

(21) repackagers; and

(22) third-party logistics providers.

C. Every application for the issuance or biennial renewal of:

(1) a license for a retail pharmacy, nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars (\$300) per year;

(2) a license for a wholesale drug distributor, drug manufacturer, drug warehouse, outsourcing facility, repackager or third-party logistics provider shall be accompanied by a fee not to exceed one thousand dollars (\$1,000) per year;

(3) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year; and

(4) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; wholesaler, retailer or distributor of veterinary drugs; contact lens sellers; or medicinal gas sellers shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars (\$200) per year.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a 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 facility or business listed in Subsection B of this section 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, including a criminal background check and financial history, provided that manufacturers distributing their own products that have been licensed or approved by the food and drug administration shall be exempt from criminal background check and financial history requirements pursuant to this section.

G. After preliminary approval of the application for a license for any facility or business listed in Paragraphs (1) through (8) and (10) through (22) of Subsection B of this section, 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.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on the expiration date set by the board unless renewed. Any person failing to renew a license on or before the expiration date set by the board shall not have the license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars (\$100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act.

**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; 1997, ch. 131, § 15; 2001, ch. 50, § 7; 2004, ch. 52, § 1; 2005, ch. 152, § 8; 2007, ch. 79, § 1; 2019, ch. 98, § 4.

### **61-11-14.1. Nonresident pharmacy licensure; toll-free telephone service.**

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; 1997, ch. 131, § 16.

### **61-11-15. Pharmacies; sale of drugs; supervision requirements.**

A. An owner of a pharmacy shall not:

(1) fail to place a pharmacist in charge;

(2) intentionally or fraudulently adulterate or cause to be adulterated or misbrand or cause to be misbranded any drugs compounded, sold or offered for sale in the pharmacy;

(3) alone or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs in the owner's place of business except by a pharmacist, pharmacist intern or pharmacy technician;

(4) alone or through any other person, sell, offer for sale, compound or dispense dangerous drugs without being a pharmacist, pharmacist intern or pharmacy technician; 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 license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978; or

(5) operate a pharmacy without the appropriate license.

B. An owner of a pharmacy shall provide to a consumer or the attorney general the current retail price for a prescription drug in any dosage or quantity when a consumer or the attorney general requests that information by phone, electronic device or otherwise. If a consumer requests the current retail prices for more than five prescription drugs at one time, the owner shall provide the information to the consumer no more than five days after the request is made; provided that the consumer:

(1) requests the information in writing;

(2) has a valid prescription for all the drugs for which the information is requested; and

(3) has made no more than three separate requests to the owner for the current retail prices for more than five prescription drugs within a six-month period.

C. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge.

D. As used in this section, "current retail price" means the cash price for a prescription drug charged to a consumer who has no prescription drug coverage.

**History:** 1953 Comp., § 67-9-46, enacted by Laws 1969, ch. 29, § 14; 1973, ch. 173, § 3; 1997, ch. 131, § 17; 2009, ch. 184, § 1.

### **61-11-16. Pharmacies; equipment required.**

There shall be kept in every pharmacy, subject to review or testing by the board or its authorized agents, such references and equipment as the board may designate by regulation.

**History:** 1953 Comp., § 67-9-47, enacted by Laws 1969, ch. 29, § 15; 1997, ch. 131, § 18.

### **61-11-17. Display of license.**

Every person shall have his license or registration and the license for the operation of the business conspicuously displayed in the pharmacy or place of business to which it applies or in which he is employed.

**History:** 1953 Comp., § 67-9-48, enacted by Laws 1969, ch. 29, § 16; 1997, ch. 131, § 19.

### **61-11-18. State license; actions authorized.**

The board shall license department of health clinics and other health facilities of the department 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.

**History:** 1953 Comp., § 67-9-49, enacted by Laws 1969, ch. 29, § 17; 1977, ch. 253, § 70; 1997, ch. 131, § 20.

### **61-11-18.1. Reports to board.**

Any person licensed under Article 61, Chapter 11 NMSA 1978 shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

- A. permanent closing of a licensed premises;
- B. change of ownership, management, location or pharmacist in charge;
- C. theft or loss of drugs or devices;
- D. conviction of an employee for violating any federal or state drug laws;
- E. theft, destruction or loss of records required by federal or state law to be maintained;
- F. occurrences of significant adverse drug events, as defined by regulations of the board;
- G. dissemination of confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and
- H. other matters or occurrences as the board may require by regulation.

**History:** Laws 1997, ch. 131, § 21; 2001, ch. 50, § 8.

### **61-11-18.2. Audit of pharmacy records.**

A. An audit of the records of a pharmacy by an entity shall be conducted in accordance with the following criteria:

- (1) the entity conducting the initial on-site audit shall give the pharmacy notice at least two weeks prior to conducting the initial on-site audit for each audit cycle;
- (2) an audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3) a clerical or recordkeeping error, regarding a required document or record, shall not necessarily constitute fraud, and that error:

(a) shall not be the basis for recoupment unless the error results in overpayment to the pharmacy, and any amount to be charged back or recouped due to overpayment shall not exceed the amount the pharmacy was overpaid; and

(b) shall not be subject to criminal penalties without proof of intent to commit fraud;

(4) a pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a dangerous drug or controlled substance;

(5) a finding of an overpayment or underpayment shall be based on the actual overpayment or underpayment of a specific individual claim;

(6) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) a pharmacy shall be allowed at least twenty-one business days, with reasonable extensions allowed, following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) the period covered by an audit shall not exceed two years from the date the claim was submitted to or adjudicated by an entity, unless it conflicts with state or federal law;

(9) an audit shall not be initiated or scheduled during the first five calendar days of a month;

(10) the preliminary audit report shall be delivered to the pharmacy within one hundred twenty days, with reasonable extensions allowed, after conclusion of the audit, and the final report shall be delivered to the pharmacy within six months after receipt of the preliminary audit report or final appeal, as provided for in Subsection B of this section, whichever is later;

(11) notwithstanding any other provision in this section, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits;

(12) the auditing entity conducting a pharmacy audit shall not compensate an employee or contractor with which an auditing entity contracts to conduct a pharmacy audit based on the amount claimed or the actual amount recouped from the pharmacy being audited;

(13) an entity shall not charge a fee for conducting an on-site or a desk audit unless there is a finding of actual fraud;

(14) as a result of an audit finding, a pharmacist or pharmacy may resubmit a claim within twenty-one business days to correct clerical or recordkeeping errors in lieu of recoupment of a claim where no actual financial harm to the patient has occurred; provided that the prescription was dispensed according to prescription documentation requirements pursuant to the Pharmacy Act;

(15) the requirements for a valid prescription or a pharmacy benefits manager's required operational standards for pharmacies shall not be more stringent than federal or state requirements;

(16) with notice to the prescriber, a pharmacy or pharmacist may satisfy state and federal requirements for a valid prescription by affixing or writing additional information on the front or back of a prescription or if the required information is electronically recorded on a patient's profile and is readily retrievable;

(17) the days' supply for unit-of-use items, such as topicals, drops, vials and inhalants, shall not be limited beyond manufacturer recommendations;

(18) if the only commercially available package size exceeds an entity's maximum days' supply, the dispensing of such package size must be accepted by the entity and shall not be the basis for recoupment;

(19) if the only commercially available package size exceeds an entity's maximum days' supply and the entity accepts the refill of such prescription, the entity shall not recoup such claim as an early refill; and

(20) the failure of a pharmacy to collect a copayment shall not be the basis for recoupment if the pharmacy provides documentation of billing of the claim and a reasonable attempt to collect the copayment.

B. Recoupment of any disputed funds shall occur after final internal disposition of the audit, including the appeals process set forth in Subsection C of this section. Should the identified discrepancy for an individual audit exceed twenty-five thousand dollars (\$25,000), future payments to the pharmacy may be withheld pending finalization of the audit.

C. Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the audit is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the report of the audit without the necessity of any further proceedings.

D. This section does not apply to any investigative audit that involves probable or potential fraud, waste, abuse or willful misrepresentation.

E. In a wholesale invoice audit conducted by an entity:

(1) an entity shall not audit the claims of another entity;

(2) the following shall not form the basis for recoupment:

(a) the national drug code for the dispensed drug is in a quantity that is a sub-unit or multiple of the purchased drug as reflected on a supporting wholesale invoice;

(b) the correct quantity dispensed is reflected on the audited pharmacy claim;  
or

(c) the drug dispensed by the pharmacy on an audited pharmacy claim is identical to the strength and dosage form of the drug purchased;

(3) the entity shall accept as evidence:

(a) supplier invoices issued prior to the date of dispensing the drug underlying the audited claim;

(b) invoices from any supplier authorized by law to transfer ownership of the drug acquired by the audited pharmacy;

(c) copies of supplier invoices in the possession of the audited pharmacy; and

(d) reports required by any state board or agency; and

(4) within five business days of request by the audited pharmacy, the entity shall provide supporting documentation provided to the entity by the audited pharmacy's suppliers.

F. As used in this section:

(1) "entity" means a managed care company, insurance company or third-party payor, or representative of a managed care company, insurance company or third-party payor, or a pharmacy benefits manager or a subcontractor of a pharmacy benefits manager; and

(2) "extrapolation" means a mathematical process or technique used to estimate audit results or findings for a larger batch or group of claims not reviewed.

**History:** Laws 2007, ch. 15, § 1; 2019, ch. 268, § 1.

## **61-11-19. Fund established; disposition; method of payment.**

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 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. Amounts paid into the pharmacy fund prior to October 1, 2005 pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 are appropriated to the board for a prescription drug program serving persons pursuant to the Medical Insurance Pool Act [Chapter 59A, Article 54 NMSA 1978]; provided that the board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

E. 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.

F. All funds that 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; 2004, ch. 52, § 2; 2007, ch. 79, § 2; 2008, ch. 62, § 1.

## **61-11-20. Disciplinary proceedings; Uniform Licensing Act.**

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 registration or license held or applied for under the Pharmacy Act 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 a federal law relating to controlled substances, a federal food and drug law or a federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978], the Drug Product Selection Act [26-3-1 to 26-3-3 NMSA 1978], the Imitation Controlled Substance[s] Act [30-31A-1 through 30-31A-15 NMSA 1978], the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] or the Drug Precursor Act [Chapter 30, Article 31B NMSA 1978];

(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 licensure as a pharmacist or pharmacist intern, registration as a pharmacy technician or licensure for a pharmacy or pharmaceutical business in this state for the licensee's or applicant's own self 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;

(9) fails to maintain any drug record required by federal law and that failure results in the condemnation of any drugs in the licensee's or applicant's possession or control;

(10) is convicted of a felony;

(11) has furnished false or fraudulent material in an application made in connection with drug or device manufacturing or distribution;

(12) has had a nonresident pharmacy, drug manufacturer, wholesale drug distributor, returned drugs processor, outsourcing facility, repackager or third-party logistics provider license or federal registration suspended or revoked;

(13) has obtained remuneration for professional services by fraud, misrepresentation or deception;

(14) has dealt with drugs or devices that the licensee or applicant knew or should have known were stolen;

(15) has purchased or received a drug or device from a source other than a person or pharmacy licensed pursuant to the Pharmacy Act, unless otherwise provided in that act, the Controlled Substances Act or the New Mexico Drug, Device and Cosmetic Act;



(16) is a wholesale drug distributor, manufacturer, outsourcing facility or repackager other than a pharmacy and dispenses or distributes drugs or devices directly to a patient;

(17) has violated a rule adopted by the board pursuant to the Pharmacy Act; or

(18) has divulged or revealed confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive that information.

B. Disciplinary proceedings may be instituted by a person, shall be by sworn complaint and shall conform with the provisions of the Uniform Licensing Act. A party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. The board may modify a prior order of revocation, suspension or refusal to issue a license of a pharmacist or a pharmacist intern or registration of a pharmacy technician but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided that 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.

**History:** 1953 Comp., § 67-9-51, enacted by Laws 1969, ch. 29, § 19; 1972, ch. 84, § 57; 1983, ch. 165, § 5; 1997, ch. 131, § 22; 2019, ch. 98, § 5.

### **61-11-21. Licensing of pharmacists and pharmacies required.**

A. Unless a person is a pharmacist or is exempted under the Pharmacy Act, no person shall sell at retail any dangerous drug, 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", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or a combination of these that might indicate to the public that the place is a pharmacy unless the place is licensed by the board under the Pharmacy Act.

C. No person shall permit anyone in the person's employ or under the person's supervision, except a pharmacist, pharmacist intern or pharmacy technician, 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 license issued pursuant to 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", "chemist's shop", "drug store", "drugs", "druggist", "drug sundries", "prescriptions" or a combination of these 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; 1997, ch. 131, § 23; 2021, ch. 9, § 1.

### **61-11-22. Exemptions from act.**

A. The Pharmacy Act does not apply to licensed practitioners in this state in supplying to their patients any drug if the licensed practitioner is practicing the licensed practitioner's profession and does not keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs.

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 the licensed practitioner's patients;
- (2) the sale of nonnarcotic proprietary preparations; or
- (3) the possession, storage, dispensing, distribution, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978.

**History:** 1953 Comp., § 67-9-53, enacted by Laws 1969, ch. 29, § 21; 1997, ch. 131, § 24; 2016, ch. 45, § 3; 2016, ch. 47, § 3.

### **61-11-23. Construction of laws relating to drugs.**

A. The Pharmacy Act does not amend or repeal any of the laws that govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not amend or repeal the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978].

**History:** 1953 Comp., § 67-9-54, enacted by Laws 1969, ch. 29, § 22; 1972, ch. 84, § 58; 1997, ch. 131, § 25.

### **61-11-24. Violations; penalties.**

A. It is a misdemeanor for any person to:

(1) practice or attempt to practice pharmacy without a current license from the board;

(2) use the title of registered pharmacist unless he is licensed as such pursuant to the Pharmacy Act;

(3) procure or attempt to procure licensure 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;

(4) allow any other person in his employ or under his supervision to compound or dispense prescriptions unless he is a pharmacist, pharmacist intern or pharmacy technician in accordance with the Pharmacy Act or exempted from the provisions of that act; or

(5) own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so pursuant to the Pharmacy Act.

B. A person convicted pursuant to Subsection A of this section shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** 1953 Comp., § 67-9-55, enacted by Laws 1969, ch. 29, § 23; 1972, ch. 84, § 59; 1997, ch. 131, § 26.

### **61-11-25. Power to enjoin violations.**

In addition to the remedies provided in the Pharmacy Act, the board may apply to the district court for 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; 1997, ch. 131, § 27.

### **61-11-26. Licensure under previous law.**

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 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.

### **61-11-27. Transfer of funds.**

All money that has 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 and any other laws being administered by the board.

**History:** 1953 Comp., § 67-9-58, enacted by Laws 1969, ch. 29, § 26; 1997, ch. 131, § 28.

### **61-11-28. Uniform Licensing Act.**

The board is 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; 1997, ch. 131, § 29.

### **61-11-29. 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; 1997, ch. 46, § 11; 2003, ch. 428, § 11; 2009, ch. 96, § 8; 2015, ch. 119, § 10; repealed by Laws 2023, ch. 15, § 8.

### **61-11-30. Testing, screening and treatment of health conditions.**

A. Pursuant to a board-approved protocol approved by the New Mexico medical board, a pharmacist may order, test, screen, treat and provide preventative services for health conditions or situations that include:

- (1) influenza;
- (2) group A streptococcus pharyngitis;
- (3) SARS-COV-2;
- (4) uncomplicated urinary tract infection;
- (5) human immunodeficiency virus, limited to the provision of pre-exposure prophylaxis and post-exposure prophylaxis; and
- (6) other emerging and existing public health threats identified by the board or department of health during civil or public health emergencies.

B. A pharmacist who orders, tests, screens or treats for health conditions or situations pursuant to this section may use any test that may guide clinical decision making, including tests waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988, as amended, the federal rules adopted thereunder or any established screening procedure that can safely be performed by a pharmacist.

C. A pharmacist may delegate the administrative and technical tasks of performing a test waived by the federal Clinical Laboratory Improvement Amendments of 1988, as amended, to a pharmacist intern or pharmacy technician acting under the supervision of the pharmacist.

**History:** Laws 2023, ch. 95, § 2.

## **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:

- 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.

**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.

### **61-11B-2. Definitions.**

As used in the Pharmacist Prescriptive Authority Act:

A. "administer" means the direct application of a drug by any means to the body of a person;

B. "board" means the board of pharmacy;

C. "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 of "Caution: federal law prohibits dispensing without prescription." or "RX only";

D. "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;

E. "monitor dangerous drug therapy" means the review of 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;



F. "pharmacist" means a person duly licensed by the board to engage in the practice of pharmacy pursuant to the Pharmacy Act;

G. "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 [New Mexico medical board] and the New Mexico academy of physician assistants, who exercises prescriptive authority in accordance with guidelines or protocol;

H. "practitioner" means a physician duly authorized by law in New Mexico to prescribe controlled substances; and

I. "prescriptive authority" means the authority to prescribe, administer or modify dangerous drug therapy.

**History:** Laws 1993, ch. 191, § 2; 1995, ch. 121, § 1; 1999, ch. 298, § 4.

### **61-11B-3. Pharmacist clinician prescriptive authority.**

A. A pharmacist clinician planning to exercise prescriptive authority in practice shall have on file at the 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 the practitioner 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 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.

F. For the purpose of the Pharmacist Prescriptive Authority Act, the New Mexico medical board shall adopt rules concerning the guidelines and protocol for their respective practitioners defined in Subsection D of Section 61-11B-2 NMSA 1978.

**History:** Laws 1993, ch. 191, § 3; 2016, ch. 90, § 27; 2021, ch. 54, § 47.

## **ARTICLE 12**

### **Physical Therapy (Repealed.)**

**61-12-1 to 61-12-21. Repealed.**

## **ARTICLE 12A**

### **Occupational Therapy**

**61-12A-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 12A NMSA 1978 may be cited as the "Occupational Therapy Act".

**History:** 1978 Comp., § 61-12A-1, enacted by Laws 1996, ch. 55, § 1; 2005, ch. 199, § 1.

**61-12A-2. Purpose. (Repealed effective July 1, 2028.)**

It is the purpose of the Occupational Therapy Act to provide for the regulation of persons offering occupational therapy services to the public in order to safeguard the public health, safety and welfare; to protect the public from being misled by incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the

availability of occupational therapy services of high quality to persons in need of such services.

**History:** 1978 Comp., § 61-12A-2, enacted by Laws 1996, ch. 55, § 2; 2005, ch. 199, § 2.

### **61-12A-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Occupational Therapy Act:

- A. "board" means the board of examiners for occupational therapy;
- B. "censure" means a formal expression of disapproval that is publicly announced;
- C. "denial of license" means that a person is barred from becoming licensed to practice in accordance with the provisions of the Occupational Therapy Act either indefinitely or for a certain period;
- D. "licensee" means an occupational therapist or occupational therapy assistant, as appropriate;
- E. "occupational therapist" means a person who holds an active license to practice occupational therapy in New Mexico in accordance with board rules;
- F. "occupational therapy" means the therapeutic use of occupations, including everyday life activities with persons across the life span, including groups, populations or organizations, to enhance or enable participation, performance or function in roles, habits and routines in home, school, workplace, community and other settings. Occupational therapy services are provided for habilitation, rehabilitation and the promotion of health and wellness to those clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. "Occupational therapy" includes addressing the physical, cognitive, psychosocial, sensory-perceptual and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being and quality of life. Occupational therapy uses everyday life activities to promote mental health and support functioning in people with or at risk of experiencing a range of mental health disorders, including psychiatric, behavioral, emotional and substance abuse disorders;
- G. "occupational therapy assistant" means a person having no less than an associate degree in occupational therapy and holding an active license to practice occupational therapy in New Mexico who assists in the practice of occupational therapy under the supervision of the occupational therapist in accordance with board rules;
- H. "person" means an individual, association, partnership, unincorporated organization or corporate body;

I. "probation" means that continued licensure is subject to fulfillment of specified conditions such as monitoring, education, supervision or counseling;

J. "reprimand" means a formal expression of disapproval that is retained in the licensee's file but not publicly announced;

K. "revocation" means permanent loss of licensure; and

L. "suspension" means the loss of licensure for a certain period, after which the person may be required to apply for reinstatement.

**History:** 1978 Comp., § 61-12A-3, enacted by Laws 1996, ch. 55, § 3; 2005, ch. 199, § 3; 2019, ch. 5, § 1.

#### **61-12A-4. Occupational therapy services. (Repealed effective July 1, 2028.)**

The practice of occupational therapy includes the following processes and services:

A. evaluation of factors affecting all areas of occupation, including activities of daily living, instrumental activities of daily living, rest and sleep, education, work, productivity, play, leisure and social participation; including:

(1) client factors, including neuromuscular, sensory, visual, mental, cognitive and pain factors and body structures, including cardiovascular, digestive, integumentary and genitourinary systems and structures related to movement;

(2) habits, routines, roles and behavior patterns;

(3) cultural, physical, environmental, social and spiritual contexts and activity demands that affect performance; and

(4) performance skills, including motor process and communication and interaction skills;

B. activity analysis to determine activity demands of occupations performed;

C. design, implementation and modification of therapeutic interventions, including the following activities related to selection of intervention strategies to direct the process of interventions:

(1) establishment, remediation or restoration of a skill or ability that has not yet developed, is impaired or is in decline;

(2) compensation, modification or adaptation of activity or environment to enhance performance or to prevent injuries, disorders or other conditions;

(3) retention, maintenance and enhancement of skills and capabilities without which performance in everyday life activities would decline;

(4) promotion of health and wellness, including the use of self-management strategies to enable or enhance performance in everyday life activities;

(5) prevention of barriers to performance, including injury and disability prevention; and

(6) interventions and procedures to promote or enhance safety and performance in areas of occupation, including:

(a) therapeutic use of occupations, exercises and activities;

(b) training in self-care, self-management, health management and maintenance, home management, community-work reintegration, school activities and work performance;

(c) development, remediation or compensation of neuromusculoskeletal, sensory-perceptual, sensory-integrative and modulation, visual, mental and cognitive functions, pain tolerance and management, developmental skills and behavioral skills;

(d) therapeutic use of self, including one's personality, insights, perceptions and judgments, as part of the therapeutic process;

(e) education and training of persons, including family members, caregivers, groups, populations and others;

(f) care coordination, case management and transition services;

(g) consultative services to groups, programs, organizations or communities;

(h) modification of home, work, school and community environments and adaptation of processes, including the application of ergonomic principles;

(i) assessment, design, fabrication, application, fitting and training in seating and positioning, assistive technology, adaptive devices and orthotic devices and training in the use of prosthetic devices;

(j) assessment, recommendation and training in techniques to enhance functional mobility, including management of wheelchairs and other mobility devices;

(k) low-vision rehabilitation;

(l) driver rehabilitation and community mobility;

(m) management of feeding, eating and swallowing;

(n) application of physical agent modalities and use of a range of specific therapeutic procedures such as wound care management; techniques to enhance sensory, perceptual and cognitive processing; and manual therapy techniques to enhance performance skills;

(o) facilitating the occupational performance of groups, populations or organizations; and

(p) management of a client's mental health, functioning and performance; and

D. use of means to measure the outcomes and effects of interventions to reflect the attainment of treatment goals, including:

- (1) improved quality of life;
- (2) the degree of participation;
- (3) role competence;
- (4) well-being;
- (5) improved life function;
- (6) enhanced performance; and
- (7) prevention criteria.

**History:** 1978 Comp., § 61-12A-4, enacted by Laws 1996, ch. 55, § 4; repealed and reenacted by Laws 2005, ch. 199, § 4; 2019, ch. 5, § 2.

### **61-12A-5. Supervision; required; defined. (Repealed effective July 1, 2028.)**

Occupational therapy shall not be performed by an occupational therapy assistant or by any person practicing on a provisional permit unless the occupational therapy is supervised by an occupational therapist. The board shall adopt rules defining supervision.

**History:** 1978 Comp., § 61-12A-5, enacted by Laws 1996, ch. 55, § 5; 2005, ch. 199, § 5; 2019, ch. 5, § 3.

### **61-12A-6. License required. (Repealed effective July 1, 2028.)**

A. Unless licensed to practice the level of occupational therapy provided in the Occupational Therapy Act, a person shall not practice as an occupational therapist or occupational therapy assistant.

B. It is unlawful for a person not licensed pursuant to the Occupational Therapy Act or whose license has been denied, suspended or revoked in this or another state to hold himself out as an occupational therapist or occupational therapy assistant or to use words or titles containing "occupational therapist" or "occupational therapy assistant" that would indicate or imply that the person is licensed as an occupational therapist or occupational therapy assistant.

C. A facility or employer shall not represent that it offers occupational therapy unless it uses the services of a licensee pursuant to the provisions of the Occupational Therapy Act.

D. A person offering or assisting in the offering of occupational therapy shall be properly identified by a name badge or other identification indicating whether the person is an occupational therapist, an occupational therapy assistant, an occupational therapy aide or technician or a person practicing under a provisional permit.

**History:** 1978 Comp., § 61-12A-6, enacted by Laws 1996, ch. 55, § 6; 2005, ch. 199, § 6.

### **61-12A-7. Exemptions. (Repealed effective July 1, 2028.)**

Nothing in the Occupational Therapy Act shall be construed as preventing or restricting the practice, services or activities of:

A. a person engaged in the profession or occupation for which he is licensed in New Mexico;

B. a person lawfully engaged in a profession or occupation known by a name other than occupational therapy when engaged in that profession or occupation;

C. a person pursuing a course of study leading to a degree or certificate in occupational therapy in an educational program accredited or seeking accreditation by the accreditation council of occupational therapy education if the activities and services constitute part of the supervised course of study and if that person is designated by a title that clearly indicates his status as a student or trainee;

D. a person fulfilling the supervised student field work experience requirement pursuant to the Occupational Therapy Act if the activities and services constitute part of the experience necessary to meet that requirement; and

E. an occupational therapist or occupational therapy assistant licensed in another state from conducting continuing education, workshops or seminars in New Mexico.

**History:** 1978 Comp., § 61-12A-7, enacted by Laws 1996, ch. 55, § 7.

**61-12A-8. Board created. (Repealed effective July 1, 2028.)**

A. The "board of examiners for occupational therapy" is created.

B. The board shall be administratively attached to the regulation and licensing department.

C. The board shall consist of five members appointed by the governor who have been residents of the state for at least two years preceding the appointment.

D. Three members shall be licensed under the provisions of the Occupational Therapy Act; have a minimum of five years' professional experience, with two years' experience in New Mexico; and have not had their licenses suspended or revoked by this or any other state. One of the professional members may be an occupational therapy assistant and one of the professional members may be a retired occupational therapist or occupational therapy assistant, who has been retired for no more than five years at the time of appointment.

E. Two members shall represent the public. The two public members shall have no direct interest in the profession of occupational therapy. The public members shall not:

(1) have been convicted of a felony;

(2) be habitually intemperate or be addicted to the use of habit-forming drugs or be addicted to any other vice to such a degree as to render the member unfit to fulfill his board duties and responsibilities; or

(3) be guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

F. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A board member shall not serve more than two consecutive terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting.

G. An individual member of the board shall not be liable in a civil or criminal action for an act performed in good faith in the execution of his duties as a member of the board.

H. Members of the board shall be reimbursed for per diem and travel expenses 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.



I. A simple majority of the board members currently serving shall constitute a quorum of the board for the conduct of business.

J. The board shall meet at least four times a year and at other times as it deems necessary. Additional meetings may be convened at the call of the president of the board or on the written request of any two board members to the president. Meetings of the board shall be conducted in accordance with the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

K. A member failing to attend three consecutive meetings, unless excused as provided by board policy, shall automatically be recommended for removal as a member of the board.

L. At the beginning of each fiscal year, the board shall elect a president, vice president and secretary-treasurer.

**History:** 1978 Comp., § 61-12A-8, enacted by Laws 1996, ch. 55, § 8; 2003, ch. 408, § 13; 2005, ch. 199, § 7.

**61-12A-9. Board; powers and duties. (Repealed effective July 1, 2028.)**

A. The board shall:

(1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Occupational Therapy Act;

(2) use funds to meet the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act;

(3) adopt a code of ethics;

(4) enforce the provisions of the Occupational Therapy Act to protect the public by conducting hearings on charges relating to the discipline of licensees, including the denial, suspension or revocation of a license in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(5) establish and collect fees;

(6) provide for examination for and issuance, renewal and reinstatement of licenses;

(7) establish, impose, collect and remit fines for violations of the Occupational Therapy Act to the current school fund;

(8) appoint a registrar to keep records and minutes necessary to carry out the functions of the board; and

(9) obtain the legal assistance of the attorney general.

B. The board may:

(1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

(2) hire or contract with an investigator to investigate complaints that have been filed with the board. The board shall set the compensation of the investigator to be paid from the funds of the board;

(3) inspect establishments; and

(4) designate hearing officers.

**History:** 1978 Comp., § 61-12A-9, enacted by Laws 1996, ch. 55, § 9; 2003, ch. 408, § 14; 2022, ch. 39, § 46.

### **61-12A-10. Board; administrative procedures. (Repealed effective July 1, 2028.)**

The board shall appoint a registrar who is either the board member elected as the 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. The registrar shall keep a written record in which shall be registered the name, license number, date of license issuance, current address, record of annual license fee payments, minutes and any other data as the board deems necessary regarding licensees.

**History:** 1978 Comp., § 61-12A-10, enacted by Laws 1996, ch. 55, § 10; 2003, ch. 408, § 15.

### **61-12A-11. Requirements for licensure. (Repealed effective July 1, 2028.)**

A. An applicant applying for a license as an occupational therapist or occupational therapy assistant shall file a written application provided by the board, accompanied by the required fees and documentation, and demonstrating to the satisfaction of the board that the applicant has:

(1) successfully completed the academic requirements of an educational program in occupational therapy that is either:

(a) accredited by the American occupational therapy association's accreditation council for occupational therapy education; or

(b) in the case of a foreign educational program, accepted by the national board for certification in occupational therapy when the therapist applies to take that board's examination;

(2) successfully completed a period of supervised field work experience at a recognized educational institution or a training program approved by the educational institution where the occupational therapist or the occupational therapy assistant has met the academic requirements of Paragraph (1) of this subsection; provided that:

(a) an occupational therapist shall complete a minimum of twenty-four weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation; and

(b) an occupational therapy assistant shall complete a minimum of sixteen weeks of supervised fieldwork experience or satisfy any generally recognized past standards that identified minimum fieldwork requirements at the time of graduation;

(3) has passed an examination prescribed by the national board for certification in occupational therapy or the board; and

(4) has no record of unprofessional conduct or incompetence.

B. In the case of an occupational therapy assistant or a person practicing on a provisional permit, the applicant shall file with the board a signed, current statement of supervision by the occupational therapist who will be the responsible supervisor.

C. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license.

**History:** 1978 Comp., § 61-12A-11, enacted by Laws 1996, ch. 55, § 11; 2005, ch. 199, § 8.

### **61-12A-12. Examinations. (Repealed effective July 1, 2028.)**

The board shall require proof of passage of the national board for certification in occupational therapy examination. The board may require each applicant to pass an examination on the state laws and rules that pertain to the practice of occupational therapy.

**History:** 1978 Comp., § 61-12A-12, enacted by Laws 1996, ch. 55, § 12; 2005, ch. 199, § 9.

### **61-12A-13. Provisional permits. (Repealed effective July 1, 2028.)**

A provisional 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 under the supervision of an occupational therapist. The provisional permit shall be valid until the date on which the results of the next qualifying examination have been made public. The provisional permit shall not be renewed if the applicant has failed the examination. The board shall verify, as necessary, information contained on the completed application and any supporting documentation required to obtain a license.

**History:** 1978 Comp., § 61-12A-13, enacted by Laws 1996, ch. 55, § 13; 2005, ch. 199, § 10.

### **61-12A-14. Expedited licensure by endorsement. (Repealed effective July 1, 2028.)**

A. The board shall grant a license to an applicant who presents a valid, unrestricted license as an occupational therapist or an occupational therapy assistant in another licensing jurisdiction and is in good standing with the licensing board of that licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application for an expedited license accompanied by required fees, process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

B. If the out-of-state licensee was licensed in a jurisdiction that did not require passage of the national examination for certification in occupational therapy, the board may require the licensee to pass that examination to continue to be licensed in New Mexico.

C. The board shall determine the other states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and the foreign countries from which it will accept applicants for expedited licensure. The board shall post the list of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1978 Comp., § 61-12A-14, enacted by Laws 1996, ch. 55, § 14; 2005, ch. 199, § 11; 2022, ch. 39, § 47.

### **61-12A-15. License renewal. (Repealed effective July 1, 2028.)**

A. Each renewal request shall contain the person's name, address and license number. After receipt of information and fees as prescribed by this section, the board shall issue a license certificate.

B. Licenses issued pursuant to the Occupational Therapy Act are subject to annual renewal upon submission of a renewal form provided by the board, payment of the annual renewal fee and the required proof of continuing education units or proof of competency as prescribed by the board. A license not renewed on the annual renewal date is expired.

C. If a person's license has been expired for five years or less, the person may renew the license upon submission of a renewal form provided by the board, the payment of the annual renewal fee, a late fee and the required proof of continuing education units for the period the license has been expired or proof of competency as prescribed by the board. If a person's license has been expired for more than five years, the person may not renew the license. The person may obtain a new license by compliance with the requirements and procedures for obtaining an original license and any additional proof of competency requested by the board.

D. If a person's license has been suspended, it shall not be renewed until it has been reinstated by the board. If a person's license has been suspended it is still subject to annual renewal. The person may renew the license as provided in this section, but renewal does not entitle the licensee, while the license is 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.

E. If a person's license has been revoked on disciplinary grounds, and has been reinstated by the board, the licensee shall pay the annual renewal fee and any applicable late fee as a condition of reinstatement.

**History:** 1978 Comp., § 61-12A-15, enacted by Laws 1996, ch. 55, § 15.

### **61-12A-16. Display of license. (Repealed effective July 1, 2028.)**

A. Each licensee shall display his current license certificate in a conspicuous place in the principal office where he practices occupational therapy. At secondary places of employment, documentation of license shall be verified by photocopy with a note attached indicating where the current license certificate is posted.

B. A consumer information sign shall be displayed in the principal place of practice. The consumer information sign shall read:

"Complaints regarding noncompliance with the Occupational Therapy Act can be directed to the board of examiners for occupational therapy."

**History:** 1978 Comp., § 61-12A-16, enacted by Laws 1996, ch. 55, § 16.

### **61-12A-17. Inactive licenses. (Repealed effective July 1, 2028.)**

A license in good standing may be transferred to inactive status upon written request to the board and payment of an annual inactive status fee as set by the board. Such request shall be made prior to the expiration of the license. The licensee shall not practice in New Mexico during the time the license is inactive. A licensee may reactivate his license upon submission of a renewal form provided by the board, the payment of the annual renewal fee for the current year, proof of continuing education units for the period of inactive status and any additional proof of competency requested and prescribed by the board.

**History:** 1978 Comp., § 61-12A-17, enacted by Laws 1996, ch. 55, § 17.

### **61-12A-18. Fees. (Repealed effective July 1, 2028.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees, including an initial licensure fee, an annual renewal fee, an examination fee, a late renewal fee and an inactive status fee. The initial licensure fee is not refundable and shall cover the cost of processing the application and shall include, for successful applicants, the initial annual renewal fee. The board may impose reasonable administration and duplicating fees or any penalties deemed appropriate.

**History:** 1978 Comp., § 61-12A-18, enacted by Laws 1996, ch. 55, § 18; 2020, ch. 6, § 30.

### **61-12A-19. Uniform Licensing Act. (Repealed effective July 1, 2028.)**

The Occupational Therapy Act is enforceable according to the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** 1978 Comp., § 61-12A-19, enacted by Laws 1996, ch. 55, § 19.

### **61-12A-20. Fund created. (Repealed effective July 1, 2028.)**

A. The "board of examiners for occupational therapy fund" is created in the state treasury.

B. Money received by the board pursuant to the Occupational Therapy Act shall be deposited in the fund. Money in the fund shall not revert to the general fund at the end of any fiscal year.

C. Money in the fund is appropriated solely to the board for the purpose of meeting the necessary expenses incurred in carrying out the provisions of the Occupational Therapy Act.

**History:** 1978 Comp., § 61-12A-20, enacted by Laws 1996, ch. 55, § 20.

### **61-12A-21. Penalties. (Repealed effective July 1, 2028.)**

A. An unlicensed person, other than an occupational therapy aide or technician, occupational therapy student or occupational therapy assistant student or person practicing under a provisional permit, who practices occupational therapy is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

B. A person who represents that he offers occupational therapy services without utilizing a licensee is in violation of the Occupational Therapy Act and shall be subject to a fine equal to ten percent of billed charges for those services. In addition, the violator shall be required to utilize the services of a licensee in order to provide occupational therapy services.

C. The board shall deny an application for licensure if it finds that the applicant made false statements or provided false information in connection with an application for licensure.

**History:** Laws 1996, ch. 55, § 21.

### **61-12A-22. Disciplinary action; denial, suspension or revocation. (Repealed effective July 1, 2028.)**

In accordance with procedures established by the Uniform Licensing Act [61-1-to 61-1-31 NMSA 1978], the board may deny, suspend or revoke any license or permit held or applied for under the Occupational Therapy Act upon the grounds that the licensee or applicant is incompetent, impaired or has engaged in unethical behavior. The board shall define such grounds by regulation. Disciplinary sanctions may also include probation, censure or reprimand, according to board regulations.

**History:** Laws 1996, ch. 55, § 22.

### **61-12A-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)**

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 Occupational Therapy Act.

**History:** Laws 1996, ch. 55, § 23.

### **61-12A-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The board of examiners for occupational therapy is terminated on July 1, 2027 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 Occupational Therapy Act until July 1, 2028. Effective July 1, 2028, the Occupational Therapy Act is repealed.

**History:** Laws 1996, ch. 55, § 24; 1997, ch. 46, § 13; 2005, ch. 199, § 12; 2005, ch. 208, § 7; 2015, ch. 119, § 11; 2021, ch. 50, § 7.

### **61-12A-25. Applicability to other health professions. (Repealed effective July 1, 2028.)**

Nothing in the Occupational Therapy Act shall be construed as limiting the practice of other licensed and qualified health professionals in their specific disciplines.

**History:** Laws 2019, ch. 5, § 4.

## **ARTICLE 12B Respiratory Care**

### **61-12B-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 12B NMSA 1978 may be cited as the "Respiratory Care Act".

**History:** Laws 1984, ch. 103, § 1; 2001, ch. 188, § 2.

### **61-12B-2. Purpose of act. (Repealed effective July 1, 2028.)**

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of respiratory care, it is necessary to provide laws and rules to govern the practice of respiratory care. The primary purpose of the Respiratory Care Act 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; 2001, ch. 188, § 3.

### **61-12B-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Respiratory Care Act:

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 that 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:

(1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;

(2) cardiopulmonary care services, including 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 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 other person authorized by law to prescribe, 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 assessment and evaluation; and

(7) the practice performed in a clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the department;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has been prepared through a formal training program to function beyond the scope of practice of respiratory care as defined by rule of the department;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico;

G. "respiratory care protocols" means a predetermined, written medical care plan, which can include standing orders;

H. "respiratory therapy training program" means an education course of study as defined by rule of the department; and

I. "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; 2001, ch. 188, § 4.

#### **61-12B-4. License required; exceptions. (Repealed effective July 1, 2028.)**

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed pursuant to the provisions of the Respiratory Care Act, except as otherwise provided by that act.

B. A respiratory care practitioner may transcribe and implement the written or verbal orders of a physician or other person authorized by law to prescribe pertaining to the practice of respiratory care and respiratory care protocols.

C. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with:

(1) the practices of other persons and health providers licensed by appropriate agencies of New Mexico;

(2) self-care by a patient;

(3) gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner; or

(4) respiratory care services rendered in case of an emergency.

D. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform those functions that he is qualified by examination to perform; provided that the examining body or testing entity is recognized nationally for expertise in evaluating the competency of persons performing those functions covered by that act or department rules. The department shall establish by rule those certifying agencies and testing entities that are acceptable to the department.

E. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to the provisions of 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 healthcare organizations 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; 2001, ch. 188, § 5.

### **61-12B-5. Advisory board created. (Repealed effective July 1, 2028.)**

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" consisting of five members as follows:

(1) one physician licensed in New Mexico who is knowledgeable in respiratory care;

(2) two respiratory care practitioners who are residents of New Mexico, licensed by the department and in good standing. At least one of the respiratory care practitioners shall have been actively engaged in the practice of respiratory care for at least five years immediately preceding appointment or reappointment; and

(3) two public members who are residents of New Mexico. A public member shall not have been licensed as a respiratory care practitioner nor shall he have any financial interest, direct or indirect, in the occupation to be regulated.

B. The board shall be administratively attached to the department.

C. A member shall serve no more than two consecutive three-year terms.

D. A member 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 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of his duties as a board member.

E. A member failing to attend three consecutive regular and properly noticed meetings of the board without a reasonable excuse shall be automatically removed from the board.

F. In the event of a vacancy, the board shall immediately notify the superintendent of the vacancy. Within ninety days of receiving notice of a vacancy, the superintendent shall appoint a qualified person to fill the remainder of the unexpired term.

G. A majority of the board members currently serving constitutes a quorum of the board.

H. The board shall meet at least twice a year and at such other times as it deems necessary.

I. The board shall annually elect officers as deemed necessary to administer its duties.

**History:** Laws 1984, ch. 103, § 5; 1987, ch. 329, § 2; 1989, ch. 109, § 1; 1996, ch. 51, § 9; 2001, ch. 188, § 6; 2003, ch. 408, § 16.

**61-12B-6. Department; duties and powers. (Repealed effective July 1, 2028.)**

A. The department, in consultation with the board, shall:

(1) evaluate the qualifications of applicants and review the required examination results of applicants. The department may recognize the entry level examination written by the national board for respiratory care or a successor board;

(2) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Respiratory Care Act;

(3) issue and renew licenses and temporary permits to qualified applicants who meet the requirements of the Respiratory Care Act; and

(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 in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The department, in consultation with the board, may:

(1) conduct examinations of respiratory care practitioner applicants as required by rules of the department;

(2) reprimand, fine, deny, suspend or revoke a license or temporary permit to practice respiratory care as provided in the Respiratory Care Act in accordance with the provisions of the Uniform Licensing Act;

(3) for the purpose of investigating complaints against applicants and licensees, issue investigative subpoenas prior to the issuance of a notice of contemplated action as set forth in the Uniform Licensing Act;

(4) enforce and administer the provisions of the Impaired Health Care Provider Act [Chapter 61, Article 7 NMSA 1978] and promulgate rules to implement the provisions of that act as it relates to respiratory care practitioners;

(5) promulgate rules, including disciplinary guidelines, relating to impaired practitioners;

(6) promulgate rules to allow the interstate transport of patients; and

(7) promulgate rules to determine and regulate the scope and qualifications for expanded practice for respiratory care practitioners.

**History:** Laws 1984, ch. 103, § 6; 1993, ch. 150, § 3; 2001, ch. 188, § 7; 2022, ch. 39, § 48.

### **61-12B-7. Licensing by training and examination. (Repealed effective July 1, 2028.)**

A 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:

A. has successfully completed a training program as defined in the Respiratory Care Act and set forth by rules of the department;

B. has passed an entry level examination, as specified by rules of the department, for respiratory care practitioners administered by the national board for respiratory care or a successor board; and

C. has successfully completed other training or education programs and passed other examinations as set forth by rules of the department.

**History:** Laws 1984, ch. 103, § 7; 1993, ch. 150, § 4; 2001, ch. 188, § 8; 2022, ch. 39, § 49.

### **61-12B-8. Expedited licensing without training and examination. (Repealed effective July 1, 2028.)**

A. The department shall waive the education and examination requirements for an applicant who presents proof that the applicant holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction.

B. The department shall, as soon as practicable but no later than thirty days after an out-of-state licensee files an application paid the required fees, process the application and issue the expedited license in accordance Section 61-1-31.1 NMSA 1978.

C. The department shall determine the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited

licensure and the foreign countries from which it will accept applicants for expedited licensure. The department shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 1984, ch. 103, § 8; 1993, ch. 150, § 5; 2001, ch. 188, § 9; 2022, ch. 39, § 50.

### **61-12B-9. Other licensing provisions. (Repealed effective July 1, 2028.)**

A. The department, in consultation with the board, shall adopt rules for mandatory continuing education requirements that shall be completed as a condition for renewal of a license issued pursuant to the provisions of the Respiratory Care Act.

B. The department, in consultation with the board, may adopt rules for issuance of temporary permits to 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 shall be adopted defining the terms "student" and "direct supervision".

C. A 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 pursuant to the provisions of 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 a valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's or temporary permittee's place of employment.

F. A respiratory care practitioner license shall expire on September 30, annually or biennially, as provided by rules of the department.

**History:** Laws 1984, ch. 103, § 9; 1987, ch. 329, § 3; 1993, ch. 150, § 6; 1996, ch. 51, § 10; 2001, ch. 188, § 10.

### **61-12B-10. Licensure; date required. (Repealed effective July 1, 2028.)**

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

**History:** Laws 1984, ch. 103, § 10; 2001, ch. 188, § 11.

### **61-12B-11. Fees. (Repealed effective July 1, 2028.)**

A. Except as provided in Section 61-1-34 NMSA 1978, the superintendent, in consultation with the board, shall by rule 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 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; 2001, ch. 188, § 12; 2020, ch. 6, § 31.

### **61-12B-12. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)**

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978] may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes:

(1) fraud or deceit in the procurement of or attempt to procure a license or temporary permit;

(2) imposition of any disciplinary action for an act that would be grounds for disciplinary action by the department pursuant to the Respiratory Care Act or as set forth by rules of the department upon a person by an agency of another jurisdiction that regulates respiratory care;

(3) conviction of a crime that 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 an examination given pursuant to provisions of the Respiratory Care Act;

(5) habitual or excessive use of intoxicants or drugs;

(6) gross negligence as defined by rules of the department in the practice of respiratory care;

(7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;

(8) engaging in unprofessional conduct as defined by rules set forth by the department;

(9) committing a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions or duties of a respiratory care practitioner;

(10) practicing respiratory care without a valid license or temporary permit;

(11) aiding or abetting the practice of respiratory care by a person who is not licensed or who has not been issued a temporary permit by the department;

(12) conviction of a felony. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;

(13) violating a provision of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(14) failing to furnish the department or its investigators or representatives with information requested by the department in the course of an official investigation;

(15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or as set forth by rules of the department; or

(16) surrendering a license, certificate or permit to practice respiratory care in another jurisdiction while an investigation or disciplinary proceeding is pending for an act or conduct that would constitute grounds for disciplinary action under the Respiratory Care Act.

B. The department, in consultation with the board, may impose conditions on and promulgate rules relating to the reapplication or reinstatement of applicants, licensees or temporary permittees who have been subject to disciplinary action by the department.

**History:** Laws 1984, ch. 103, § 12; 1987, ch. 329, § 5; 1993, ch. 150, § 7; 2001, ch. 188, § 13.

**61-12B-13. Respiratory care fund created; disposition; method of payment. (Repealed effective July 1, 2028.)**



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 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. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 1984, ch. 103, § 13; 1987, ch. 329, § 6; 1989, ch. 109, § 2; 2001, ch. 188, § 14.

### **61-12B-14. Repealed.**

### **61-12B-15. Enforcement. (Repealed effective July 1, 2028.)**

A. A person who violates a provision of the Respiratory Care Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

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; 2001, ch. 188, § 15.

### **61-12B-16. Termination of board; delayed repeal. (Repealed effective July 1, 2028.)**

The advisory board of respiratory care practitioners is terminated on July 1, 2027 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 Respiratory Care Act until July 1, 2028. Effective July 1, 2028, the Respiratory Care Act is repealed.

**History:** Laws 1984, ch. 103, § 17; 1989, ch. 109, § 3; 1996, ch. 51, § 11; 1997, ch. 46, § 14; 2003, ch. 428, § 12; 2009, ch. 96, § 9; 2015, ch. 119, § 12; 2021, ch. 50, § 8.

### **61-12B-17. Severability. (Repealed effective July 1, 2028.)**

If any part or application of the Respiratory Care Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

**History:** Laws 2001, ch. 188, § 16.

## **ARTICLE 12C**

### **Massage Therapy Practice**

#### **61-12C-1. Short title. (Repealed effective July 1, 2028.)**

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; 1999, ch. 240, § 1.

#### **61-12C-2. Legislative purpose. (Repealed effective July 1, 2028.)**

In the interest of public health, safety and welfare and to protect the public from unlawful, improper and incompetent practice of massage therapy, it is necessary to regulate that practice.

**History:** Laws 1991, ch. 147, § 2; 1999, ch. 240, § 2.

#### **61-12C-2.1. Scope of practice. (Repealed effective July 1, 2028.)**

The practice of massage therapy consists of the assessment of the soft tissue structures of the body; the treatment and prevention of physical dysfunction and pain of soft tissue; and joint movement within normal physiologic range of motion to relieve pain or to develop, maintain, rehabilitate or augment physical function.

**History:** Laws 2019, ch. 40, § 14.

#### **61-12C-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Massage Therapy Practice Act:

A. "board" means the massage therapy board;

B. "continuing education" means courses, seminars, workshops and classes in areas related to the practice of massage therapy, such as:

- (1) massage;
- (2) bodywork;
- (3) health care;

- (4) psychology;
- (5) anatomy and physiology;
- (6) business;
- (7) insurance;
- (8) ethics;
- (9) professional development;
- (10) movement therapy;
- (11) stress management;
- (12) exempt modalities listed in Subsection C of Section 61-12C-5.1 NMSA 1978;
- (13) cardiopulmonary resuscitation or first aid; and
- (14) complementary alternative medicine modalities determined by the board to be related to the practice of massage therapy;

C. "continuing education provider" means:

- (1) an individual who was an active New Mexico registered independent massage therapy instructor on the effective date of this 2019 act;
- (2) a massage therapy school regulated by the requisite regulatory agency where the massage therapy school is located;
- (3) a national or international professional association for massage therapists;
- (4) an individual or an organization approved by a national or international massage therapy continuing education approval agency;
- (5) a health care professional organization; or
- (6) accredited post-secondary educational institutions;

D. "department" means the regulation and licensing department;

E. "jurisprudence" means the statutes and rules of the state pertaining to the practice of massage therapy;

F. "massage therapist" means an individual licensed to practice massage therapy pursuant to the Massage Therapy Practice Act;

G. "massage therapy" means the treatment of soft tissues for therapeutic purposes, primarily comfort and relief of pain; it is a health care service that includes gliding, kneading, percussion, compression, vibration, friction, nerve strokes, stretching the tissue and exercising the range of motion and 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. "Massage therapy" does 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; and

H. "massage therapy school" means a facility providing an educational program in massage therapy that is registered with the board.

**History:** Laws 1991, ch. 147, § 3; 1993, ch. 173, § 2; 1999, ch. 240, § 3; 2019, ch. 40, § 1.

#### **61-12C-4. Repealed.**

#### **61-12C-5. License required. (Repealed effective July 1, 2028.)**

A. An individual shall not provide or offer to provide massage therapy for compensation unless that individual is a massage therapist.

B. An individual shall not use the title of or make any representation as being a massage therapist or use any other title, abbreviations, letters, figures, signs or devices that indicate the individual is a massage therapist unless the individual is a massage therapist.

**History:** Laws 1991, ch. 147, § 5; 1993, ch. 173, § 4; 1999, ch. 240, § 4; 2019, ch. 40, § 2.

#### **61-12C-5.1. Exemptions. (Repealed effective July 1, 2028.)**

Nothing in the Massage Therapy Practice Act 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 licenses or regulations; provided they do not represent themselves as massage therapists;

B. students from rendering massage therapy services within the course of study of a registered massage therapy school; and

C. sobadores; Hispanic traditional healers; Native American healers; reflexologists whose practices are limited to hands, feet and ears; practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch'i gung; or practitioners of healing modalities not listed in this subsection who do not manipulate the soft tissues for therapeutic purposes from practicing those skills. An exempt practitioner who applies for a license pursuant to the Massage Therapy Practice Act shall comply with all licensure requirements of that act.

**History:** Laws 2001, ch. 121, § 1; 2007, ch. 174, § 1; 2019, ch. 40, § 3.

### **61-12C-6. Repealed.**

### **61-12C-7. Board created; membership. (Repealed effective July 1, 2028.)**

A. The "massage therapy board" is created. The board is administratively attached to the department.

B. The board consists of five members who are New Mexico residents. Members of the board shall be appointed by the governor to terms of four years. The terms shall be staggered, and the governor shall make appointments of two two-year terms, two three-year terms and one four-year term, if necessary to produce staggered terms. Three members of the board shall be massage therapists, each with at least five years of massage therapy practice and who are actively engaged in the practice of massage therapy during their tenure as members. Two members of the board shall be public members who have not been licensed and have no financial interest, direct or indirect, in the profession of massage therapy.

C. Each member of the board shall hold office until a successor has been appointed and qualified.

D. No board member shall serve more than two full consecutive terms.

E. The board shall elect annually a chair and 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 held in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978]. Three members, at least one of whom must be a public member, shall constitute a quorum.

F. A 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 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** Laws 1991, ch. 147, § 7; 1993, ch. 173, § 6; 1999, ch. 240, § 6.

### **61-12C-8. Board powers. (Repealed effective July 1, 2028.)**

The board has the power to:

A. adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Massage Therapy Practice Act, in accordance with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978];

B. provide for the evaluation of the qualifications of applicants for licensure as a massage therapist or registration as a massage therapy school under the Massage Therapy Practice Act;

C. provide for the issuance of massage therapist licenses to applicants who meet the requirements of the Massage Therapy Practice Act;

D. establish minimum curricula for massage therapy schools and provide for the issuance and revocation of massage therapy school registrations;

E. establish instructor qualifications for hands-on massage therapy instruction within the minimum curricula;

F. provide for the inspection, when required, of the business premises of any licensee or registrant during regular business hours;

G. establish minimum training and educational standards for licensure as a massage therapist;

H. pursuant to the Uniform Licensing Act, conduct hearings on charges against applicants or licensees and take actions described in Section 61-1-3 NMSA 1978;

I. bring an action for injunctive relief in district court seeking to enjoin a person from violating the provisions of the Massage Therapy Practice Act;

J. issue cease and desist orders to persons violating the provisions of the Massage Therapy Practice Act or any rule adopted by the board pursuant to that act;

K. adopt an annual budget;

L. adopt a code of professional conduct for massage therapists;

M. provide for the investigation of complaints against licensees and registrants; and

N. publish at least annually combined or separate lists of licensed massage therapists and registered massage therapy schools.

**History:** Laws 1991, ch. 147, § 8; 1993, ch. 173, § 7; 1999, ch. 240, § 7; 2019, ch. 40, § 4.

### **61-12C-9. Requirements for licensure of massage therapists. (Repealed effective July 1, 2028.)**

A. The board shall issue a license to practice massage therapy to any individual 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; and
- (3) has completed at least six hundred fifty hours of education that includes at least five hundred hours of massage therapy instruction.

B. An initial license issued pursuant to this section may be for a period of up to two years pursuant to board rule.

**History:** Laws 1991, ch. 147, § 9; 1993, ch. 173, § 8; 1999, ch. 240, § 8; 2019, ch. 40, § 5.

### **61-12C-10. Requirements for registration of massage therapy schools. (Repealed effective July 1, 2028.)**

A. The board shall establish by rule procedures for the registration of massage therapy schools and shall register massage therapy schools that meet the requirements of the Massage Therapy Practice Act and rules adopted by the board pursuant to that act.

B. The board shall establish minimum standards of training and curriculum for massage therapy schools. Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours of training and 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.

**History:** Laws 1991, ch. 147, § 10; 1993, ch. 173, § 9; 1999, ch. 240, § 9.

### **61-12C-10.1. Massage therapy school registration, renewal, suspension and revocation. (Repealed effective July 1, 2028.)**

A. A person shall not maintain, manage or operate a massage therapy school offering education, instruction or training in massage therapy unless the school is a registered massage therapy school.

B. Massage therapy school registrations shall expire annually. Expiration dates shall be established by rule of the board.

C. A registration shall be renewed by submitting a renewal application on a form provided by the board.

D. A sixty-day grace period shall be allowed each registrant after the end of the renewal period, during which time a registration may be renewed upon payment of the renewal fee and a late fee as prescribed by the board.

E. Proceedings to determine whether to suspend or revoke the registration of a massage therapy school may be instituted by sworn complaint of any individual, including members of the board, and shall conform with the provisions of the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

**History:** Laws 2019, ch. 40, § 12.

### **61-12C-11. Display of license or registration. (Repealed effective July 1, 2028.)**

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; 1999, ch. 240, § 10.



### **61-12C-12. Assignability of license. (Repealed effective July 1, 2028.)**

A license or registration issued pursuant to the Massage Therapy Practice Act is not assignable or transferable.

**History:** Laws 1991, ch. 147, § 12; 1993, ch. 173, § 11.

### **61-12C-13. Examinations. (Repealed effective July 1, 2028.)**

A. The board shall establish by rule the required examinations for licensure as a massage therapist and the procedures for taking and retaking them. 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.

**History:** Laws 1991, ch. 147, § 13; 1993, ch. 173, § 12; 1999, ch. 240, § 11; 2019, ch. 40, § 6.

### **61-12C-14. Temporary license. (Repealed effective July 1, 2028.)**

A. Prior to examination, an applicant for licensure may obtain a temporary license to engage in the practice of massage therapy if 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.

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; 1999, ch. 240, § 12.

### **61-12C-15. Repealed.**

### **61-12C-16. Expedited licensure by credentials. (Repealed effective July 1, 2028.)**

A. The board shall license an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978 if the applicant possesses a valid, unrestricted license or registration to practice massage therapy in another licensing jurisdiction and pays required fees. As

soon as practicable but no later than thirty days after a person files an application for an expedited license, the board shall process the application and issue the expedited license in accordance with Section 61-1-31.1 NMSA 1978.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

C. The board shall determine each year the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and determine foreign countries from which it will accept applicants for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval.

**History:** Laws 1991, ch. 147, § 16; 1993, ch. 173, § 14; 1999, ch. 240, § 13; 2022, ch. 39, § 51.

### **61-12C-17. License renewal; continuing education. (Repealed effective July 1, 2028.)**

A. Except as provided for initial licensure in Subsection B of Section 61-12C-9 NMSA 1978, massage therapy licenses shall expire biennially. Expiration dates shall be established by rule.

B. The board may establish continuing education requirements as a condition of the renewal of massage therapy licenses.

C. All courses offered by continuing education providers shall be acceptable to meet continuing education requirements regardless of the location where the course is offered.

D. A continuing education provider who is an individual who was an active New Mexico registered independent massage therapy instructor on the effective date of this 2019 act shall submit to the board a syllabus and one-time fee for any course not previously approved by the board.

E. Within thirty days of application, the board may approve or deny the application of an individual who is not a continuing education provider to offer a particular continuing education course; provided that the individual submits:

- (1) a copy of any relevant license;
- (2) proof of a minimum of two years' experience in the area of instruction;
- (3) a course syllabus for the proposed course;

- (4) a resume; and
- (5) a one-time fee to be determined by the board by rule.

F. A license shall be renewed by submitting a renewal application on a form provided by the board.

G. A sixty-day grace period shall be allowed each licensee after the end of the renewal period, during which time a license 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; 1999, ch. 240, § 14; 2019, ch. 40, § 7.

### **61-12C-18. Inactive status. (Repealed effective July 1, 2028.)**

A. A massage therapy 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 licensee wishes to resume practice, the licensee shall notify the board in writing, and, upon proof of completion of any continuing education or refresher courses prescribed by rule 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; 1999, ch. 240, § 15; 2019, ch. 40, § 8.

### **61-12C-19. Repealed.**

### **61-12C-20. License fees. (Repealed effective July 1, 2028.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish by rule a schedule of reasonable fees for applications, examinations, licenses, registrations, inspections, renewals, penalties, reactivation and necessary administrative fees, but no single fee shall exceed five hundred dollars (\$500). All fees collected shall be deposited in the massage therapy fund.

**History:** Laws 1991, ch. 147, § 20; 1993, ch. 173, § 16; 1999, ch. 240, § 16; 2020, ch. 6, § 32.

### **61-12C-21. Advertising. (Repealed effective July 1, 2028.)**

A massage therapist or massage therapy school shall include the number of the license or registration and the designation as a "licensed massage therapist" or

"registered massage therapy school" in any advertisement of massage therapy services as established by board rule.

**History:** Laws 1991, ch. 147, § 21; 1993, ch. 173, § 17; 1999, ch. 240, § 17; 2019, ch. 40, § 9.

### **61-12C-22. Power of county or municipality to regulate massage. (Repealed effective July 1, 2028.)**

A county or municipality, within its jurisdiction, may regulate persons licensed pursuant to the Massage Therapy Practice Act. 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.

### **61-12C-23. Fund created. (Repealed effective July 1, 2028.)**

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. 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.

### **61-12C-24. Suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2028.)**

A. Pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may take disciplinary action against an individual licensed pursuant to the Massage Therapy Practice Act.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the licensee:

- (1) is guilty of fraud, deceit or misrepresentation;
- (2) attempted to use as the licensee's own the license of another;
- (3) allowed the use of the licensee's license by another;

(4) has been adjudicated as mentally incompetent by regularly constituted authorities;

(5) has been convicted of a crime that substantially relates to the qualifications, functions or duties of a massage therapist. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;

(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 an unlicensed individual in the practice of massage therapy;

(10) is grossly negligent or incompetent in the practice of massage therapy;

(11) has had a license 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 similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or

(12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

C. Disciplinary proceedings may be instituted by sworn complaint of any individual, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

D. The board shall establish the guidelines for the disposition of disciplinary cases. Guidelines may include minimum and maximum fines, periods of probation, conditions of probation or reissuance of a license.

E. Licensees 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; 1999, ch. 240, § 18; 2019, ch. 40, § 10.

### **61-12C-24.1. Denial of license. (Repealed effective July 1, 2028.)**

A. Pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny the issuance of a massage therapist license to an applicant.

B. The board has authority to take an action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that the applicant:

- (1) is guilty of fraud, deceit or misrepresentation;
- (2) attempted to use as the applicant's own the license of another;
- (3) allowed the use by another of the applicant's license issued in another jurisdiction;
- (4) has been adjudicated as mentally incompetent by regularly constituted authorities;
- (5) has been convicted of a crime that substantially relates to the qualifications, functions or duties of a massage therapist. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of conviction;
- (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 the practice of massage therapy in New Mexico without a New Mexico license;
- (10) is grossly negligent or incompetent in the practice of massage therapy;
- (11) has had a license 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 applicant similar to acts described in this section. A certified copy of the record of conviction shall be conclusive evidence of the conviction; or
- (12) is guilty of failing to comply with a provision of the Massage Therapy Practice Act or rules of the board adopted pursuant to that act and filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 2019, ch. 40, § 13.

### **61-12C-25. Criminal offender's character evaluation. (Repealed effective July 1, 2028.)**

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 Massage Therapy Practice Act.

**History:** Laws 1991, ch. 147, § 25.

### **61-12C-26. Protected actions. (Repealed effective July 1, 2028.)**

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.

### **61-12C-27. Offenses; criminal penalties. (Repealed effective July 1, 2028.)**

An individual who does any of the following is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978:

A. violates a provision of the Massage Therapy Practice Act or rules adopted pursuant to that act;

B. renders or attempts to render massage therapy services without the required current valid license issued by the board; or

C. advertises or uses a designation, diploma or certificate implying that the individual is a massage therapist or massage therapy school unless the individual holds a current valid license or registration issued by the board.

**History:** Laws 1993, ch. 173, § 20; 1999, ch. 240, § 19; 2019, ch. 40, § 11.

### **61-12C-28. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The massage therapy board is terminated on July 1, 2027 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 Massage Therapy Practice Act until July 1, 2028. Effective July 1, 2028, Chapter 61, Article 12C NMSA 1978 is repealed.

**History:** Laws 1993, ch. 173, § 21; 2000, ch. 4, § 9; 2005, ch. 208, § 8; 2015, ch. 119, § 13; 2021, ch. 50, § 9.

## **ARTICLE 12D**

### **Physical Therapy**

### **61-12D-1. Short title. (Repealed effective July 1, 2028.)**

This act [61-12D-1 through 61-12D-19 NMSA 1978] may be cited as the "Physical Therapy Act".

**History:** Laws 1997, ch. 89, § 1.

### **61-12D-2. Legislative purpose. (Repealed effective July 1, 2028.)**

The purpose of the Physical Therapy Act is to protect the public health, safety and welfare and provide for control, supervision, licensure and regulation of the practice of physical therapy. To carry out those purposes, only individuals who meet and maintain minimum standards of competence and conduct may engage in the practice of physical therapy. The practice of physical therapy is declared to affect the public interest and that act shall be liberally construed so as to accomplish the purpose stated in that act.

**History:** Laws 1997, ch. 89, § 2.

### **61-12D-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Physical Therapy Act:

A. "assistive personnel" means physical therapist assistants, physical therapy aides and other assistive personnel;

B. "board" means the physical therapy board;

C. "other assistive personnel" means trained or educated personnel other than physical therapist assistants or physical therapy aides who perform specific designated tasks related to physical therapy under the supervision of a physical therapist. At the discretion of the supervising physical therapist and if not prohibited by any other law, it may be appropriate for other assistive personnel to be identified by the title specific to their training or education;

D. "person" means an individual or other legal entity, excluding a governmental entity;

E. "physical therapist" means a person who is licensed in this state to practice physical therapy;

F. "physical therapist assistant" means a person who performs physical therapy procedures and related tasks pursuant to a plan of care written by the supervising physical therapist;

G. "physical therapy" means the care and services provided by or under the direction and supervision of a physical therapist;



H. "physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine physical therapy tasks;

I. "practice of physical therapy" means:

(1) examining and evaluating patients with mechanical, physiological and developmental impairments, functional limitations and disabilities or other health-related conditions in order to determine a physical therapy diagnosis, prognosis and planned therapeutic intervention;

(2) alleviating impairments and functional limitations by designing, implementing and modifying therapeutic interventions that include therapeutic exercise; functional training in self-care and community or work reintegration; manual therapy techniques, including soft tissue and joint mobilization and manipulation; therapeutic massage; assistive and adaptive devices and equipment; bronchopulmonary hygiene; debridement and wound care; physical agents; mechanical and electrotherapeutic modalities; and patient-related instruction;

(3) preventing injury, impairments, functional limitations and disability, including the promotion and maintenance of fitness, health and quality of life in all age populations; and

(4) engaging in consultation, testing, education and research; and

J. "restricted license" means a license to which restrictions or conditions as to scope of practice, place of practice, supervision of practice, duration of licensed status or type or condition of patient or client served are imposed by the board.

**History:** Laws 1997, ch. 89, § 3.

#### **61-12D-4. Board created. (Repealed effective July 1, 2028.)**

A. The "physical therapy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of five members appointed by the governor. Three members shall be physical therapists who are residents of the state, who possess unrestricted licenses to practice physical therapy and who have been practicing in New Mexico for no less than five years. Two members shall be citizens appointed from the public at large who are not associated with, or financially interested in, any health care profession.

B. Appointments shall be made for staggered terms of three years with no more than two terms ending at any one time. A member shall not serve for more than two successive three-year terms. Vacancies shall be filled for the unexpired term by appointment by the governor prior to the next scheduled board meeting. Board members shall continue to serve until a successor has been appointed and qualified.

C. The members shall elect a chairman and may elect other officers as they deem necessary.

D. The governor may remove a member of the board for misconduct, incompetence or neglect of duty.

E. Members may receive per diem and mileage pursuant to the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978], but shall receive no other compensation, perquisite or allowance.

F. There shall be no liability on the part of and no action for damages against any board member when the member is acting within the scope of his duties.

**History:** Laws 1997, ch. 89, § 4; 2003, ch. 408, § 17.

### **61-12D-5. Powers and duties. (Repealed effective July 1, 2028.)**

The board:

A. shall examine all applicants for licensure to practice physical therapy and issue licenses or permits to those who are duly qualified;

B. shall regulate the practice of physical therapy by interpreting and enforcing the provisions of the Physical Therapy Act;

C. may promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the Physical Therapy Act;

D. may meet as often as it deems necessary. A majority of the members constitutes a quorum for the transaction of business. The board shall keep an official record of all its proceedings;

E. may establish requirements for assessing continuing competency;

F. may collect fees;

G. may elect such officers as it deems necessary for the operations and obligations of the board. Terms of office shall be one year;

H. shall provide for the timely orientation and training of new professional and public appointees to the board, including training in licensing and disciplinary procedures and orientation to all statutes, rules, policies and procedures of the board;

I. may establish ad hoc committees and pay per diem and mileage to the members;

J. may enter into contracts;

K. may deny, suspend or revoke a license or take other disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

L. shall report final disciplinary action taken against a physical therapist or physical therapist assistant to the national disciplinary database;

M. shall publish at least annually final disciplinary action taken against any physical therapist or physical therapist assistant; and

N. may prescribe the forms of license certificates, application forms and such other documents as it deems necessary to carry out the provisions of the Physical Therapy Act.

**History:** Laws 1997, ch. 89, § 5; 2003, ch. 408, § 18; 2022, ch. 39, § 52.

### **61-12D-6. Board fund; created. (Repealed effective July 1, 2028.)**

The "physical therapy fund" is created in the state treasury. The fund shall consist of deposits into the fund and income from investment of the fund. Money in the fund at the end of any fiscal year shall not revert to the general fund. Money in the fund is appropriated to the board to pay its necessary expenses pursuant to appropriation by the legislature and a budget approved by the state board of finance. Disbursements from the fund shall be made only on warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the director or his authorized representative.

**History:** Laws 1997, ch. 89, § 6.

### **61-12D-7. Fees. (Repealed effective July 1, 2028.)**

A. Except as provided in Section 61-1-34 NMSA 1978, the board, by regulation, may charge the following fees:

(1) application for licensure as a physical therapist, not to exceed three hundred dollars (\$300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(2) application for licensure as a physical therapist assistant, not to exceed three hundred dollars (\$300); provided that an additional fee to cover the cost of any examinations provided by the board may be charged;

(3) annual renewal of license as a physical therapist, not to exceed one hundred fifty dollars (\$150);

(4) annual renewal of license as a physical therapist assistant, not to exceed one hundred dollars (\$100); and

(5) late fee, not to exceed five hundred dollars (\$500).

B. The board may charge reasonable administration and duplication fees.

**History:** Laws 1997, ch. 89, § 7; 2020, ch. 6, § 33.

### **61-12D-8. Practice of physical therapy; license required. (Repealed effective July 1, 2028.)**

A. No person shall practice or hold himself out to be engaging in the practice of physical therapy or designate himself as a physical therapist unless he is licensed as a physical therapist or is exempt from licensure as provided in the Physical Therapy Act.

B. No person shall designate himself or act as a physical therapist assistant unless he is licensed as a physical therapist assistant or is exempt from licensure as provided in the Physical Therapy Act.

C. A physical therapist shall refer persons under his care to the appropriate health care practitioner if the physical therapist has reasonable cause to believe symptoms or conditions are present that require services beyond his scope of practice or when physical therapy is contraindicated.

D. Physical therapists or physical therapist assistants shall adhere to the recognized standards of ethics of the physical therapy profession.

**History:** Laws 1997, ch. 89, § 8.

### **61-12D-9. Use of titles; restrictions. (Repealed effective July 1, 2028.)**

A. A physical therapist shall use the letters "PT" in connection with his name or place of business to denote licensure pursuant to the Physical Therapy Act.

B. It is unlawful for a person or his employees, agents or representatives to use in connection with his name or the name or activity of the business the words "physical therapy", "physical therapist", "physiotherapy", "physiotherapist", "registered physical therapist", the letters "PT", "LPT", "RPT", "MPT", "DPT" or any other words, abbreviations or insignia indicating or implying directly or indirectly that physical therapy is provided or supplied, including the billing of services labeled as physical therapy, unless the services are provided by or under the direction of a physical therapist.

C. A physical therapist assistant shall use the letters "PTA" in connection with his name to denote licensure.

D. No person shall use the title "physical therapist assistant" or use the letters "PTA" in connection with his name or any other words, abbreviations or insignia indicating or implying directly or indirectly that he is a physical therapist assistant unless he has graduated from an accredited physical therapist assistant education program approved by the board and has met the requirements of the Physical Therapy Act.

**History:** Laws 1997, ch. 89, § 9.

**61-12D-10. Licensure; qualifications; licensure from foreign schools; temporary licenses; reinstatement. (Repealed effective July 1, 2028.)**

A. An applicant for licensure as a physical therapist shall submit a completed application and have the following minimum qualifications:

- (1) be a graduate of an accredited physical therapy program approved by the board;
- (2) have successfully passed the national physical therapy examination approved by the board; and
- (3) have successfully passed the state jurisprudence examination.

B. An applicant for licensure as a physical therapist who has been educated outside the United States shall submit a completed application and meet the following minimum qualifications in addition to those required in Subsection A of this section:

- (1) provide satisfactory evidence that the applicant's education is substantially equivalent to the requirements of physical therapists educated in accredited educational programs in the United States, as determined by the board. If the board determines that a foreign-educated applicant's education is not substantially equivalent, it may require completion of additional course work before proceeding with the application process;
- (2) provide evidence that the applicant is a graduate of a school of training that is recognized by the foreign country's own ministry of education or similar institution;
- (3) provide written proof of authorization to practice as a physical therapist without limitations in the legal jurisdiction where the post-secondary institution from which the applicant has graduated is located;

(4) have the applicant's educational credentials evaluated by a board-approved credential evaluation agency; and

(5) participate in an interim supervised clinical practice period as may be prescribed by the board.

C. The board may issue an interim permit to a foreign-trained applicant who satisfies the board's requirements. An interim permit shall be issued for the purpose of participating in a supervised clinical practice period.

D. If the foreign-educated physical therapist applicant is a graduate of a college accredited by the commission on accreditation in physical therapy education, the board shall waive requirements of Paragraphs (1), (2), (4) and (5) of Subsection B of this section.

E. An applicant for licensure as a physical therapist assistant shall submit a completed application and meet the following minimum requirements:

(1) be a graduate of an accredited physical therapist assistant program approved by the board; and

(2) have successfully passed the national physical therapy examination approved by the board.

F. An applicant for licensure as a physical therapist or physical therapist assistant shall file a written application on forms provided by the board. A nonrefundable application fee and the cost of the examination shall accompany the completed written application.

G. Applicants who fail to pass the examinations shall be subject to requirements determined by board regulations prior to being approved by the board for subsequent testing.

H. The board or its designee shall issue an expedited license to a physical therapist or physical therapist assistant who has a valid unrestricted license from another United States licensing jurisdiction.

I. Prior to licensure, if prescribed by the board, the board or its designee may issue a temporary nonrenewable license to a physical therapist or physical therapist assistant who has completed the education and experience requirements of the Physical Therapy Act. The temporary license shall allow the applicant to practice physical therapy under the supervision of a licensed physical therapist until a permanent license is approved that shall include passing the national physical therapy examination.

J. The board or its designee may issue a temporary license to a physical therapist or physical therapist assistant performing physical therapy while teaching an

educational seminar who has met the requirements established by regulation of the board.

K. A physical therapist or physical therapist assistant licensed under the provisions of the Physical Therapy Act shall renew the physical therapist's or physical therapist assistant's license as specified in board rules. A person who fails to renew the person's license by the date of expiration shall not practice physical therapy as a physical therapist or physical therapist assistant in New Mexico.

L. Reinstatement of a lapsed license following a renewal deadline requires payment of a renewal fee and late fee.

M. Reinstatement of a physical therapist or physical therapist assistant license that has lapsed for more than three years, without evidence of continued practice in another state pursuant to a valid unrestricted license in that state, requires reapplication and payment of fees, as specified in board rules. The board shall promulgate rules establishing the qualifications for reinstatement of a lapsed license.

N. The board may establish, by rule, activities to periodically assess continuing competence to practice physical therapy.

O. A physical therapist shall refer a patient to the patient's licensed health care provider if:

(1) after thirty days of initiating physical therapy intervention, the patient has not made measurable or functional improvement with respect to the primary complaints of the patient; provided that the thirty-day limit shall not apply to:

(a) treatment provided for a condition related to a chronic, neuromuscular or developmental condition for a patient previously diagnosed by a licensed health care provider as having a chronic, neuromuscular or developmental condition;

(b) services provided for health promotion, wellness, fitness or maintenance purposes; or

(c) services provided to a patient who is participating in a program pursuant to an individual education plan or individual family service plan under federal law; or

(2) at any time, the physical therapist has reason to believe the patient has symptoms or conditions requiring treatment that is beyond the scope of practice of the physical therapist.

P. As used in this section, "licensed health care provider" means:

(1) a medical doctor or an osteopathic physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

(2) a chiropractic physician licensed pursuant to the Chiropractic Physician Practice Act [Chapter 61, Article 4 NMSA 1978];

(3) a podiatrist licensed pursuant to the Podiatry Act [Chapter 61, Article 8 NMSA 1978];

(4) a dentist licensed pursuant to the Dental Health Care Act [Chapter 61, Article 5A NMSA 1978];

(5) a doctor of oriental medicine licensed pursuant to the Acupuncture and Oriental Medicine Practice Act [Chapter 61, Article 14A NMSA 1978];

(6) a certified nurse practitioner licensed pursuant to the Nursing Practice Act [Chapter 61, Article 3 NMSA 1978];

(7) a certified nurse-midwife licensed pursuant to the Nursing Practice Act and registered with the public health division of the department of health as a certified nurse-midwife;

(8) a certified nurse specialist licensed pursuant to the Nursing Practice Act;  
or

(9) a physician assistant licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

**History:** Laws 1997, ch. 89, § 10; 2015, ch. 144, § 1; 2021, ch. 70, § 9; 2022, ch. 39, § 53.

### **61-12D-10.1. Expedited physical therapist and physical therapist assistant licensure. (Repealed effective July 1, 2028.)**

A. The board shall issue an expedited license to a person licensed as a physical therapist or physical therapist assistant in another state or the District of Columbia who pays the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days, process the application and issue the expedited license in accordance Section 61-1-31.1 NMSA 1978.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination.

C. The board shall determine licensing jurisdictions from which it will not accept applicants for expedited licensure. The board shall post the list of disapproved licensing jurisdictions on its website, including the specific reasons for disapproval.



**History:** Laws 2022, ch. 39, § 54.

### **61-12D-11. Exemptions. (Repealed effective July 1, 2028.)**

A. The following persons are exempt from licensure as physical therapists under the Physical Therapy Act:

(1) a person who is pursuing a course of study leading to a degree as a physical therapist in an entry-level education program approved by the board and is satisfying supervised clinical education requirements related to his physical therapy education; and

(2) a physical therapist practicing in the United States armed services, United States public health service or veterans administration as based on requirements under federal regulations for state licensure of health care providers.

B. Nothing in the Physical Therapy Act shall be construed as restricting persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed.

**History:** Laws 1997, ch. 89, § 11.

### **61-12D-12. Supervision. (Repealed effective July 1, 2028.)**

A. A physical therapist is responsible for patient care given by assistive personnel under his supervision. A physical therapist may delegate to assistive personnel and supervise selected acts, tasks or procedures that fall within the scope of physical therapy practice but do not exceed the assistive personnel's education or training.

B. A physical therapist assistant shall function under the supervision of a physical therapist as prescribed by rules of the board.

C. Physical therapy aides and other assistive personnel shall perform patient care activities under on-site supervision of a physical therapist. "On-site supervision" means the supervising physical therapist shall:

(1) be continuously on-site and present in the department or facility where the assistive personnel are performing services;

(2) be immediately available to assist the person being supervised in the services being performed; and

(3) maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel.

**History:** Laws 1997, ch. 89, § 12.

### **61-12D-13. Grounds for disciplinary action. (Repealed effective July 1, 2028.)**

The following conduct, acts or conditions constitute grounds for disciplinary action:

- A. practicing physical therapy in violation of the provisions of the Physical Therapy Act or rules adopted by the board;
- B. practicing or offering to practice beyond the scope of physical therapy practice as defined in the Physical Therapy Act;
- C. obtaining or attempting to obtain a license by fraud or misrepresentation;
- D. engaging in or permitting the performance of negligent care by a physical therapist or by assistive personnel working under the physical therapist's supervision, regardless of whether actual injury to the patient is established;
- E. engaging in the performance of negligent care by a physical therapist assistant, regardless of whether actual injury to the patient is established. This includes exceeding the authority to perform tasks pursuant to the plan of care written by the supervising physical therapist;
- F. having been convicted of a felony in the courts of this state or any other state, territory or country, subject to the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978]. Conviction includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence;
- G. practicing as a physical therapist or working as a physical therapist assistant when physical or mental abilities are impaired by the habitual or excessive use of controlled substances, other habit-forming drugs, chemicals or alcohol;
- H. having had a license revoked or suspended; other disciplinary action taken; or an application for licensure refused, revoked or suspended by the proper authorities of another state, territory or country based upon acts by the licensee similar to acts described in this section. A certified copy of the record of suspension, revocation or other disciplinary action taken by the state taking the disciplinary action is conclusive evidence;
- I. failing to adequately supervise assistive personnel;
- J. engaging in sexual misconduct, including engaging in or soliciting sexual relationships with a patient, whether consensual or nonconsensual, while a physical therapist- or physical therapist assistant-patient relationship exists; or sexual harassment of a patient that includes making sexual advances, requesting sexual favors

and engaging in other verbal conduct or physical contact of a sexual nature while a physical therapist- or physical therapist assistant-patient relationship exists;

K. directly or indirectly requesting, receiving or participating in the dividing, transferring, assigning, rebating or refunding of an unearned fee; or profiting by means of a credit or other valuable consideration such as an unearned commission, discount or gratuity in connection with the furnishing of physical therapy services. Nothing in this subsection prohibits the members of any regularly and properly organized business entity recognized by law and comprised of physical therapists from dividing fees received for professional services among themselves as they determine by contract necessary to defray their joint operating expense;

L. failing to adhere to the recognized standards of ethics of the physical therapy profession;

M. charging unreasonable or fraudulent fees for services performed or not performed;

N. making misleading, deceptive, untrue or fraudulent representations in the practice of physical therapy;

O. having been adjudged mentally incompetent by a court of competent jurisdiction;

P. aiding or abetting an unlicensed person to perform activities requiring a license;

Q. failing to report to the board any act or omission of a licensee, applicant or other person that violates the provisions of the Physical Therapy Act;

R. interfering with or refusing to cooperate in an investigation or disciplinary proceeding of the board, including misrepresentation of facts or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding;

S. failing to maintain patient confidentiality without prior written consent or unless otherwise provided by law;

T. impersonating another person licensed to practice physical therapy, permitting or allowing any person to use the physical therapist's or physical therapist assistant's license or practicing physical therapy under a false or assumed name;

U. failure to report to the board the surrendering of a license or other authorization to practice physical therapy in another state or jurisdiction or the surrendering of membership in any professional association following, in lieu of or 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;  
and

V. abandonment of patients.

**History:** Laws 1997, ch. 89, § 13.

### **61-12D-14. Consumer protection. (Repealed effective July 1, 2028.)**

A. Any person, including a licensee; corporation; insurance company; health care organization; health care facility; and state, federal or local governmental agency, shall report to the board any conviction, determination or finding that a licensee has committed an act that constitutes a violation of the Physical Therapy Act. The person is immune from civil liability for providing information in good faith to the board. Failure by a licensee to report a violation of the Physical Therapy Act shall constitute grounds for disciplinary action.

B. The board may permit an impaired physical therapist or assistive personnel to actively participate in a board-approved substance abuse treatment program under the following conditions:

(1) the board has evidence indicating that the licensee is an impaired professional;

(2) the licensee has not been convicted of a felony relating to a controlled substance in a court of law of the United States or any other territory or country;

(3) the impaired professional enters into a written agreement with the board and complies with all the terms of the agreement, including making satisfactory progress in the program and adhering to any limitations on his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the voluntary substance abuse program; and

(4) as part of the agreement established between the licensee and the board, the licensee shall sign a waiver allowing the substance abuse program to release information to the board if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety.

C. The public shall have access to information pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

D. The board shall conduct its meetings and disciplinary hearings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978].

E. Physical therapists and physical therapist assistants shall disclose in writing to patients if the referring health care practitioner is deriving direct or indirect compensation from the referral to physical therapy.

F. Physical therapists and physical therapist assistants shall disclose any financial interest in products they endorse and recommend to their patients.

G. The licensee has the responsibility to ensure that the patient has knowledge of freedom of choice in services and products.

H. The physical therapist or physical therapist assistant shall not promote an unnecessary device, treatment intervention or service for the financial gain of himself or another person.

I. The physical therapist or physical therapist assistant shall not provide treatment intervention unwarranted by the condition of the patient, nor shall he continue treatment beyond the point of reasonable benefit.

J. A person may submit a complaint regarding a physical therapist, physical therapist assistant or other person potentially in violation of the Physical Therapy Act. The board shall keep all information relating to the receiving and investigation of complaints filed against licensees confidential until the information becomes public record according to the Inspection of Public Records Act.

K. Each licensee shall display a copy of his license and current renewal verification in a location accessible to public view at his place of practice.

**History:** Laws 1997, ch. 89, § 14.

### **61-12D-15. Disciplinary actions; penalties. (Repealed effective July 1, 2028.)**

A. The board, upon satisfactory proof that any ground enumerated in Section 13 [61-12D-13 NMSA 1978] of the Physical Therapy Act has been violated, may take the following disciplinary action singly or in combination:

- (1) issue a letter of censure or reprimand;
- (2) issue a restricted license, including requiring the licensee to report regularly to the board on matters related to the grounds for the restricted license;
- (3) suspend a license for a period determined by the board;
- (4) revoke a license;
- (5) refuse to issue or renew a license;
- (6) impose fines in accordance with the Physical Therapy Act; and
- (7) accept a voluntary surrendering of a license.

B. Disciplinary actions of the board shall be taken in accordance with the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

C. The board may institute any legal proceedings necessary to effect compliance with the Physical Therapy Act, including:

- (1) receiving and investigating complaints filed against licensees;
- (2) conducting an investigation at any time and on its own initiative without receipt of a written complaint if the board has reason to believe that there may be a violation of the Physical Therapy Act;
- (3) issuing subpoenas and compelling the attendance of witnesses or the production of documents relative to the case; and
- (4) appointing hearing officers. Hearing officers shall prepare and submit to the board findings of fact, conclusions of law and an order that shall be reviewed and voted upon by the board.

**History:** Laws 1997, ch. 89, § 15.

**61-12D-16. Unlawful practice; criminal and civil penalties; injunctive relief. (Repealed effective July 1, 2028.)**

A. A person who engages in an activity requiring a license pursuant to the provisions of the Physical Therapy Act and who fails to obtain the required license; who violates any provision of the Physical Therapy Act; or who uses any word, title or representation to induce the false belief that the person is licensed to engage in the practice of physical therapy is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment of not more than one year, or both.

B. The board may apply for injunctive relief in any court of competent jurisdiction to enjoin a person from committing an act in violation of the Physical Therapy Act. Such injunction proceedings shall be in addition to and not in lieu of penalties and other remedies in the Physical Therapy Act.

C. The board may assess a civil penalty of up to one thousand dollars (\$1,000) for a first offense and up to five thousand dollars (\$5,000) for a second or subsequent offense against a licensee who aids or abets an unlicensed person to directly or indirectly evade the Physical Therapy Act or the applicable licensing laws; or permits his license to be used by an unlicensed person with the intent to evade the Physical Therapy Act or the applicable licensing laws, pursuant to the notice of hearing and appeal procedures pursuant to the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978]. The civil penalties provided in this subsection are in addition to other

disciplinary measures provided in the Physical Therapy Act. Civil penalties shall be deposited with the state treasurer to the credit of the current school fund.

**History:** Laws 1997, ch. 89, § 16.

### **61-12D-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The physical therapy board is terminated on July 1, 2027 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 Physical Therapy Act until July 1, 2028. Effective July 1, 2028, the Physical Therapy Act is repealed.

**History:** Laws 1997, ch. 89, § 17; 2003, ch. 428, § 13; 2009, ch. 96, § 10; 2015, ch. 119, § 14; 2021, ch. 50, § 10.

### **61-12D-18. Temporary provision; existing regulations; licensure under prior law. (Repealed effective July 1, 2028.)**

A. Existing rules regarding physical therapy services shall remain in effect until new rules are adopted pursuant to the provisions of the Physical Therapy Act.

B. A person licensed to perform physical therapy services pursuant to the provisions of prior law, whose license is valid on July 1, 1997, is entitled to renew his license pursuant to the provisions of the Physical Therapy Act.

**History:** Laws 1997, ch. 89, § 18.

## **ARTICLE 12E**

### **Naprapathic Practice (Repealed.)**

#### **61-12E-1. Repealed.**

**History:** Laws 2003, ch. 60, § 1; repealed by Laws 2011, ch. 31, § 16.

### **61-12D-19. Temporary provision; board members to continue. (Repealed effective July 1, 2028.)**

On the effective date of this act, members serving on the physical therapists' licensing board shall continue to serve on the physical therapy board until their terms expire; thereafter, the governor shall appoint board members as provided in the Physical Therapy Act.

**History:** Laws 1997, ch. 89, § 20.

### **61-12E-2. Repealed.**

**History:** Laws 2003, ch. 60, § 2; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-3. Repealed.**

**History:** Laws 2003, ch. 60, § 3; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-4. Repealed.**

**History:** Laws 2003, ch. 60, § 4; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-5. Repealed.**

**History:** Laws 2003, ch. 60, § 5; 2009, ch. 176, § 1; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-6. Repealed.**

**History:** Laws 2003, ch. 60, § 6; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-7. Repealed.**

**History:** Laws 2003, ch. 60, § 7; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-8. Repealed.**

**History:** Laws 2003, ch. 60, § 8; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-9. Repealed.**

**History:** Laws 2003, ch. 60, § 9; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-10. Repealed.**

**History:** Laws 2003, ch. 60, § 10; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-11. Repealed.**

**History:** Laws 2003, ch. 60, § 11; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-12. Repealed.**

**History:** Laws 2003, ch. 60, § 12; repealed by Laws 2011, ch. 31, § 16.



### **61-12E-13. Repealed.**

**History:** Laws 2003, ch. 60, § 13; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-14. Repealed.**

**History:** Laws 2003, ch. 60, § 14; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-15. Repealed.**

**History:** Laws 2003, ch. 60, § 15; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-16. Repealed.**

**History:** Laws 2003, ch. 60, § 16; repealed by Laws 2011, ch. 31, § 16.

### **61-12E-17. Repealed.**

**History:** Laws 2003, ch. 60, § 17; repealed by Laws 2011, ch. 31, § 16.

## **ARTICLE 12F**

### **Naprapathic Practice**

#### **61-12F-1. Short title.**

Sections 4 through 14 [61-12F-1 to 61-12F-11 NMSA 1978] of this act may be cited as the "Naprapathic Practice Act".

**History:** Laws 2011, ch. 31, § 4.

#### **61-12F-2. Definitions.**

As used in the Naprapathic Practice Act:

- A. "board" means the New Mexico medical board; and
- B. "licensee" means a person licensed by the board to practice naprapathy.

**History:** Laws 2011, ch. 31, § 5.

#### **61-12F-3. Naprapathic task force created.**

A. The "naprapathic task force" is created under the direction of the board. The naprapathic task force shall advise the board regarding licensure of naprapaths,

approval of naprapathy curricula and any other matters that are necessary to ensure the training and licensure of naprapaths.

B. The naprapathic task force shall be composed of no fewer than two licensees, appointed by the board, who are residents of the state. Vacancies on the naprapathic task force shall be filled by appointment by the board.

C. The naprapathic task force shall develop guidelines for the board to consider in regard to:

(1) regulating the licensure of naprapaths and the practice of naprapathy and establishing minimum qualifications and hours of clinical experience required for licensure as a naprapath;

(2) prescribing the manner in which records of examinations and treatments shall be kept and maintained;

(3) providing standards for professional responsibility and conduct;

(4) identifying disciplinary actions and circumstances that require disciplinary action;

(5) developing a means to provide information to all licensees in the state;

(6) providing for the investigation of complaints against licensees or persons holding themselves out as practicing naprapathy in the state;

(7) providing for the publishing of information for the public about licensees and the practice of naprapathy in the state;

(8) providing for an orderly process for reinstatement of a license;

(9) establishing criteria for acceptance of naprapathy credentials or licensure from another jurisdiction;

(10) providing criteria for advertising or promotional materials; and

(11) any other matter necessary to implement the Naprapathic Practice Act.

**History:** Laws 2011, ch. 31, § 6.

#### **61-12F-4. Practice of naprapathy; description.**

A. Naprapathic practice includes the diagnosis and treatment of persons with connective tissue disorders through the use of special techniques, review of case history, examination and palpation or treatment of a person by the use of connective

tissue manipulation, exercise, postural counseling, nutritional counseling and the application or use of heat, cold, light, water, radiant energy, electricity, sound and air and assistive devices for the purpose of preventing, correcting or alleviating a physical disability. Naprapathic practice does not include surgery, acupuncture, Chinese herbal medicine, pharmacology or invasive diagnostic testing.

B. A naprapath treats contractures, muscle spasms, inflammations, scar tissue formation, adhesions, lesions, laxity, hypotonicity, rigidity, structural imbalances, bruises, contusions, muscular atrophy and partial separation of connective tissue fibers.

C. Naprapathic practice may require the:

- (1) performance of specialized tests and measurements;
- (2) administration of specialized treatment procedures; and
- (3) establishment and modification of naprapathic treatment programs.

D. A naprapath may advise, supervise or teach another in the performance of naprapathy.

E. A naprapath shall refer to a licensed physician any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the naprapath.

**History:** Laws 2011, ch. 31, § 7.

### **61-12F-5. License required; exceptions; registration.**

A. A person shall not practice naprapathy in the state without a valid license issued by the board.

B. A person who is a naprapath practitioner employed by a federal government facility or agency in New Mexico is not required to be licensed pursuant to the Naprapathic Practice Act.

C. A person who is enrolled in a program approved by the board to provide training for naprapaths or a person receiving continuing educational training to practice naprapathy is not required to be licensed or registered with the board.

D. A person teaching, advising or supervising students of naprapathy or teaching continuing education for naprapaths shall not practice naprapathy in New Mexico without a license by the board unless:

- (1) that person is in the state for less than one month;

(2) that person is registered with the board as a teacher, advisor or supervisor; and

(3) the practice occurs in the course of that person's duties as a teacher, advisor or supervisor.

E. Nothing in the Naprapathic Practice Act shall be construed to prevent a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, from rendering services within the scope of the person's license or a state rule adopted to regulate the profession; provided that the person does not make a representation as being a naprapath.

**History:** Laws 2011, ch. 31, § 8.

### **61-12F-6. Requirements for licensing.**

A. The board shall grant a license to practice naprapathy to a person who:

(1) is at least twenty-one years of age;

(2) has submitted to the board:

(a) a completed application for licensing on a form provided by the board;

(b) required documentation as required by the board; and

(c) the required fees;

(3) has graduated from a two-year college-level program or an equivalent program approved by the board;

(4) has completed, in not less than three years, a four-year academic curriculum in naprapathy that is approved by the board, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical naprapathic science, theory and application;

(5) has passed the national board of naprapathic examiners examination or holds a valid license as a naprapath in another jurisdiction; and

(6) has met all other requirements of the board.

B. The board may require a personal interview with an applicant to evaluate that person's qualifications for a license.

**History:** Laws 2011, ch. 31, § 9.

### **61-12F-7. Designation as naprapath; display of license.**

A. A licensee is designated a "naprapath" and may use that title in connection with the practice of the profession of naprapathy.

B. A licensee may use the title "doctor of naprapathy" or the letters "D.N." following the licensee's name to indicate the licensee's professional status.

C. A licensee shall display the licensee's license and diplomas in the licensee's place of business in a location clearly visible to the licensee's patients.

**History:** Laws 2011, ch. 31, § 10.

### **61-12F-8. License renewal.**

A. The board shall review licenses for renewal annually, and all licenses to be renewed shall be renewed on July 1. Applicants for license renewal shall submit:

- (1) a renewal application on a form provided by the board; and
- (2) except as provided in Section 61-1-34 NMSA 1978, a license renewal fee.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

**History:** Laws 2011, ch. 31, § 11; 2020, ch. 6, § 34.

### **61-12F-9. License fees.**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable administrative and licensing fees, but an individual fee shall not exceed one thousand dollars (\$1,000).

**History:** Laws 2011, ch. 31, § 12; 2020, ch. 6, § 35.

### **61-12F-10. Offenses; criminal penalties.**

A person who practices naprapathy without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 2011, ch. 31, § 13.

### **61-12F-11. Violation; civil penalties.**

The board may fine any person who intentionally violates the provisions of the Naprapathic Practice Act up to one thousand dollars (\$1,000) or may suspend or revoke the licensee's authority to practice naprapathy in New Mexico.

**History:** Laws 2011, ch. 31, § 14.

## **ARTICLE 12G**

### **Naturopathic Doctors' Practice**

#### **61-12G-1. Short title.**

Sections 1 through 13 [61-12G-1 through 61-12G-13 NMSA 1978] of this act may be cited as the "Naturopathic Doctors' Practice Act".

**History:** Laws 2019, ch. 244, § 1.

#### **61-12G-2. Definitions.**

As used in the Naturopathic Doctors' Practice Act:

A. "approved naturopathic medical educational program" means an educational program that the board has approved as meeting the requirements of Section 4 [61-12G-4 NMSA 1978] of the Naturopathic Doctors' Practice Act that prepares naturopathic doctors for the practice of naturopathic medicine;

B. "association" means an entity that is approved by the American association of naturopathic physicians, which entity represents the interests of naturopathic doctors in the state;

C. "biological product" means any of the following that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

- (1) a virus;
- (2) a therapeutic serum;
- (3) a toxin;
- (4) an antitoxin;
- (5) a vaccine;
- (6) blood;
- (7) a blood component or derivative;

- (8) an allergenic product;
- (9) a protein, except any chemically synthesized polypeptide;
- (10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or
- (11) arsphenamine, a derivative of arsphenamine or any other trivalent organic arsenic compound;

D. "board" means the New Mexico medical board established pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978];

E. "clinical laboratory procedure" means the use of venipuncture consistent with naturopathic medical practice, commonly used diagnostic modalities consistent with naturopathic practice, the recording of a patient's health history, physical examination, ordering and interpretation of radiographic diagnostics and other standard imaging and examination of body orifices, excluding endoscopy and colonoscopy. "Clinical laboratory procedure" includes the practice of obtaining samples of human tissues, except surgical excision beyond surgical excision that is authorized as a minor office procedure;

F. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

G. "council" means the naturopathic doctors' advisory council;

H. "dangerous drug" has the same meaning as set forth in Section 26-1-2 NMSA 1978;

I. "drug" has the same meaning as set forth in Section 26-1-2 NMSA 1978;

J. "homeopathic medicine" means a system of medicine based on the use of infinitesimal doses of substances capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopoeia of the United States;

K. "hygiene" means the use of preventive techniques, including personal hygiene, asepsis, public health and safety;

L. "laboratory examination" means:

- (1) phlebotomy;
- (2) a clinical laboratory procedure;

- (3) an official examination;
- (4) a physiological function test; or
- (5) a screening or test that the board has authorized naturopathic doctors to perform, when indicated, which results are interpreted by the naturopathic doctor;

M. "legend drug" means a drug that is an unscheduled dangerous drug;

N. "license" means a license issued by the board to an individual pursuant to the Naturopathic Doctors' Practice Act and board rules authorizing that individual to practice naturopathic medicine in the state;

O. "licensee" means a naturopathic doctor licensed by the board to practice naturopathic medicine in the state;

P. "minor office procedure" means minor surgical care and procedures, including:

- (1) surgical care incidental to superficial laceration, lesion or abrasion, excluding surgical care to treat a lesion suspected of malignancy;
- (2) the removal of foreign bodies located in superficial structures, excluding the globe of the eye;
- (3) trigger point therapy;
- (4) dermal stimulation;
- (5) allergy testing and treatment; and
- (6) the use of antiseptics and topical or local anesthetics;

Q. "naturopathic doctor" means an individual licensed pursuant to the Naturopathic Doctors' Practice Act as a naturopathic doctor to practice naturopathic medicine in the state;

R. "naturopathic medicine" means:

- (1) a system of health care for the prevention, diagnosis and treatment of human health conditions, injury and disease;
- (2) the promotion or restoration of health; and
- (3) the support and stimulation of a patient's inherent self-healing processes through patient education and the use of naturopathic therapies and therapeutic substances;



S. "naturopathic physical medicine" means the use of one or more of the following physical agents in a manner consistent with naturopathic medical practice on a part or the whole of the body, by hand or by mechanical means, in the resolution of a human ailment or conditions:

- (1) air;
- (2) water;
- (3) heat;
- (4) cold;
- (5) sound;
- (6) light;
- (7) electromagnetism;
- (8) colon hydrotherapy;
- (9) soft tissue therapy;
- (10) joint mobilization;
- (11) therapeutic exercise; or
- (12) naturopathic manipulation;

T. "naturopathic therapy" means the use of:

- (1) naturopathic physical medicine;
- (2) suggestion;
- (3) hygiene;
- (4) a therapeutic substance;
- (5) a dangerous drug;
- (6) nutrition and food science;
- (7) homeopathic medicine;
- (8) a clinical laboratory procedure; or

(9) a minor office procedure;

U. "nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of food, water, herbs, roots, bark or natural food elements;

V. "prescription" has the same meaning as set forth in Section 26-1-2 NMSA 1978;

W. "professional examination" means a competency- based national naturopathic doctor licensing examination administered by the North American board of naturopathic examiners or its successor agency, which board has been nationally recognized to administer a naturopathic examination that represents federal standards of education and training;

X. "suggestion" means a technique using:

- (1) biofeedback;
- (2) hypnosis;
- (3) health education; or
- (4) health counseling; and

Y. "therapeutic substance" means any of the following exemplified in a standard naturopathic medical text, journal or pharmacopeia:

- (1) a vitamin;
- (2) a mineral;
- (3) a nutraceutical;
- (4) a botanical medicine;
- (5) oxygen;
- (6) a homeopathic medicine;
- (7) a hormone;
- (8) a hormonal or pharmaceutical contraceptive device; or
- (9) other physiologic substance.

**History:** Laws 2019, ch. 244, § 2.

### **61-12G-3. Qualifications for licensure.**

The board shall license an applicant who:

A. is of good moral character, in accordance with standards established by rules of the board;

B. submits, in accordance with rules of the board, the following items to the board:

(1) an application for licensure designed and approved by the board and submitted in accordance with rules of the board;

(2) except as provided in Section 61-1-34 NMSA 1978, an application fee submitted in an amount and manner established by rules of the board;

(3) evidence that the applicant has graduated from an approved naturopathic medical educational program;

(4) evidence that the applicant has passed a professional examination;

(5) evidence that the applicant has passed a state jurisprudence examination that meets standards established in rules of the board; and

(6) evidence of professional liability insurance with policy limits not less than prescribed by the board;

C. is determined by the board, upon recommendation by the council, to be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation; and

D. has not had a license to practice naturopathic medicine or other health care license registration or certificate refused, revoked or suspended by any other jurisdiction for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine unless that license, registration or certification has been restored to good standing by that jurisdiction.

**History:** Laws 2019, ch. 244, § 3; 2020, ch. 6, § 36.

### **61-12G-4. Approved naturopathic medical educational program.**

With the advice and consent of the council, the board shall establish by rule guidelines for an approved naturopathic medical educational program, which guidelines shall meet the following requirements and the board's specifications for the education of naturopathic doctors. The approved naturopathic medical educational program shall:

A. offer graduate-level, full-time didactic and supervised clinical training;

B. be accredited, or shall have achieved candidacy status for accreditation, by the council on naturopathic medical education or an equivalent federally recognized accrediting body for naturopathic medical programs that is also recognized by the board; and

C. be conducted by an institution, or a division of an institution of higher education, that:

(1) is accredited or is a candidate for accreditation by a regional or national institutional accrediting agency recognized by the United States secretary of education or a diploma-granting, degree-equivalent college or university; or

(2) meets equivalent standards for recognition of accreditation established in rules of the board for medical education programs offered in Canada.

**History:** Laws 2019, ch. 244, § 4.

### **61-12G-5. Display of license.**

A licensee shall display the licensee's license in the licensee's place of business in a location clearly visible to the licensee's patients and shall also display evidence of the licensee having completed an approved naturopathic medical educational program.

**History:** Laws 2019, ch. 244, § 5.

### **61-12G-6. Scope of practice.**

A. A licensee may practice naturopathic medicine only to provide primary care, as "primary care" is defined in rules of the board, as follows:

(1) in collaboration with a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] ; and

(2) in alignment with naturopathic medical education to:

(a) perform physical examinations;

(b) order laboratory examinations;

(c) order diagnostic imaging studies;

(d) interpret the results of laboratory examinations for diagnostic purposes;

(e) order and, based on a radiologist's report, take action on diagnostic imaging studies in a manner consistent with naturopathic training;

(f) prescribe, administer, dispense and order the class of drugs that excludes the natural derivatives of opium, which are morphine and codeine, and related synthetic and semi-synthetic compounds that act upon opioid receptors;

(g) after passing a pharmacy examination authorized by rules of the board, prescribe, administer, dispense and order: 1) all legend drugs; and 2) testosterone products and all drugs within Schedules III, IV and V of the Controlled Substances Act, excluding all benzodiazapines, opioids and opioid derivatives;

(h) administer intramuscular, intravenous, subcutaneous, intra-articular and intradermal injections of substances appropriate to naturopathic medicine;

(i) use routes of administration that include oral, nasal, auricular, ocular, rectal, vaginal, transdermal, intradermal, subcutaneous, intravenous, intra-articular and intramuscular consistent with the education and training of a naturopathic doctor;

(j) perform naturopathic physical medicine;

(k) employ the use of naturopathic therapy; and

(l) use therapeutic devices, barrier contraception, intrauterine devices, hormonal and pharmaceutical contraception and durable medical equipment.

B. As used in this section, "collaboration" means the process by which a licensed physician and a naturopathic doctor jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered.

**History:** Laws 2019, ch. 244, § 6; 2021, ch. 54, § 30.

### **61-12G-7. Referral requirement.**

A licensee shall refer to a physician authorized to practice in the state under the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the licensee.

**History:** Laws 2019, ch. 244, § 7; 2021, ch. 54, § 31.

### **61-12G-8. Prohibitions.**

A licensee shall not:

A. provide care outside of the scope of primary care, as that term is defined in rules of the board;

B. perform surgery outside of the scope of minor office procedures permitted in the employment of naturopathic therapy;

C. use general or spinal anesthetics;

D. administer ionizing radioactive substances for therapeutic purposes;

E. perform a surgical procedure using a laser device;

F. perform a surgical procedure involving any of the following areas of the body that extend beyond superficial tissue:

(1) eye;

(2) ear;

(3) tendon;

(4) nerves;

(5) veins; or

(6) artery;

G. perform a surgical abortion;

H. treat any lesion suspected of malignancy or requiring surgical removal; or

I. perform acupuncture.

**History:** Laws 2019, ch. 244, § 8.

### **61-12G-9. Exemptions.**

Nothing in the Naturopathic Doctors' Practice Act shall be construed to prohibit or to restrict:

A. the practice of a health care profession by an individual who is licensed, certified or registered under other laws of this state and who is performing services within the individual's authorized scope of practice;

B. the practice of naturopathic medicine by a student enrolled in an approved naturopathic medical educational program; provided that the practice of naturopathic medicine by a student is performed pursuant to a course of instruction or an assignment from an instructor and under the supervision of the instructor who is a licensee or a duly licensed professional in the instructed field;

C. any person that sells a vitamin or herb from providing information about the vitamin or herb;

D. the practice of naturopathic medicine by persons who are licensed to practice in any other state or district in the United States and who enter this state to consult with a naturopathic doctor of this state; provided that the consultation is limited to examination, recommendation or testimony in litigation; or

E. any person or practitioner who is not licensed as a naturopathic doctor from recommending ayurvedic medicine, herbal remedies, nutritional advice, homeopathy or other therapy that is within the scope of practice of the Unlicensed Health Care Practice Act [61-35-1 through 61-35-8 NMSA 1978]; provided that the person or practitioner shall not:

(1) use a title protected pursuant to Section 10 [61-12G-10 NMSA 1978] of the Naturopathic Doctors' Practice Act;

(2) represent or assume the character or appearance of a licensee; or

(3) otherwise use a name, title or other designation that indicates or implies that the person is a licensee.

**History:** Laws 2019, ch. 244, § 9.

### **61-12G-10. Protected titles.**

A. A licensee shall use the title "naturopathic doctor" and the recognized abbreviation "N.D.".

B. A licensee has the exclusive right to use the following terms in reference to the licensee's self:

(1) "naturopathic doctor";

(2) "doctor of naturopathic medicine";

(3) "doctor of naturopathy";

(4) "N.D.";

- (5) "ND";
- (6) "NMD"; and
- (7) "N.M.D."

C. An individual represents the individual's self to be a naturopathic doctor when the individual uses or adopts any of the following terms in reference to the individual's self:

- (1) "naturopathic doctor";
- (2) "doctor of naturopathic medicine";
- (3) "doctor of naturopathy";
- (4) "N.D.";
- (5) "ND";
- (6) "NMD"; and
- (7) "N.M.D."

D. An individual shall not represent the individual's self to the public as a naturopathic doctor, a doctor of naturopathic medicine or a doctor of naturopathy, or as being otherwise authorized to practice naturopathic medicine in the state, unless the individual is a licensee.

E. A licensee shall not represent the licensee's self as a "naturopathic physician"; provided that representing that the licensee is a member of an organization that uses the term "naturopathic physicians" in the organization's name shall not be construed to be a violation of the provisions of this subsection.

**History:** Laws 2019, ch. 244, § 10.

### **61-12G-11. Naturopathic doctors' advisory council created.**

A. The "naturopathic doctors' advisory council" is created as a council to the board under the direction of the board. The council shall advise the board regarding:

- (1) licensure of naturopathic doctors; and
- (2) the board's approval of matters relating to the training and licensure of naturopathic doctors.



B. By July 1, 2019, the board shall appoint an initial council of one member for a term of four years and two members for terms of three years each. The initial council shall consist of three voting members as follows:

(1) either:

(a) two members of an association; or

(b) one member of an association and one member who is a physician licensed pursuant to the Medical Practice Act who has worked collaboratively with a member of an association for at least two years prior to being appointed to the council; and

(2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

C. As the terms of the initial council members expire, the board shall appoint successors for terms of four years each as follows:

(1) either:

(a) two licensees; or

(b) one licensee and one member who is a physician licensed pursuant to the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] who has worked collaboratively with a member of the association for at least two years prior to being appointed to the council; and

(2) one member who is a resident of the state who is not, and never has been, a licensed health care practitioner and who does not have an interest in naturopathic education, naturopathic medicine or naturopathic business or practice.

D. By August 1, 2019, the board shall call the first meeting of the council, at which meeting members shall elect a chair. By August 1, 2020 and at least once during each calendar quarter thereafter, the council shall hold a meeting at the call of the chair. The council may hold additional meetings at the call of the chair or at the written request of any two members of the council.

E. Vacancies on the council shall be filled by the board from a list of not fewer than three candidates provided by the association.

F. A majority of the council membership shall constitute a quorum.

G. At the discretion of the board, members of the council may receive per diem and mileage reimbursement pursuant to 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:** Laws 2019, ch. 244, § 11.

## **61-12G-12. Council duties.**

The council shall develop guidelines for the board to consider for rulemaking with regard to:

- A. regulating the licensure of naturopathic doctors and determining the hours of continuing education units required for maintaining licensure as a naturopathic doctor;
- B. prescribing the manner in which records of examinations and treatments shall be kept and maintained;
- C. establishing standards for professional responsibility and conduct;
- D. identifying disciplinary actions and circumstances that require disciplinary action;
- E. developing a means to provide information to all licensees in the state;
- F. providing for the investigation of complaints against licensees or persons holding themselves out as naturopathic doctors in the state;
- G. providing for the publication of information for the public about licensees and the practice of naturopathic medicine in the state;
- H. providing for an orderly process for reinstatement of a license;
- I. establishing criteria for advertising or promotional materials;
- J. establishing by rule, in accordance with the Naturopathic Doctors' Practice Act:
  - (1) continuing education hours and content;
  - (2) standards for the state jurisprudence examination;
  - (3) schedules for providing licensing examinations and for the issuance of examination results;
  - (4) procedures and standards for reviewing licensing examination scores; and
  - (5) procedures for reviewing transcripts demonstrating completion of the approved naturopathic medical educational program;

K. the requirements for issuance and renewal of licenses; and

L. any other matter necessary to implement the Naturopathic Doctors' Practice Act.

**History:** Laws 2019, ch. 244, § 12.

### **61-12G-13. License expiration; renewal; denial; revocation; continuing education.**

A. A license issued or renewed pursuant to the Naturopathic Doctors' Practice Act shall expire three years following its issuance or last renewal.

B. The board may renew the license of any licensee who, upon the expiration of the licensee's license:

(1) has submitted an application for renewal;

(2) has paid the renewal fee established by rules of the board;

(3) meets the qualifications for licensure set forth in the Naturopathic Doctors' Practice Act and rules of the board; and

(4) meets the continuing education requirements established by the board.

C. The board shall grant applicants and licensees for whom the board intends to refuse to issue or renew a license, or whose license the board proposes to revoke or suspend, opportunity for a hearing in accordance with the procedures provided in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978].

**History:** Laws 2019, ch. 244, § 13.

## **ARTICLE 13**

### **Nursing Home Administrators**

#### **61-13-1. Short title. (Repealed effective July 1, 2026.)**

Chapter 61, Article 13 NMSA 1978 may be cited as the "Nursing Home Administrators Act".

**History:** 1953 Comp., § 67-37-1, enacted by Laws 1970, ch. 61, § 1; 2013, ch. 166, § 1.

#### **61-13-2. Definitions. (Repealed effective July 1, 2026.)**

As used in the Nursing Home Administrators Act:

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.

### **61-13-3. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)**

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.

**History:** 1953 Comp., § 67-37-2.1, enacted by Laws 1974, ch. 78, § 35.

### **61-13-4. Board of nursing home administrators. (Repealed effective July 1, 2026.)**

A. There is created the "board of nursing home administrators". The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor to three-year terms staggered so that no more than three terms expire in any one year. Three members of the board shall be nursing home administrators licensed and practicing under the Nursing Home Administrators Act for a minimum of five years and who have never been disciplined by the board, one member shall be a practicing physician licensed in this state and three members shall be from the public who have no significant financial interest, direct or indirect, in the nursing home industry.

B. Within ninety days of a vacancy, the governor shall appoint a person 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 a 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; 1997, ch. 267, § 1; 2003, ch. 408, § 19.

## **61-13-4.1. Repealed.**

## **61-13-5. Organization of board; meetings. (Repealed effective July 1, 2026.)**

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.

## **61-13-6. Duties of the board. (Repealed effective July 1, 2026.)**

The board shall:

A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to adopt and enforce standards for licensing nursing home administrators and to carry into effect the provisions of the Nursing Home Administrators Act;

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 [Chapter 61, Article 1 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; and

E. 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; 2003, ch. 408, § 20; 2022, ch. 39, § 55.

### **61-13-7. Compensation of board members. (Repealed effective July 1, 2026.)**

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.

### **61-13-8. Licensure of nursing home administrators. (Repealed effective July 1, 2026.)**

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, including a criminal records check satisfactory to the board that the applicant:

A. 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;

B. 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 prescribes in its rules;

C. demonstrates knowledge of state rules governing the operation of nursing homes in a manner the board prescribes in its rules; and

D. has successfully completed an internship or administrator-in-training program as prescribed by the board in its rules.

**History:** 1953 Comp., § 67-37-7, enacted by Laws 1970, ch. 61, § 7; 1973, ch. 68, § 1; 1993, ch. 245, § 4; 1997, ch. 267, § 2; 2022, ch. 39, § 56.

### **61-13-9. Educational programs. (Repealed effective July 1, 2026.)**

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.

**61-13-10. Licensure by examinations by board. (Repealed effective July 1, 2026.)**

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.

**61-13-11. Expedited licensure without examination. (Repealed effective July 1, 2026.)**

A. The board shall issue an expedited license without examination to an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept applicants for expedited licensure and determine the foreign countries from which it will accept applicants for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1953 Comp., § 67-37-10, enacted by Laws 1970, ch. 61, § 10; 1993, ch. 245, § 7; 1997, ch. 267, § 3; 2022, ch. 39, § 57.

### **61-13-12. License and renewal fees; board expenditures. (Repealed effective July 1, 2026.)**

A. Except as provided in Section 61-1-34 NMSA 1978, 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. Any 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; 2020, ch. 6, § 37.

### **61-13-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2026.)**

The board may refuse to issue or renew, or may suspend or revoke, any license in accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], on the grounds that the licensee or applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure or renew 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 or any rules or regulations of the board adopted and filed in accordance with the State Rules Act [Chapter 14, Article 4 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 conduct that substantially deviates from reasonable standards of acceptable practice of nursing home administration, 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; 1997, ch. 267, § 4.

### **61-13-14. Penalties. (Repealed effective July 1, 2026.)**

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;

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.

### **61-13-15. Injunctive proceedings. (Repealed effective July 1, 2026.)**

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.

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.

### **61-13-16. Exemptions. (Repealed effective July 1, 2026.)**

The Nursing Home Administrators Act does not apply to boardinghouses or to sheltered-care facilities.

**History:** 1953 Comp., § 67-37-15, enacted by Laws 1970, ch. 61, § 15.

### **61-13-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)**

The board of nursing home administrators is terminated on July 1, 2025 pursuant to the Sunset Act [12-9-11 through 12-9-21 NMSA 1978]. The board shall continue to operate according to the provisions of Chapter 61, Article 13 NMSA 1978 until July 1, 2026. Effective July 1, 2026, Chapter 61, Article 13 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; 1997, ch. 46, § 15; 2005, ch. 208, § 9; 2013, ch. 166, § 2; 2019, ch. 168, § 1.

## **ARTICLE 14**

### **Veterinary Medicine**

### **61-14-1. Short title. (Repealed effective July 1, 2030.)**

Chapter 61, Article 14 NMSA 1978 may be cited as the "Veterinary Practice Act".

**History:** 1953 Comp., § 67-11-12, enacted by Laws 1967, ch. 62, § 1; 2011, ch. 30, § 2.

### **61-14-2. Definitions. (Repealed effective July 1, 2030.)**

As used in the Veterinary Practice Act:

A. "animal" means any animal other than man;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a small animal impound facility; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

D. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a small animal impound facility, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

E. "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;

F. "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;

G. "licensed veterinarian" means a person licensed to practice veterinary medicine in this state;

H. "veterinary school" means any veterinary college or any division of a university or college that is approved for accreditation by the American veterinary medical association;

I. "board" means the board of veterinary medicine;

J. "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;

K. "committee" means the veterinary technician examining committee;

L. "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;

M. "sheltering committee" means the animal sheltering committee;

N. "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

O. "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; 2017, ch. 44, § 1.

### **61-14-3. Criminal offender's character evaluation. (Repealed effective July 1, 2030.)**

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.

### **61-14-4. Board created; terms; compensation; finance. (Repealed effective July 1, 2030.)**

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 New Mexico. Veterinary members shall 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, 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 pursuant to provisions of the Veterinary Practice Act. The board shall deposit all fees received pursuant to provisions of 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, after proper notice, 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; 1995, ch. 154, § 1.

#### **61-14-4.1. Protected actions; communication. (Repealed effective July 1, 2030.)**

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

B. All written and oral communications made by any person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. 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. The board shall make available to interested members of the public information about a disciplinary action taken by the board pursuant to Section 61-14-13 NMSA 1978, including the name of the licensee, the nature of the violation of the Veterinary Practice Act and the disciplinary action taken.

D. 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:** Laws 1999, ch. 243, § 6.

#### **61-14-5. Board; duties. (Repealed effective July 1, 2030.)**

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 in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish 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 in accordance with the Uniform Licensing Act;

E. employ personnel necessary to carry out its duties;

F. in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], promulgate and enforce rules 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 rules 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;

I. promulgate rules establishing continuing education requirements as a condition for license renewal;

J. regulate the operation of veterinary facilities, including:

(1) establishing requirements for operation of a veterinary facility in accordance with recognized standards for the practice of veterinary medicine;

(2) issuing permits to qualified veterinary facilities; and

(3) promulgating standards for inspection of veterinary facilities.

For purposes of this subsection, "veterinary facility" means a building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided;

K. perform the duties imposed on the board pursuant to the Animal Sheltering Act [Chapter 77, Article 1B NMSA 1978]; and

L. establish a five-member sheltering committee.

**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; 1995, ch. 154, § 2; 1999, ch. 243, § 1; 2017, ch. 44, § 2; 2022, ch. 39, § 58.

### **61-14-5.1. Impaired veterinarian. (Repealed effective July 1, 2030.)**

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.

**61-14-6. Veterinary technician examining committee; membership; terms; compensation. (Repealed effective July 1, 2030.)**

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.

**61-14-7. Duties of the veterinary technician examining committee. (Repealed effective July 1, 2030.)**

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.

### **61-14-7.1. Animal sheltering committee; duties. (Repealed effective July 1, 2030.)**

The sheltering committee shall:

A. develop a voluntary statewide dog and cat spay and neuter program in conjunction with animal shelters and euthanasia agencies;

B. develop criteria for individuals, nonprofit organizations, animal shelters and euthanasia agencies to receive assistance for dog and cat spaying and neutering from the animal care and facility fund; provided that assistance to individuals and nonprofit organizations shall only be given to individuals who have, or to nonprofit organizations that shall only provide assistance to service recipients who have, a household income that does not exceed two hundred percent of the current federal poverty level guidelines published by the United States department of health and human services; and

C. recommend to the board the disbursements of money from the animal care and facility fund to qualifying individuals, nonprofit organizations, animal shelters and euthanasia agencies.

**History:** Laws 2017, ch. 44, § 3; 2020, ch. 69, § 1.

### **61-14-8. Application for license. (Repealed effective July 1, 2030.)**

A. Any person desiring a license to practice veterinary medicine in this state may make written application to the board showing that the person:

- (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, except as provided in Section 61-1-34 NMSA 1978, 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 the applicant 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; 2020, ch. 6, § 38.

### **61-14-9. Examination. (Repealed effective July 1, 2030.)**

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.

### **61-14-10. Expedited and temporary license. (Repealed effective July 1, 2030.)**

A. The board shall issue an expedited license to a qualified applicant licensed in another state or territory of the United States, the District of Columbia or a foreign country as provided in Section 61-1-31.1 NMSA 1978. The board shall process the application as soon as practicable but no later than thirty days after the out-of-state veterinarian files an application for expedited licensure accompanied by any required fee if the applicant:

- (1) holds a license that is current and in good standing issued by another licensing jurisdiction approved by the board; and
- (2) has practiced veterinary medicine for at least five years.

B. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal.

C. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

D. The board may issue without examination a temporary permit to practice veterinary medicine to:

- (1) a qualified applicant for a license pending examination, provided the applicant is a graduate veterinarian and employed by and working under the direct supervision of a licensed veterinarian; provided that:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued;

(b) a qualified applicant for a license pending examination may, at the board's discretion, be exempted from the requirement of working under the direct supervision of a licensed veterinarian, provided the applicant submits a written request for such exemption; and

(c) 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 or territory of the United States, the District of Columbia or a foreign country if the nonresident veterinarian is employed by or has a contract with the state, a municipality or a county to provide veterinary services at a nationally accredited zoo or aquarium located in New Mexico; provided that the temporary permit shall be issued for a period lasting no more than six months and no more than two consecutive six-month temporary permits shall be issued to any one veterinarian.

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; 1995, ch. 154, § 3; 2022, ch. 8, § 1; 2023, ch. 190, § 29.

**61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (Repealed effective July 1, 2030.)**

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.

### **61-14-12. License, permit and registration renewal. (Repealed effective July 1, 2030.)**

A. All licenses, permits and registrations issued pursuant to the Veterinary Practice Act may be renewed by payment of the renewal fee, except as provided in Section 61-1-34 NMSA 1978, 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. Except as provided in Subsections C and D of this section, a person may reinstate an expired license, registration or permit, issued pursuant to the Veterinary Practice Act, 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 and late fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder shall apply for a new license, registration or permit and take the required examination.

C. A person shall not have the person's license, issued pursuant to the Veterinary Practice Act, reinstated in New Mexico if, during the time period in which the person's license lapsed, the person's license in another state or jurisdiction was suspended or revoked for reasons for which the license would have been subject to suspension or revocation in New Mexico.

D. A person who, during the time period in which the person's license, issued pursuant to the Veterinary Practice Act, lapsed, was subject to any disciplinary proceedings resulting in action less than suspension or revocation in another state or jurisdiction, may, at the discretion of the board, have the person's license to practice in New Mexico reinstated on a probationary status for up to two years. Upon request by the applicant for reinstatement, the board shall determine under what circumstances the probationary status shall be continued or removed or the application for reinstatement denied.

E. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when the veterinarian 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; 1995, ch. 154, § 4; 2017, ch. 44, § 4; 2020, ch. 6, § 39.

### **61-14-13. Denial, suspension or revocation of license. (Repealed effective July 1, 2030.)**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, suspend for a definite period or revoke a license, certificate or permit held or applied for under the Veterinary Practice Act, or may reprimand, place on probation, enter a stipulation with or impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) on a holder of a license, certificate or permit, upon a finding by the board that the licensee, certificate or permit holder, or applicant:

- (1) has committed an act of fraud, misrepresentation or deception in obtaining a license or permit;
- (2) has been adjudicated insane or manifestly incapacitated;
- (3) has used advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under rules promulgated by the board;
- (4) has been convicted of a felony or other crime involving moral turpitude;
- (5) is guilty of dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;
- (6) has a professional association with or employs any person practicing veterinary medicine unlawfully;
- (7) is guilty of fraud or dishonesty in the application or reporting of any test for disease in animals;
- (8) has failed to maintain his professional premises and equipment in a clean and sanitary condition in compliance with facility permit rules promulgated by the board;
- (9) is guilty of habitual or excessive use of intoxicants or drugs;
- (10) is guilty of cruelty to animals;

(11) has had his license to practice veterinary medicine revoked by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;

(12) is guilty of unprofessional conduct by violation of a rule promulgated by the board pursuant to provisions of the Veterinary Practice Act;

(13) has failed to perform as a veterinary technician under the direct supervision of a licensed veterinarian;

(14) has failed as a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;

(15) is guilty of aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;

(16) has used any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;

(17) has willfully or negligently administered a drug or substance that will adulterate meat, milk, poultry, fish or eggs;

(18) has failed to maintain required logs and records;

(19) has used a prescription or has sold any prescription drug or prescribed extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;

(20) has failed to report, as required by law, or has made a false report of any contagious or infectious disease;

(21) has engaged in an unfair or deceptive practice; or

(22) has engaged in the practice of veterinary medicine on any animal or group of animals in the absence of a valid veterinarian-client-patient relationship.

B. Disciplinary proceedings may be instituted by sworn complaint by any person and shall conform with the provisions of the Uniform Licensing Act.

C. Any person whose license, certificate or permit is suspended or revoked by the board pursuant to provisions of 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; 1995, ch. 154, § 5; 1998, ch. 55, § 75; 1999, ch. 243, § 2.

## **61-14-14. Exemptions. (Repealed effective July 1, 2030.)**

Provisions of the Veterinary Practice Act do not apply to:

- A. employees of federal or state 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. a veterinarian licensed in a foreign jurisdiction consulting with a licensed veterinarian;
- E. a merchant or manufacturer selling at the merchant's or manufacturer's 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 and the owner's 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 the member's regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with a 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; or
- I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals.

**History:** 1953 Comp., § 67-11-21, enacted by Laws 1967, ch. 62, § 10; 1975, ch. 96, § 10; 1993, ch. 163, § 10; 1999, ch. 243, § 3; 2017, ch. 44, § 5.

## **61-14-15. Persons previously licensed. (Repealed effective July 1, 2030.)**

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.



### **61-14-16. Responsibility. (Repealed effective July 1, 2030.)**

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 in this section shall be construed to relieve the veterinary technician of any responsibility and liability for any of his own acts and omissions.

**History:** 1953 Comp., § 67-11-22.1, enacted by Laws 1975, ch. 96, § 11; 1995, ch. 154, § 6.

### **61-14-17. Inoculation records; confidentiality. (Repealed effective July 1, 2030.)**

Animal inoculation records maintained by any state or local public agency may be used only in protecting the public health and welfare or by any other government agency and are not public records open to inspection or duplication. Upon request, the agency shall verify, or deny, as the case may be, that the records reflect that a particular animal has received inoculations within the next preceding twelve months.

**History:** 1978 Comp., § 61-14-17, enacted by Laws 1995, ch. 154, § 7.

### **61-14-18. Practicing without license; penalty. (Repealed effective July 1, 2030.)**

A. It is a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978 for a person to practice veterinary medicine without complying with the provisions of the Veterinary Practice Act and without being the holder of a license entitling the person to practice veterinary medicine in New Mexico.

B. If the board finds that a person or entity has practiced veterinary medicine without a license, the board may:

- (1) impose a fine not to exceed five thousand dollars (\$5,000);
- (2) assess the person or entity for administrative costs, including investigative costs and the cost of conducting a hearing; and
- (3) impose any other sanction as provided pursuant to board rules.

**History:** 1953 Comp., § 67-11-24, enacted by Laws 1967, ch. 62, § 13; 1999, ch. 243, § 4; 2017, ch. 44, § 6.

### **61-14-19. Injunction. (Repealed effective July 1, 2030.)**

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 violation. Any person so enjoined who violates the injunction may be punished for contempt of court. This remedy by injunction shall be in addition to any remedy provided for criminal prosecution of the offender.

**History:** 1953 Comp., § 67-11-25, enacted by Laws 1967, ch. 62, § 14; 1999, ch. 243, § 5.

### **61-14-20. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The board of veterinary medicine is terminated on July 1, 2029 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 and Chapter 77, Article 1B NMSA 1978 until July 1, 2030. Effective July 1, 2030, Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 are 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; 1997, ch. 46, § 16; 2005, ch. 208, § 10; 2011, ch. 30, § 3; 2017, ch. 44, § 7; 2023, ch. 15, § 1.

## **ARTICLE 14A**

### **Acupuncture and Oriental Medicine Practice**

#### **61-14A-1. Short title.**

Chapter 61, Article 14A 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; 1997, ch. 240, § 2.

#### **61-14A-2. Purpose.**

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.

### **61-14A-3. Definitions.**

As used in the Acupuncture and Oriental Medicine Practice Act:

A. "acupuncture" means the surgical use of needles inserted into and removed from the body and the use of other devices, 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 function to restore and maintain health;

B. "board" means the board of acupuncture and oriental medicine;

C. "doctor of oriental medicine" means a person licensed as a physician to practice acupuncture and oriental medicine with the ability to practice independently, serve as a primary care provider and as necessary collaborate with other health care providers;

D. "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;

E. "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 for the prevention, cure or correction of disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy, form and function to restore and maintain health;

F. "primary care provider" means a health care practitioner acting within the scope of the health care practitioner's license who provides the first level of basic or general health care for a person's health needs, including diagnostic and treatment services, initiates referrals to other health care practitioners and maintains the continuity of care when appropriate;

G. "techniques of oriental medicine" means:

(1) the diagnostic and treatment techniques used in oriental medicine that include diagnostic procedures; acupuncture; moxibustion; manual therapy, also known as tui na; other physical medicine modalities and therapeutic procedures; breathing and exercise techniques; and dietary, nutritional and lifestyle counseling;

(2) the prescribing, administering, combining and providing of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, amino acids, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] and nonprescription drugs as they are defined in the Pharmacy Act [Chapter 61, Article 11 NMSA 1978]; and

(3) the prescribing, administering and providing of devices, restricted devices and prescription devices, as those devices are defined in the New Mexico Drug, Device and Cosmetic Act, if the board determines by rule that the devices are necessary in the practice of oriental medicine and if the prescribing doctor of oriental medicine has fulfilled requirements for prescriptive authority in accordance with rules promulgated by the board for the devices enumerated in this paragraph; and

H. "tutor" means a doctor of oriental medicine with at least ten years of clinical experience who is a teacher of acupuncture and oriental medicine.

**History:** 1978 Comp., § 61-14A-3, enacted by Laws 1993, ch. 158, § 11; 1997, ch. 240, § 3; 2000, ch. 53, § 2; 2001, ch. 266, § 1; 2007, ch. 276, § 1.

#### **61-14A-4. License required.**

Unless licensed as a doctor of oriental medicine pursuant to the Acupuncture and Oriental Medicine Practice Act, 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.

#### **61-14A-4.1. Certified auricular detoxification specialists, supervisors and training programs; fees.**

A. A person who is not a doctor of oriental medicine or who is not a person certified as an auricular detoxification specialist pursuant to the Acupuncture and Oriental Medicine Practice Act shall not:

(1) practice auricular acupuncture for the treatment of alcoholism, substance abuse or chemical dependency;

(2) use the title of or represent as a certified auricular detoxification specialist or use any other title, abbreviation, letters, figures, signs or devices that indicate that the person is certified to practice as an auricular detoxification specialist; or

(3) advertise, hold out to the public or represent in any manner that the person is authorized to practice auricular detoxification.

B. The board shall issue an auricular detoxification specialist certification to a person who has paid an application fee to the board and has successfully completed all board requirements. The board shall adopt rules that require an applicant to:

(1) successfully complete the national acupuncture detoxification association training or equivalent training approved by the board that shall include clean needle technique training;

(2) demonstrate experience in treatment, disease prevention, harm reduction and counseling of people suffering from alcoholism, substance abuse or chemical dependency or become employed by a substance abuse treatment program;

(3) complete a board-approved training program that will include examinations on clean needle technique, jurisprudence and other skills required by the board; and

(4) demonstrate a record free of convictions for drug- or alcohol-related offenses for at least two consecutive years before the person applied to the board for certification.

C. A certified auricular detoxification specialist is authorized to perform auricular acupuncture and the application to the ear of simple board-approved devices that do not penetrate the skin for the purpose of treating and preventing alcoholism, substance abuse or chemical dependency. The specialist shall use the five auricular point national acupuncture detoxification procedure or auricular procedures approved or established by rule of the board and shall only treat or prevent alcoholism, substance abuse or chemical dependency within a board-approved program that demonstrates experience in disease prevention, harm reduction or the treatment or prevention of alcoholism, substance abuse or chemical dependency.

D. A person certified pursuant to this section shall use the title "certified auricular detoxification specialist" or "C.A.D.S." for the purpose of advertising auricular acupuncture services to the public.

E. A certified auricular detoxification specialist shall apply with the board to renew the certification. The board shall for one year renew the certification of an applicant who pays a renewal fee and completes the requirements established by rule of the board. An applicant who does not apply for renewal before the last date that the certification is valid may be required to pay a late fee pursuant to a rule of the board. The board shall deem a certification for which a renewal has not been applied within sixty days of that date as expired and an applicant that seeks valid certification shall apply with the board for new certification. The board shall by rule require an applicant for renewal of the certification to demonstrate a record free of convictions for drug- or alcohol-related offenses for a minimum of one year prior to application for renewal with the board.

F. A certified auricular detoxification specialist shall practice under the supervision of a licensed doctor of oriental medicine registered with the board as an auricular detoxification specialist supervisor. A supervising doctor of oriental medicine shall be accessible for consultation directly or by telephone to a practicing auricular detoxification specialist. The supervising doctor of oriental medicine shall not supervise more specialists than permitted by board rule. Supervision requirements shall be provided by rule of the board.

G. A doctor of oriental medicine who supervises a certified auricular detoxification specialist shall apply for registration with the board. The board shall issue an auricular detoxification specialist supervisor registration to a doctor of oriental medicine who fulfills board requirements. The board shall by rule require an applicant for registration to list the certified auricular detoxification specialists that will be supervised, pay an application fee for registration and demonstrate clinical experience in treating or counseling people suffering from alcoholism, substance abuse or chemical dependency.

H. A training program that educates auricular detoxification specialists for certification shall apply for approval by the board. The board shall approve a training program that fulfills the board requirements established by rule and that pays an application fee. The approval shall be valid until July 31 following the initial approval.

I. A training program that is approved by the board to provide training for certification of auricular detoxification specialists shall apply to renew the approval with the board. The board shall renew the approval of a program that fulfills board requirements established by rule, and the renewal shall be valid for one year. An applicant who does not renew before the last date that the renewed approval is valid shall pay a late fee. The board shall deem a program approval that is not renewed within sixty days of that date as expired and a program that seeks board approval shall apply with the board for new approval.

J. The board shall impose the following fees:

(1) an application fee not to exceed one hundred fifty dollars (\$150) for auricular detoxification specialist certification;

(2) a fee not to exceed seventy-five dollars (\$75.00) for renewal of an auricular detoxification specialist certification;

(3) an application fee not to exceed two hundred dollars (\$200) for registration of a certified auricular detoxification specialist supervisor;

(4) an application fee not to exceed two hundred dollars (\$200) for the approval of an auricular detoxification specialist training program;

(5) a fee not to exceed one hundred fifty dollars (\$150) for the renewal of the approval of an auricular detoxification training specialist training program; and

(6) a late fee not to exceed fifty dollars (\$50.00) for applications for renewal filed after the last valid date of a registration, certification, approval or renewal issued pursuant to this section.

K. In accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, revoke or suspend any certification, registration, approval or renewal that a person holds or applies for pursuant to this section upon findings by the board that the person violated any rule established by the board.

**History:** Laws 2003, ch. 193, § 1; 2007, ch. 276, § 2.

### **61-14A-5. Title.**

Any person licensed pursuant to provisions of the Acupuncture and Oriental Medicine Practice Act, in advertising his services to the public, shall use the title "doctor of oriental medicine" or "D.O.M.". The title "doctor of oriental medicine" or "D.O.M." shall supersede the use of all other titles that include the words "medical doctor" or the initials "M.D." unless the person is a medical doctor licensed pursuant to provisions of the Medical Practice Act [Chapter 61, Article 6 NMSA 1978].

**History:** 1978 Comp., § 61-14A-5, enacted by Laws 1993, ch. 158, § 13; 1997, ch. 240, § 4.

### **61-14A-6. Exemptions.**

A. Nothing in the Acupuncture and Oriental Medicine Practice Act is intended to limit, interfere with or prevent any other class of licensed health care professionals from practicing within the scope of their licenses, 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 term acupuncture, acupuncturist or oriental medicine unless they are licensed under the Acupuncture and Oriental Medicine Practice Act.

B. The Acupuncture and Oriental Medicine Practice Act shall not apply to or affect the following practices if the person 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 a person or spiritual group or the practice of the religious tenets of a church;

(6) the providing of information about the general usage of herbal medicines, homeopathic medicines, vitamins, minerals, enzymes or glandular or nutritional supplements; or

(7) the use of needles for diagnostic purposes and the use of needles for the administration of diagnostic or therapeutic substances by licensed health care professionals.

**History:** 1978 Comp., § 61-14A-6, enacted by Laws 1993, ch. 158, § 14; 1997, ch. 240, § 5; 2000, ch. 53, § 3.

### **61-14A-7. Board created; appointment; officers; compensation.**

A. The "board of acupuncture and oriental medicine" is created.

B. The board is administratively attached to the regulation and licensing 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 residents of and practiced acupuncture and oriental medicine in New Mexico for at least five years immediately 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 board member shall be the owner, principal or director of an institute offering educational programs in acupuncture and oriental medicine. No more than one board member may be from each of the following categories:

(1) a faculty member at an institute offering educational programs in acupuncture and oriental medicine;

(2) a tutor in acupuncture and oriental medicine; or

(3) an officer or director 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 expire on July 1. A board member shall serve until his successor has been appointed and qualified. Vacancies shall be filled for the remainder of the unexpired term in the same manner as the original appointment.



E. A board member shall not serve more than two consecutive full terms, and a board member who fails to attend, after he has received proper notice, three consecutive meetings shall be recommended for removal as a board member unless excused for reasons established by the board.

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; 2000, ch. 53, § 4.

### **61-14A-8. Board; powers.**

The board has the power to:

- A. enforce the provisions of the Acupuncture and Oriental Medicine Practice Act;
- B. promulgate, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules 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 facilities of approved educational programs, extern programs and the offices of licensees;
- F. promulgate 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; and
- G. in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]:
  - (1) issue investigative subpoenas for the purpose of investigating complaints against licensees prior to the issuance of a notice of contemplated action;

(2) administer oaths and take testimony on any matters within the board's jurisdiction;

(3) conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license; and

(4) grant, deny, renew, suspend or revoke licenses to practice acupuncture and oriental medicine or grant, deny, renew, suspend or revoke approvals of educational programs and extern programs for any cause stated in the Acupuncture and Oriental Medicine Practice Act or the rules of the board.

**History:** 1978 Comp., § 61-14A-8, enacted by Laws 1993, ch. 158, § 16; 2000, ch. 53, § 5; 2003, ch. 408, § 21; 2022, ch. 39, § 59.

### **61-14A-8.1. Expanded practice and prescriptive authority; certifications.**

A. The board shall issue certifications, as determined by rule of the board, for expanded practice and prescriptive authority only for the substances enumerated in Paragraphs (1) and (2) of Subsection C of this section to a doctor of oriental medicine who has submitted completed forms provided by the board, paid the application fee for certification and submitted proof of successful completion of additional training required by rule of the board. The board shall adopt the rules determined by the board of pharmacy for additional training required for the prescribing, administering, compounding or dispensing of caffeine, procaine, oxygen, epinephrine and bioidentical hormones. The board and the board of pharmacy shall consult as appropriate.

B. The board shall issue certifications in the four expanded practices of basic injection therapy, injection therapy, intravenous therapy and bioidentical hormone therapy.

C. The expanded practice and prescriptive authority shall include:

(1) the prescribing, administering, compounding and dispensing of herbal medicines, homeopathic medicines, vitamins, minerals, amino acids, proteins, enzymes, carbohydrates, lipids, glandular products, natural substances, natural medicines, protomorphogens, live cell products, gerovital, dietary and nutritional supplements, cosmetics as they are defined in the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] and nonprescription drugs as they are defined in the Pharmacy Act [Chapter 61, Article 11 NMSA 1978]; and

(2) the prescribing, administering, compounding and dispensing of the following dangerous drugs or controlled substances as they are defined in the New Mexico Drug, Device and Cosmetic Act, the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or the Pharmacy Act, if the prescribing doctor of oriental medicine has fulfilled the requirements for expanded practice and prescriptive authority

in accordance with the rules promulgated by the board for the substances enumerated in this paragraph:

- (a) sterile water;
- (b) sterile saline;
- (c) sarapin or its generic;
- (d) caffeine;
- (e) procaine;
- (f) oxygen;
- (g) epinephrine;
- (h) vapocoolants;
- (i) bioidentical hormones;
- (j) biological products, including therapeutic serum; and
- (k) any of the drugs or substances enumerated in Paragraph (1) of this subsection if at any time those drugs or substances are classified as dangerous drugs or controlled substances.

D. When compounding drugs for their patients, doctors of oriental medicine certified for expanded practice and prescriptive authority shall comply with the compounding requirements for licensed health care professionals in the United States pharmacopeia and national formulary.

**History:** Laws 2000, ch. 53, § 12; 2007, ch. 276, § 3.

### **61-14A-9. Board; duties.**

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;
- 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.

### **61-14A-10. Requirements for licensing.**

The board shall grant a license to practice acupuncture and oriental medicine to a person who has:

A. submitted to the board:

- (1) the completed application for licensing on the form provided by the board;
- (2) the required documentation as determined by the board;
- (3) the required fees;
- (4) an affidavit stating that the applicant has not been found guilty of unprofessional conduct or incompetency;
- (5) proof, as determined by the board, that the applicant has completed a board-approved educational program in acupuncture and oriental medicine as provided for in the Acupuncture and Oriental Medicine Practice Act and the rules of the board; and
- (6) proof that he has passed the examinations approved by the board; and

B. complied with any other requirements of the board.

**History:** 1978 Comp., § 61-14A-10, enacted by Laws 1993, ch. 158, § 18; 1997, ch. 240, § 6; 2000, ch. 53, § 6.

### **61-14A-11. Examinations.**

A. The board shall establish procedures to ensure that examinations for licensing are offered at least once a year.

B. The board shall establish 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 the passing grades for its approved examinations.

D. The board may approve, and use as a basis for licensure, examinations that are used for national certification or other examinations.

E. The board shall require each qualified applicant to pass a validated, objective written examination that covers areas that are not included in other examinations approved by the board, including, as a minimum, the following subjects:

- (1) anatomy and physiology;
- (2) pathology;
- (3) diagnosis;
- (4) pharmacology; and
- (5) principles, practices and treatment techniques of acupuncture and oriental medicine.

F. The board may require each qualified applicant to pass a validated, objective practical examination that covers areas that are not included in other examinations approved by the board and 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 rules that pertain to the practice of acupuncture and oriental medicine.

I. If English is not the primary language of the applicant, the board may require that the applicant pass an English proficiency examination prescribed by the board.

**History:** 1978 Comp., § 61-14A-11, enacted by Laws 1993, ch. 158, § 19; 1997, ch. 240, § 7; 2000, ch. 53, § 7.

## **61-14A-12. Requirements for temporary licensing.**

A. The board shall establish the criteria for temporary licensing of out-of-state doctors of oriental medicine.

B. The board may grant a temporary license to a person who:

(1) is legally recognized to practice acupuncture and oriental medicine in another state or a foreign country or is legally recognized in another state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine;

(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; 2000, ch. 53, § 8.

### **61-14A-13. Requirements for expedited licensing.**

A. The board shall grant a license to practice acupuncture and oriental medicine without examination to a person who has been licensed, certified, registered or legally recognized as a doctor of oriental medicine in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 if the applicant:

(1) submits the completed application for expedited licensing on the form provided by the board;

(2) submits the required documentation as determined by the board;

(3) submits the required fee for application for expedited licensing; and

(4) passes a written examination on the state laws and rules that pertain to the practice of acupuncture and oriental medicine, if the board requires regular applicants for licensure to pass such an examination.

B. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing

with the licensing board in the other licensing jurisdiction and has practiced for at least two years immediately prior to application in New Mexico. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

C. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** 1978 Comp., § 61-14A-13, enacted by Laws 1993, ch. 158, § 21; 1997, ch. 240, § 8; 2022, ch. 39, § 60.

#### **61-14A-14. Approval of educational programs.**

A. The board shall establish by rule the criteria for board approval of educational programs in acupuncture and oriental medicine. For an educational program to meet board approval, proof shall be submitted to the board demonstrating that the educational program as a minimum:

- (1) was for a period of not less than four academic years;
- (2) included a minimum of nine hundred hours of supervised clinical practice;
- (3) was taught by qualified teachers or tutors;
- (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) pharmacology;
  - (e) oriental principles of life therapy, including diet, nutrition and counseling;
  - (f) theory and techniques of oriental medicine;
  - (g) precautions and contraindications for acupuncture treatment;



(h) theory and application of meridian pulse evaluation and meridian point location;

(i) traditional and modern methods of qi or life-energy evaluation;

(j) the prescription of herbal medicine and precautions and contraindications for its use;

(k) hygiene, sanitation and clean-needle technique;

(l) care and management of needling devices; and

(m) 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 in-state educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board shall be approved annually by the board. The applicant shall submit the following:

(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 provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

C. Out-of-state educational programs in acupuncture and oriental medicine with the intent to graduate students qualified to be applicants for licensing examination by the board may apply for approval by the board. The applicant shall submit the following:

(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 provided for in Subsection A of this section are being met; and

(4) the required fee for application for approval of an educational program.

D. Each in-state approved educational program shall renew its approval annually by submitting prior to the date established by the board:

- (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 provided for 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 out-of-state approved educational program may renew its approval annually by submitting prior to the date established by the board:

- (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 provided for 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 educational program 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 provided for 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. An approval that is not renewed by the end of the grace period shall be considered expired, and the educational program must apply as a new applicant.

**History:** 1978 Comp., § 61-14A-14, enacted by Laws 1993, ch. 158, § 22; 1997, ch. 240, § 9; 2000, ch. 53, § 9.

### **61-14A-14.1. Students and externs; supervised practice.**

A. A student enrolled in an approved educational program may practice acupuncture and oriental medicine under the direct supervision of a teacher or tutor as part of the educational program.

B. The board may promulgate rules to govern the practice of acupuncture and oriental medicine by externs. The rules shall include qualifications for externs and supervising doctors of oriental medicine or other supervising health care professionals and the allowable scope of practice for externs. The board may charge a fee for approval and renewal of approval of extern programs. Participation as an extern is optional and not a requirement for licensure.

**History:** Laws 2000, ch. 53, § 11.

### **61-14A-15. License renewal.**

A. Each licensee shall renew his license annually by submitting prior to the date established by the board:

- (1) the completed application for license renewal on the form provided by the board; and
- (2) the required fee for annual 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 annual license renewal; and
- (3) the required late fee.

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 reinstatement of an expired license within one year of the date of renewal, the board shall establish any requirements or fees that are in addition to the fee for annual 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; 2000, ch. 53, § 10.

### **61-14A-16. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable nonrefundable fees not to exceed the following amounts:

- |    |  |        |
|----|--|--------|
| A. | application for licensing  | \$800; |
| B. | application for expedited licensing  | 750;   |
| C. | application for temporary licensing  | 500;   |
| D. | examination, not including the cost of any nationally recognized examination | 700;   |
| E. | annual 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    | 600;   |
| J. | late renewal of approval of an educational program                           | 200;   |
| K. | annual continuing education provider registration                            | 200;   |
| L. | application for extended or expanded prescriptive authority                  | 500;   |
| M. | application for externship supervisor registration                           | 500;   |
| N. | application for extern certification   | 500;   |
- and
- O. fees to cover reasonable and necessary administrative expenses.

**History:** 1978 Comp., § 61-14A-16, enacted by Laws 1993, ch. 158, § 24; 2001, ch. 263, § 1; 2001, ch. 266, § 2; 2020, ch. 6, § 40; 2022, ch. 39, § 61.

### **61-14A-17. Disciplinary proceedings; judicial review; application of Uniform Licensing Act.**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 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, 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 as defined by board rule;
- (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 board rule;
- (6) is guilty of any violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];
- (7) has violated any provision of the Acupuncture and Oriental Medicine Practice Act or rules promulgated 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 of the board;

(15) has been declared mentally incompetent by regularly constituted authorities;

(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; or

(17) fails, when diagnosing or treating a patient, to possess or apply the knowledge or to use the skill and care ordinarily used by reasonably well-qualified doctors of oriental medicine practicing under similar circumstances, giving due consideration to the locality involved.

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.

D. The licensee shall bear the costs of disciplinary proceedings unless exonerated.

**History:** 1978 Comp., § 61-14A-17, enacted by Laws 1993, ch. 158, § 25; 1997, ch. 240, § 10.

### **61-14A-18. Fund created.**

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 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.

### **61-14A-19. Penalties.**

A. A person who violates a provision of the Acupuncture and Oriental Medicine Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

B. In addition to criminal penalties, a person who engages in acupuncture or oriental medicine without a license is subject to disciplinary proceedings by the board. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against such person and may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing. The fine shall be deposited to the credit of the current school fund.

**History:** 1978 Comp., § 61-14A-19, enacted by Laws 1993, ch. 158, § 27; 2017, ch. 52, § 3.

### **61-14A-20. Criminal Offender Employment Act.**

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.

**History:** 1978 Comp., § 61-14A-20, enacted by Laws 1993, ch. 158, § 28.

### **61-14A-21. Licensed acupuncture practitioner; license valid under new act.**

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.

**History:** 1978 Comp., § 61-14A-21, enacted by Laws 1993, ch. 158, § 29.

### **61-14A-22. Repealed.**

**History:** 1978 Comp., § 61-14A-22, enacted by Laws 1993, ch. 158, § 30; 2000, ch. 4, § 10; 2000, ch. 53, § 13; 2005, ch. 208, § 11; 2017, ch. 52, § 4; repealed by Laws 2023, ch. 15, § 8.

## **ARTICLE 14B**

### **Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices**

#### **61-14B-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 14B NMSA 1978 may be cited as the "Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

**History:** Laws 1996, ch. 57, § 1; 1999, ch. 128, § 1.

#### **61-14B-2. Definitions. (Repealed effective July 1, 2028.)**

As used in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act:

A. "apprentice" means a person working toward full licensure in speech-language pathology who meets the requirements for licensure as an apprentice in speech and language pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. "appropriate supervisor" means a person licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who has a minimum of two years' experience as a speech-language pathologist after the clinical fellowship year;

C. "auditory trainer" means a custom-fitted FM amplifying instrument other than a hearing aid designed to enhance signal-to-noise ratios;

D. "audiologist" means a person who engages in the practice of audiology, who may or may not dispense hearing aids and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

E. "bilingual-multicultural endorsement" means an endorsement that is issued pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act to a qualified speech-language pathologist and that recognizes the licensee's or applicant's demonstrated proficiency in the use of languages other than English to provide speech-language pathology services;

F. "board" means the speech-language pathology, audiology and hearing aid dispensing practices board;

G. "business location" means a permanent physical business location in New Mexico where records can be examined and process served;

H. "certification by a national professional association" means certification issued by a board-approved national speech-language or hearing association;

I. "clinical fellow" means a person who has completed all academic course work and practicum requirements for a master's degree or the equivalent in speech-language pathology and engages in the practice of speech-language pathology as set forth in the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

J. "clinical fellowship year" or "CFY" means the time following the completion of all academic course work and practicum requirements for a master's degree in speech-language pathology and during which a clinical fellow is working toward certification by a national professional association;

K. "department" means the regulation and licensing department;

L. "hearing aid" means a 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;

M. "hearing aid dispenser" means a person other than an audiologist or an otolaryngologist who is licensed to sell, fit and service hearing aids pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and maintains or occupies a permanent physical business location in New Mexico where records can be examined and process can be served;

N. "otolaryngologist" means a licensed physician who has completed a recognized residency in otolaryngology and is certified by the American board of otolaryngology;

O. "paraprofessional" means a person who provides adjunct speech-pathology or audiology services under the direct supervision of a licensed speech-language pathologist or audiologist;



P. "practice of audiology" means the application of principles, methods and procedures of measurement, testing, appraisal, prognostication, aural rehabilitation, aural habilitation, consultation, hearing aid selection and fitting, 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;

Q. "practice of hearing aid dispensing" means the behavioral measurement of human hearing for the purpose of the selection and fitting of hearing aids or other rehabilitative devices to ameliorate the dysfunction of hearing sensitivity; this may include otoscopic inspection of the ear, fabrication of ear impressions and earmolds, instruction, consultation and counseling on the use and care of these instruments, medical referral when appropriate and the analysis of function and servicing of these instruments involving their modification or adjustment;

R. "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, prognostication, counseling and instruction related to the development and disorders of communications, speech, fluency, voice, verbal and written language, auditory comprehension, cognition, dysphagia, oral pharyngeal or laryngeal sensorimotor competencies and treatment of persons requiring use of an augmentative communication device for the purpose of nonmedical diagnosing, preventing, treating and ameliorating such disorders and conditions in individuals and groups of individuals;

S. "screening" means a pass-fail procedure to identify individuals who may require further assessment in the areas of speech-language pathology, audiology or hearing aid dispensing;

T. "speech-language pathologist" means a person who engages in the practice of speech-language pathology and who meets the qualifications set forth in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

U. "sponsor" means a licensed hearing aid dispenser, audiologist or otolaryngologist who has an endorsement to dispense hearing aids and:

(1) is employed in the same business location where the trainee is being trained; and

(2) has been actively engaged in the dispensing of hearing aids during three of the past five years;

V. "student" means a person who is a full- or part-time student enrolled in an accredited college or university program in speech-language pathology, audiology or communicative disorders;

W. "supervisor" means a speech-language pathologist or audiologist licensed pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act who provides supervision in the area of speech-language pathology or audiology; and

X. "trainee" means a person working toward full licensure as a hearing aid dispenser under the direct supervision of a sponsor.

**History:** Laws 1996, ch. 57, § 2; 1999, ch. 128, § 2; 2013, ch. 110, § 1; 2015, ch. 110, § 1.

### **61-14B-3. Scope of practice; speech-language pathology. (Repealed effective July 1, 2028.)**

A. The scope of practice for speech-language pathologists shall include:

(1) rendering or offering to render professional services, including diagnosis, prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, counseling, prognostication, training and research to individuals or groups of individuals who have or are suspected of having disorders of communication, including speech comprehension, voice, fluency, language in all its expressive and receptive forms, including oral expression, reading, writing and comprehension, oral pharyngeal function, oral motor function, dysphagia, functional maintenance therapy or cognitive-communicative processes; and

(2) determining the need for personal augmentative and alternative communication systems, computer access or assistive technology, recommending such systems, and providing set-up, modification, training, trouble-shooting and follow-up in the utilization of such systems.

B. The scope of practice for speech-language pathologists may include:

(1) conducting pure-tone air conduction hearing screening, tympanometry screening, limited to a pass or fail determination, for the purpose of performing a speech and language evaluation or for the initial identification of individuals with other disorders of communications;

(2) aural rehabilitation that is defined as services and procedures for facilitation of adequate receptive and expressive communication in individuals with hearing impairment; or

(3) supervision of graduate students, clinical fellows or paraprofessionals.

**History:** Laws 1996, ch. 57, § 3.

**61-14B-3.1. Scope of practice; apprentice in speech and language. (Repealed effective July 1, 2028.)**

The scope of practice for an apprentice in speech and language is to provide adjunct services that are planned, selected or designed by the supervising speech-language pathologist. These services may include:

- A. conducting speech-language or hearing screenings;
- B. following documented intervention plans or protocols;
- C. preparing written daily plans based on the overall intervention plan;
- D. recording, charting, graphing or otherwise displaying data relative to client performance and reporting performance changes to the supervisor;
- E. maintaining daily service notes and completing daily charges as requested;
- F. reporting but not interpreting data relative to client performance to teacher, family or other professionals;
- G. performing clerical duties, including maintenance of therapy and diagnostic materials, equipment and client files as directed by the supervisor;
- H. assisting the speech-language pathologist during client treatment and assessment; and
- I. assisting the speech-language pathologist in research, in-service, training and public relations programs.

**History:** Laws 1999, ch. 128, § 3; 2005, ch. 250, § 1.

**61-14B-3.2. Scope of practice; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)**

A. The scope of practice for a clinical fellow of speech-language pathology under supervision by an appropriate supervisor shall include:

- (1) rendering or offering to render professional services, including diagnosis, prevention, identification, evaluation, consultation, habilitation, rehabilitation, instruction, counseling, prognostication, training and research, to individuals or groups of individuals who have or are suspected of having disorders of communication, including speech comprehension; voice fluency; language in all its expressive and receptive forms,

including oral expression, reading, writing and comprehension; oral pharyngeal function; oral motor function; dysphagia; functional maintenance therapy; or cognitive-communicative processes; and

(2) determining the need for personal augmentative and alternative communication systems, computer access systems or assistive technology systems; recommending such systems; and providing setup modification, training, troubleshooting and follow-up in the utilization of such systems.

B. The scope of practice for a clinical fellow of speech-language pathology under supervision by an appropriate supervisor may include:

(1) conducting pure-tone air conduction hearing screening or tympanometry screening, limited to a pass or fail determination, for the purpose of performing a speech and language evaluation or for the initial identification of individuals with other disorders of communication; and

(2) aural rehabilitation that is defined as services and procedures for facilitation of adequate receptive and expressive communication in individuals with hearing impairment.

**History:** Laws 2013, ch. 110, § 2.

#### **61-14B-4. Repealed.**

#### **61-14B-5. Scope of practice; audiologists. (Repealed effective July 1, 2028.)**

The scope of practice for audiologists shall include:

A. the rendering or offering to render professional services, including nonmedical diagnosis, prevention, identification, evaluation, consultation, counseling, habilitation, rehabilitation and instruction on and prognostication of individuals having or suspected of having disorders of hearing, balance or central auditory processing;

B. identification and evaluation of auditory function through the performance and interpretation of appropriate behavioral or electrophysiological tests for this purpose;

C. making ear impressions for use with auditory trainers or for non-amplified devices such as swim molds or ear protectors;

D. cerumen management;

E. evaluation and management of tinnitus;

F. the scope of practice for hearing aid dispensers;

- G. consultation regarding noise control or environmental noise evaluation;
- H. hearing conservation;
- I. calibration of equipment used in hearing testing and environmental evaluation;
- J. fitting and management of auditory trainers, including their general service, adjustment and analysis of function, as well as instruction, orientation and counseling in the use and care of these instruments;
- K. speech or language screening for the purposes of audiological evaluation or initial identification for referral of individuals with disorders of communication other than hearing;
- L. supervision of students, clinical fellows and paraprofessionals; and
- M. sponsorship of hearing aid dispenser trainees.

**History:** Laws 1996, ch. 57, § 5; 1999, ch. 128, § 4; 2013, ch. 110, § 3.

**61-14B-6. Scope of practice; hearing aid dispenser. (Repealed effective July 1, 2028.)**

The scope of practice of the hearing aid dispenser shall include:

- A. the measurement and evaluation of the sensitivity of human hearing by means of appropriate behavioral testing equipment for the purpose of amplification;
- B. the otoscopic observation of the outer ear in connection with the evaluation of hearing and the fitting of hearing aids and for the purpose of referral to other professionals;
- C. the fabrication of ear impressions or ear molds for the purpose of selecting and fitting hearing aids;
- D. the analysis of hearing aid function by means of the appropriate testing equipment;
- E. the selection and fitting of hearing aids with appropriate instruction, orientation, counseling and management regarding the use and maintenance of these devices; and
- F. the modification and general servicing of hearing aids.

**History:** Laws 1996, ch. 57, § 6.

**61-14B-7. License required. (Repealed effective July 1, 2028.)**

A. Unless licensed to practice speech-language pathology, audiology or hearing aid dispensing under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, no person shall:

(1) practice as a speech-language pathologist, audiologist or hearing aid dispenser;

(2) use the title or make any representation as being a licensed speech-language pathologist, audiologist or hearing aid dispenser or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice as a speech-language pathologist, audiologist or hearing aid dispenser; or

(3) advertise, hold out to the public or represent in any manner that one is authorized to practice speech-language pathology, audiology or hearing aid dispensing.

B. No person shall make any representation as being a speech-language pathologist or hold out to the public by any means or by any service or function perform, directly or indirectly, or by using the terms "speech pathology", "speech pathologist", "speech therapy", "speech therapist", "speech correction", "speech correctionist", "speech clinic", "speech clinician", "language pathology", "language pathologist", "voice therapy", "voice therapist", "voice pathology", "voice pathologist", "logopedics", "logopedist", "communicology", "communicologist", "aphasiology", "aphasiologist", "phoniatriest" or "swallowing therapist" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

C. No person shall make any representation as being an audiologist or hold out to the public by any means, or by any service or function perform directly or indirectly, or by using the terms "audiology", "audiologist", "audiometry", "audiometrist", "audiological", "audiometrics", "hearing therapy", "hearing therapist", "hearing clinic", "hearing clinician", "hearing center", "hearing aid audiologist" or "audioprosthologist" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

D. No person shall make any representation as being a hearing aid dispenser or use the terms "hearing aid dealer", "hearing aid fitter", "hearing aid sales", "hearing aid center" or "hearing aid service center" unless licensed as such under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**History:** Laws 1996, ch. 57, § 7; 2013, ch. 110, § 4.

### **61-14B-8. Exemptions. (Repealed effective July 1, 2028.)**

A. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be construed to prevent qualified members of other recognized professions that are licensed, certified or registered under New Mexico law or regulation from rendering services within the scope of their licenses, certificates or

registrations, provided that they do not represent themselves as holding licenses in speech-language pathology, audiology or hearing aid dispensing.

B. A person not meeting the requirements for licensure as a speech-language pathologist or audiologist under the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act may practice as a speech pathologist or audiologist until July 1, 1997 if:

(1) the person is employed as a speech pathologist or audiologist on a waiver license issued by the public education department prior to the effective date of that act; and

(2) the person is actively seeking the educational requirements for licensure under that act.

C. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act prevents qualified members of other recognized professional groups, such as licensed physicians, dentists or teachers of the deaf, from doing appropriate work in the area of communication disorders consistent with the standards and ethics of their respective professions.

D. Nothing in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act restricts the activities and services of a speech-language pathology or audiology graduate student at an accredited or approved college or university or an approved clinical training facility; provided that these activities and services constitute part of the student's supervised course of study and that the student is designated as a speech-language pathology or audiology graduate student or other title clearly indicating the training status appropriate to the student's level of training.

**History:** Laws 1996, ch. 57, § 8; 2013, ch. 110, § 5.

### **61-14B-9. Board created. (Repealed effective July 1, 2028.)**

A. There is created the "speech-language pathology, audiology and hearing aid dispensing practices board" that shall be administratively attached to the department.

B. The board shall consist of eleven members who have been New Mexico residents for at least five years prior to their appointment. Among the membership, three members shall be licensed speech-language pathologists, two members shall be licensed audiologists, two members shall be licensed hearing aid dispensers, one member shall be a licensed otolaryngologist and three members shall represent the public and have no interest, direct or indirect, in the profession regulated.

C. A licensed member of the board shall not hold any elected or appointed office in any related professional organization.

**History:** Laws 1996, ch. 57, § 9; 2013, ch. 110, § 6.

**61-14B-10. Terms; reimbursement; meetings. (Repealed effective July 1, 2028.)**

A. Members of the board shall be appointed by the governor for staggered terms of three years. Each member shall hold office until the member's successor is appointed. Vacancies shall be filled for the unexpired term in the same manner as original appointments.

B. A majority of the board members serving constitutes a quorum of the board. The board shall meet at least once a year and at such other times as it deems necessary.

C. The board shall elect a chair and other officers as deemed necessary to administer its duties.

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

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. No member of the board shall be liable in a civil action for any act performed in good faith in the performance of the member's duties.

**History:** Laws 1996, ch. 57, § 10; 2013, ch. 110, § 7.

**61-14B-11. Board powers and duties. (Repealed effective July 1, 2028.)**

The board shall:

A. promulgate rules necessary to carry out the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978];

B. promulgate rules implementing continuing education requirements;

C. adopt a code of ethics that includes rules requiring audiologists and hearing aid dispensers, at the time of the initial examination for possible sale and fitting of a hearing aid if a hearing loss is determined, to inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and assistive



listening systems. These rules shall be in accordance with the latest standards for accessible design adopted by the United States department of justice in accordance with the federal Americans with Disabilities Act of 1990, as amended;

D. 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 [Chapter 61, Article 1 NMSA 1978];

E. investigate complaints against licensees by issuing investigative subpoenas prior to the issuance of a notice of contemplated action;

F. establish fees for licensure;

G. provide for the licensing and renewal of licenses of applicants; and

H. promulgate rules that provide for expedited licensure and temporary permits for speech-language pathologists, audiologists or hearing aid dispensers.

**History:** Laws 1996, ch. 57, § 11; 2003, ch. 408, § 22; 2019, ch. 100, § 1; 2022, ch. 39, § 62.

### **61-14B-12. Requirements for licensure; speech-language pathologist. (Repealed effective July 1, 2028.)**

A license to practice as a speech-language pathologist shall be issued to a person who files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

A. holds at least a master's degree in speech pathology, speech-language pathology or communication disorders or an equivalent degree regardless of degree name and meets the academic requirements for certification by a national professional association; and either

B. currently holds certification by a national professional association in the area for which the applicant is seeking licensure; or

C. has completed the current academic, practicum and employment experience requirements for certification by a national professional association in the area for which the applicant is applying for license and has passed a recognized standard national examination in speech-language pathology.

**History:** Laws 1996, ch. 57, § 12; 1999, ch. 128, § 5; 2005, ch. 250, § 2; 2015, ch. 110, § 2.

## **61-14B-12.1. Requirements for licensure; audiologist. (Repealed effective July 1, 2028.)**

A. A license to practice as an audiologist shall be issued to any person who:

(1) files a completed application, accompanied by the required fees and documentation;

(2) certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and

(3) submits satisfactory evidence that the applicant:

(a) holds a doctor of audiology degree or an equivalent degree regardless of degree name and meets the academic requirements for certification by a national professional association, as determined by the board by rule;

(b) has passed a nationally recognized standard examination in audiology, if required by rule; and

(c) has earned certification by a national professional association as evidence that the applicant meets the clinical experience and examination requirements of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

B. A license to practice as an audiologist shall be issued to a person who:

(1) files a completed application, accompanied by the required fees and documentation;

(2) certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978;

(3) submits satisfactory evidence that the applicant:

(a) holds a master's degree in audiology or communication disorders or an equivalent degree in audiology or communication disorders or an equivalent degree awarded prior to January 1, 2007; has met the academic requirements for certification by a national professional association; and has earned certification by a national professional association in the area in which the applicant is seeking licensure; or

(b) has completed the current academic, practicum and employment experience requirements for certification by a national professional association and has passed a nationally recognized standard examination in audiology; and

(4) provides evidence satisfactory to the board of at least six months' experience in the dispensing of hearing aids through practical examination or other

methods as determined by the board in either a graduate training program or in a work or training experience.

**History:** Laws 2005, ch. 250, § 3; 2013, ch. 110, § 8; 2015, ch. 110, § 3.

### **61-14B-13. Requirements for endorsement to dispense hearing aids as an otolaryngologist. (Repealed effective July 1, 2028.)**

An endorsement to practice hearing aid dispensing shall be issued to a licensed otolaryngologist who files a completed application accompanied by the required fees and documentation and who:

A. provides evidence satisfactory to the board of at least six months' experience in the dispensing of hearing aids through practical examination or other methods as determined by the board in either a graduate training program or in a work or training experience;

B. maintains or occupies a business location, hospital, clinical medical practice or other facility where hearing aids are regularly dispensed;

C. passes the jurisprudence examination given by the board; and

D. certifies that the otolaryngologist is not guilty of any activities listed in Section 61-14B-21 NMSA 1978.

**History:** Laws 1996, ch. 57, § 13; 1999, ch. 128, § 6; 2015, ch. 110, § 4.

### **61-14B-13.1. Requirements for bilingual-multicultural endorsement. (Repealed effective July 1, 2028.)**

A bilingual-multicultural endorsement shall be issued to any person who:

A. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

(1) is eligible for and in the process of obtaining a license to practice as a speech-language pathologist;

(2) has completed the required education as determined by rule;

(3) has met experience requirements approved by the board; and

(4) has demonstrated proficiency in the specified language as determined by the board; or

B. files a completed application accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

- (1) has an active license in good standing in the state of New Mexico as a speech-language pathologist;
- (2) has a current bilingual endorsement from the public education department;  
or
- (3) has a minimum of five years practicing with clients who utilize a language other than English and has demonstrated proficiency in the specified language as determined by the board; or

C. files a completed application, accompanied by the required fees and documentation; certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; and submits satisfactory evidence that the applicant:

- (1) has a license in good standing in another state or country as a speech-language pathologist;
- (2) has a minimum of five years practicing with clients who utilize a language other than English; and
- (3) has demonstrated proficiency in the specified language as determined by the board.

**History:** Laws 2013, ch. 110, § 16; 2015, ch. 110, § 5.

#### **61-14B-14. Requirements for licensure by examination; hearing aid dispenser. (Repealed effective July 1, 2028.)**

A. A license to practice as a hearing aid dispenser shall be issued to a person who files a completed application, passes the examination approved by the board, pays the required fees, provides required documentation and submits satisfactory evidence that the person:

- (1) is an audiologist or an otolaryngologist; or
- (2) is a person other than an audiologist or an otolaryngologist applying for a license pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;
- (3) has reached the age of majority and has at least a high school education or the equivalent;

(4) has worked for no less than seven months under a training permit; and

(5) certifies that the person is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

B. The examination for hearing aid dispenser shall be conducted by the board quarterly unless there are no applicants for examination.

C. The board:

(1) shall provide procedures to ensure that examinations for licensure are offered as needed;

(2) shall establish rules regarding the examination application deadline and other rules relating to the taking and retaking of licensure examinations;

(3) shall determine a passing grade for the examination; and

(4) may accept an applicant's examination scores used for national certification or other examination approved by the board.

**History:** Laws 1996, ch. 57, § 14; 1999, ch. 128, § 7; 2013, ch. 110, § 9.

### **61-14B-15. Requirements for licensure; clinical fellow of speech-language pathology. (Repealed effective July 1, 2028.)**

A license to practice as a clinical fellow of speech-language pathology shall be issued to a person who files a completed application, pays the required fees, provides documentation and submits satisfactory evidence that the person:

A. has met all academic course work and practicum requirements for a master's degree in speech-language pathology, speech pathology or communication disorders for certification by a national professional association;

B. certifies that the person has received no reprimands of unprofessional conduct or incompetency;

C. applies for licensure under Section 61-14B-12 NMSA 1978 after completing the clinical fellowship year; and

D. has an appropriate supervisor, as defined in Section 61-14B-2 NMSA 1978.

**History:** Laws 1996, ch. 57, § 15; 2013, ch. 110, § 10; 2015, ch. 110, § 6.

### **61-14B-15.1. Requirements for licensure; apprentice in speech and language. (Repealed effective July 1, 2028.)**

A license to practice as an apprentice in speech and language shall be issued by the board to a person who files a completed application accompanied by the required fees and documentation and provides satisfactory evidence that the applicant:

A. is working toward full licensure pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

B. has a baccalaureate degree in speech-language pathology or communicative disorders or an equivalent degree or a baccalaureate degree in another field with thirty semester hours of credit in speech-language pathology or communicative disorder;

C. is enrolled in and successfully completes graduate classes in speech-language pathology, communicative disorders or a related field at a minimum rate of nine semester hours per year and is accepted into a master's level program in speech-language pathology or communicative disorders within two years of initial licensing;

D. maintains a minimum of a 3.0 grade point average in the master's degree course and other work;

E. is supervised by an appropriate supervisor, as defined in Section 61-14B-2 NMSA 1978; and

F. has arranged for appropriate supervision to meet the supervision requirement defined by rule.

**History:** Laws 1999, ch. 128, § 8; 2005, ch. 250, § 4; 2013, ch. 110, § 11.

### **61-14B-16. Licensure under prior laws. (Repealed effective July 1, 2028.)**

Any license issued in accordance with the Speech-Language Pathology and Audiology Act or the Hearing Aid Act prior to the effective date of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be valid until the expiration date of the license.

**History:** 1996, ch. 57, § 16.

### **61-14B-16.1. Expedited licensure. (Repealed effective July 1, 2028.)**

A. The board shall issue an expedited license without examination to a speech-language pathologist, audiologist or hearing aid dispenser licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue

the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 2022, ch. 39, § 63.

### **61-14B-17. Hearing aid dispensing temporary trainee permits; issuance. (Repealed effective July 1, 2028.)**

A. A person who does not meet the requirements for licensure without examination as an audiologist or otolaryngologist as set forth in Section 61-14B-13 NMSA 1978 or as a hearing aid dispenser as set forth in Section 61-14B-14 NMSA 1978 may apply for a temporary trainee permit. A temporary trainee permit shall be issued to a person who:

(1) has reached the age of majority and has a high school education or the equivalent;

(2) has identified a sponsor;

(3) pays an application fee as determined by the board;

(4) has not failed the licensing examination twice within a five-year period;  
and

(5) certifies that the person is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978.

B. A temporary trainee permit shall:

(1) be valid for one year from the date of its issuance and is nonrenewable for a period of one year following its expiration; and

(2) allow the person to complete a training period.

C. A person issued a temporary trainee permit may be eligible for licensure as a hearing aid dispenser upon:

- (1) the completion of a minimum of three hundred twenty hours of training, to be completed within a three-month period under the direct supervision of the sponsor;
- (2) the completion of five continuous months of full-time dispensing work, during which time all sales are approved by the sponsor prior to delivery; and
- (3) the sponsor approving all fittings, adjustments, modifications or repairs to hearing aids and earmolds.

D. An audiologist or otolaryngologist issued a temporary trainee permit may be eligible for licensure without examination as a hearing aid dispenser upon the sponsor providing direct supervision for a minimum of three months of all fittings, adjustments, modifications or repairs to hearing aids and earmolds.

**History:** Laws 1996, ch. 57, § 17; 1999, ch. 128, § 9; 2013, ch. 110, § 12.

### **61-14B-18. Scope of hearing aid dispensing examination. (Repealed effective July 1, 2028.)**

In preparing the hearing aid dispensing examination, the board shall use tests that demonstrate:

A. knowledge in the fitting and sale of hearing aids, including basic physics of sound, anatomy and physiology of the ear and the function of hearing aids; and

B. proficient use of techniques for the fitting of hearing aids, including:

- (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 recognition score tests;
- (3) masking when indicated;
- (4) recording and evaluation of audiograms and speech audiometry for determining proper selection, fitting and adjustment of hearing aids;
- (5) taking earmold impressions; and
- (6) analyzing hearing aid function, modification and general service.

**History:** Laws 1996, ch. 57, § 18; 2013, ch. 110, § 13.



### **61-14B-19. License renewal. (Repealed effective July 1, 2028.)**

A. Each licensee shall renew the licensee's license biennially by submitting a renewal application as provided for in the board's regulations. The board may require proof of continuing education as a requirement for renewal. The board may establish a method to provide for staggered biennial terms. The board may authorize license renewal for one year to establish the renewal cycle.

B. A sixty-day grace period shall be allowed to each licensee after each licensing period. A license may be renewed during the grace period upon payment of a renewal fee and a late fee as prescribed by the board.

C. Any license not renewed by the end of the grace period will be considered expired and the licensee shall not be eligible to practice within the state until the license is renewed. The board shall develop rules regarding requirements for renewal of an expired license and may require the licensee to reapply as a new applicant.

D. Clinical fellow licenses may be renewed annually for no more than three years; provided the clinical fellow has submitted evidence of passing a recognized standard national examination in speech-language pathology prior to or within the clinical fellow's second year of the CFY. The CFY license shall not be renewed for a second year without evidence of passing a recognized standard national examination in speech-language pathology.

E. An apprentice in speech-language pathology shall renew the apprentice's license annually; provided that the apprentice is accepted into a master's-level program in speech-language pathology or communicative disorders within two years of initial licensing.

F. The board may issue rules providing for inactive status of licenses.

**History:** Laws 1996, ch. 57, § 19; 2013, ch. 110, § 14.

### **61-14B-20. Fees. (Repealed effective July 1, 2028.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees for applications, licenses, renewal of licenses, exams, penalties and administrative fees. The license and license renewal fees shall not exceed:

A. one hundred dollars (\$100) for clinical fellows and apprentices in speech and language;

B. two hundred dollars (\$200) for audiologists or speech-language pathologists;

C. six hundred dollars (\$600) for hearing aid dispensers;

- D. four hundred dollars (\$400) for examinations;
- E. one hundred dollars (\$100) for late renewal fees;
- F. four hundred dollars (\$400) for hearing aid dispensing endorsement;
- G. five hundred dollars (\$500) for a hearing aid dispenser trainee license, which fee includes examination, both written and practical;
- H. one hundred dollars (\$100) for bilingual-multicultural endorsement; and
- I. reasonable administrative fees.

**History:** Laws 1996, ch. 57, § 20; 1999, ch. 128, § 10; 2013, ch. 110, § 15; 2020, ch. 6, § 41.

**61-14B-21. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2028.)**

A. The board may deny, revoke, suspend or impose conditions upon a license held or applied for under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 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 the conviction;
- (3) is guilty of incompetence;
- (4) is guilty of unprofessional conduct;
- (5) is selling or fitting the first hearing aid of a child under sixteen years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has earned certification by a national professional association;
- (6) is selling or fitting a hearing aid on a person who has not been tested, except for replacement aids;
- (7) uses untruthful or misleading advertising;
- (8) makes any representation as being a medical doctor when the licensee or applicant is not a licensed medical doctor;

(9) is addicted to the use of habit-forming drugs or is addicted to a substance to such a degree as to render the licensee or applicant unfit to practice as a speech-language pathologist, dispensing or nondispensing audiologist or hearing aid dispenser;

(10) is guilty of unprofessional conduct, as defined by regulation of the board;

(11) is guilty of a violation of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978];

(12) has violated a provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(13) is guilty of willfully or negligently practicing beyond the scope of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(14) is guilty of aiding or abetting the practice of speech-language pathology, audiology or hearing aid dispensing by a person not licensed by the board;

(15) is guilty of practicing without a license in violation of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act and its regulations; or

(16) has had a license, certificate or registration to practice speech-language pathology, audiology or hearing aid dispensing 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 section. A certified copy of the record of the jurisdiction taking such disciplinary action will be conclusive evidence thereof.

B. Disciplinary proceedings may be initiated by a person filing a sworn complaint. A 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:** Laws 1996, ch. 57, § 21; 2015, ch. 110, § 7.

### **61-14B-22. Penalties. (Repealed effective July 1, 2028.)**

A. Any person who fails to furnish the board, its investigators or representatives with information requested by the board is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment for a period of one year or both.

B. Any person who violates any provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act 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 for a period of one year or both.

**History:** Laws 1996, ch. 57, § 22.

### **61-14B-23. Criminal Offender Employment Act. (Repealed effective July 1, 2028.)**

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 Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**History:** Laws 1996, ch. 57, § 23.

### **61-14B-24. Fund established. (Repealed effective July 1, 2028.)**

A. There is created in the state treasury the "speech-language pathology, audiology and hearing aid dispensing practices board fund".

B. All money received by the board under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act shall be deposited with the state treasurer for credit to the speech-language pathology, audiology and hearing aid dispensing practices board 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 speech-language pathology, audiology and hearing aid dispensing practices board fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**History:** Laws 1996, ch. 57, § 24.

### **61-14B-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The speech-language pathology, audiology and hearing aid dispensing practices board is terminated on July 1, 2027 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 Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act until July 1, 2028. Effective July 1, 2028, the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act is repealed.

**History:** Laws 1996, ch. 57, § 25; 1997, ch. 46, § 17; 2005, ch. 208, § 12; 2015, ch. 119, § 15; 2021, ch. 50, § 11.

## **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 [repealed] 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.

## **ARTICLE 14D**

### **Athletic Trainer Practice**

#### **61-14D-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 14D NMSA 1978 may be cited as the "Athletic Trainer Practice Act".

**History:** 1978 Comp., § 61-14D-1, enacted by Laws 1993, ch. 325, § 1; 2000, ch. 4, § 11.

#### **61-14D-2. Purpose. (Repealed effective July 1, 2028.)**

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.

#### **61-14D-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Athletic Trainer Practice Act:

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. "clinical assessment" means obtaining a history of an athletic injury, inspection and palpation of an injured part and associated structures and performance of testing techniques related to stability and function to determine the extent of an injury;

E. "department" means the regulation and licensing department;

F. "district" means an area having the same boundaries as a congressional district in the state;

G. "emergency care" means the application of first aid, determination of whether an injury is life-threatening and referral to an appropriately licensed health care provider if an injury requires further definitive care or the injury or condition is outside an athletic trainer's scope of practice;

H. "licensed physician" means a chiropractor, osteopath or physician licensed pursuant to Article 4, 6 or 10 of Chapter 61 NMSA 1978;

I. "preventive services" means treatment of injuries through pre-activity screening and evaluation, educational programs, application of commercial products, use of protective equipment and physical conditioning and reconditioning programs; and

J. "therapeutic intervention and rehabilitation" means treatment of injuries through the application of exercise, the use of physical modalities such as heat, light, sound, cold, electricity or mechanical devices, therapeutic activities, preventive services and standard reassessment techniques and procedures in accordance with established, written athletic training service plans and upon the order or protocol of a licensed physician.

**History:** 1978 Comp., § 61-14D-3, enacted by Laws 1993, ch. 325, § 3; 2017, ch. 86, § 1.

#### **61-14D-4. License required. (Repealed effective July 1, 2028.)**

A. Unless licensed pursuant to the Athletic Trainer Practice Act, 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.

### **61-14D-4.1. Expedited licensure. (Repealed effective July 1, 2028.)**

A. The board shall issue an expedited license without examination to an athletic trainer licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978. The board shall issue the expedited license as soon as practicable but no later than thirty days after the person files an application with the required fees and demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before license renewal.

B. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 2022, ch. 39, § 65.

### **61-14D-5. Exemptions. (Repealed effective July 1, 2028.)**

A. Nothing in the Athletic Trainer Practice Act 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.

### **61-14D-6. Scope of practice. (Repealed effective July 1, 2028.)**

The practice of athletic training includes preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians, pursuant to the written prescription, standing order or protocol of a licensed physician.

**History:** 1978 Comp., § 61-14D-6, enacted by Laws 1993, ch. 325, § 6; 2017, ch. 86, § 2.

### **61-14D-7. Board created. (Repealed effective July 1, 2028.)**

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 who are United States citizens and have been New Mexico residents for at least three years prior to their appointment. Members of the board shall be appointed by the governor for staggered terms of three years each. Three of the members shall be athletic trainers licensed pursuant to provisions of the Athletic Trainer Practice Act. 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 reside in separate districts. 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; 2005, ch. 125, § 1.

### **61-14D-8. Department duties. (Repealed effective July 1, 2028.)**

The department shall assist the board in administering the Athletic Trainer Practice Act and shall:

- A. process applications and conduct and review the required examinations;
- B. issue licenses and provisional permits to applicants who meet the requirements of the Athletic Trainer Practice Act;
- C. administer and coordinate the provisions of the Athletic Trainer Practice Act and investigate persons engaging in practices that 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;
- F. maintain board records, including financial records; and
- G. maintain a current register of licensees as a matter of public record.

**History:** 1978 Comp., § 61-14D-8, enacted by Laws 1993, ch. 325, § 8; 2005, ch. 125, § 2; 2022, ch. 39, § 64.

### **61-14D-9. Board powers and duties. (Repealed effective July 1, 2028.)**

The board:

- A. shall select and provide for the administration of examinations for licensure no less often than semiannually;
- B. shall establish the passing scores for the New Mexico laws and regulation examinations;
- C. shall determine eligibility of individuals for licensure;
- D. shall set fees for administrative services and licenses as authorized by the Athletic Trainer Practice Act, and authorize all disbursements necessary to carry out the provisions of that act;

E. shall review license applications and recommend approval or disapproval;

F. may adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules and regulations necessary to carry out the provisions of the Athletic Trainer Practice Act;

G. may take any disciplinary action allowed by and in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978];

H. may conduct hearings upon charges relating to the discipline of licensees, including the denial, suspension or revocation of a license;

I. may adopt a code of ethics; and

J. may require and establish criteria for continuing education.

**History:** 1978 Comp., § 61-14D-9, enacted by Laws 1993, ch. 325, § 9; 2005, ch. 125, § 3.

### **61-14D-10. Requirements for licensure. (Repealed effective July 1, 2028.)**

The board 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 a baccalaureate degree;

B. is currently competent in cardiopulmonary resuscitation and in the use of automated electrical defibrillator units; and

C. demonstrates professional competence by passing the 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; 2005, ch. 125, § 4.

### **61-14D-11. Examinations. (Repealed effective July 1, 2028.)**

Applicants shall demonstrate professional competency by passing the New Mexico laws and regulations examination. The board shall establish the board-approved examinations application deadline and the requirements for re-examination if the applicant has failed the examination.

**History:** 1978 Comp., § 61-14D-11, enacted by Laws 1993, ch. 325, § 11; 2005, ch. 125, § 5.

### **61-14D-12. Provisional permit. (Repealed effective July 1, 2028.)**

A. An applicant for licensure who has passed the New Mexico state law and regulations examination may obtain a provisional permit to engage in the practice of athletic training; provided that the applicant meets all licensure requirements except for passing the national certification exam for athletic trainers. The applicant must provide proof of registration to take the national certification examination.

B. The provisional permit is valid until the results of the national certification examination have been received in the board office.

C. If the applicant should fail or not take the national certification examination, upon proof of re-registration for the national certification examination, the applicant will be issued a second provisional permit. No more than two provisional permits shall be issued to an individual.

**History:** 1978 Comp., § 61-14D-12, enacted by Laws 1993, ch. 325, § 12; 2005, ch. 125, § 6.

### **61-14D-13. License renewal. (Repealed effective July 1, 2028.)**

A. Each licensee shall renew his license annually by submitting a renewal application on a form provided by the board.

B. The board may require proof of continuing education, current cardiopulmonary resuscitation certification and certification in the use of automated electrical defibrillator units as a requirement for renewal.

C. If a license is not renewed by the expiration date, the license will be considered expired and the licensee shall refrain from practicing. A licensee may renew a license within the allotted grace period by submitting to the board payment of the renewal fee and late fee and proof of compliance with all renewal requirements. Upon receipt of payment and proof of meeting any continuing education requirements by the board, the licensee may resume practice. Failure to receive renewal notice and application for renewal of license from the board does not excuse a licensed athletic trainer from the requirements for renewal.

D. A license granted by the board shall automatically expire if the licensee fails to apply for the renewal license provided for in this section within thirty days of the renewal deadline. Reinstatement of an expired license will require the licensee to reapply and meet all current standards for licensure.

**History:** 1978 Comp., § 61-14D-13, enacted by Laws 1993, ch. 325, § 13; 2005, ch. 125, § 7.

### **61-14D-14. Fees. (Repealed effective July 1, 2028.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees, not to exceed one hundred dollars (\$100) each for applications, licenses, expedited licenses, provisional permits, renewal of licenses, placement on inactive status and necessary and reasonable administrative fees and initial prorated licensing fees.

**History:** 1978 Comp., § 61-14D-14, enacted by Laws 1993, ch. 325, § 14; 2005, ch. 125, § 8; 2020, ch. 6, § 42; 2022, ch. 39, § 66.

### **61-14D-15. Criminal Offenders Employment Act. (Repealed effective July 1, 2028.)**

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.

**History:** 1978 Comp., § 61-14D-15, enacted by Laws 1993, ch. 325, § 15.

### **61-14D-16. Disciplinary proceedings; judicial review; application of Uniform Licensing Act. (Repealed effective July 1, 2028.)**

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 upon findings by the board that the licensee or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure a license provided for in the Athletic Trainer Practice Act;

(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 [Chapter 30, Article 31 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; 2005, ch. 125, § 9.

### **61-14D-17. Penalties. (Repealed effective July 1, 2028.)**

Any person who violates any provision of the Athletic Trainer Practice Act 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.

### **61-14D-18. Fund established. (Repealed effective July 1, 2028.)**

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 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.

### **61-14D-19. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The athletic trainer practice board is terminated on July 1, 2027 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, 2028. Effective July 1, 2028, Chapter 61, Article 14D NMSA 1978 is repealed.

**History:** 1978 Comp., § 61-14D-19, enacted by Laws 1993, ch. 325, § 19; 2000, ch. 4, § 12; 2005, ch. 208, § 13; 2015, ch. 119, § 16; 2021, ch. 50, § 12.

## **ARTICLE 14E**

### **Medical Imaging and Radiation Therapy Health and Safety**

#### **61-14E-1. Short title.**

Chapter 61, Article 14E NMSA 1978 may be cited as the "Medical Imaging and Radiation Therapy Health and Safety Act".

**History:** Laws 1983, ch. 317, § 1; 2009, ch. 106, § 1.

#### **61-14E-2. Purpose of act.**

The purpose of the Medical Imaging and Radiation Therapy Health and Safety Act is to maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging. This purpose is effectuated by establishing requirements for appropriate education and training of persons operating medical equipment emitting ionizing and non-ionizing radiation, establishing standards of education and training for the persons who administer medical imaging and radiation therapy procedures and providing for the appropriate examination and licensure of those persons.

**History:** Laws 1983, ch. 317, § 2; 2009, ch. 106, § 2.

#### **61-14E-3. Administration; enforcement.**

The administration and enforcement of the Medical Imaging and Radiation Therapy Health and Safety Act is vested in the department.

**History:** Laws 1983, ch. 317, § 3; 1993, ch. 140, § 2; 2009, ch. 106, § 3.

#### **61-14E-4. Definitions.**

As used in the Medical Imaging and Radiation Therapy Health and Safety Act:

A. "advisory council" means the medical imaging and radiation therapy advisory council;

B. "board" means the environmental improvement board;

C. "certificate of limited practice" means a certificate issued pursuant to the Medical Imaging and Radiation Therapy 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. "certified nurse practitioner" means a person licensed pursuant to Section 61-3-23.2 NMSA 1978;

E. "credential" or "certification" means the recognition awarded to an individual who meets the requirements of a credentialing or certification organization;

F. "credentialing organization" or "certification organization" means a nationally recognized organization recognized by the board that issues credentials or certification through testing or evaluations that determine whether an individual meets defined standards for training and competence in a medical imaging modality;

G. "department" means the department of environment;

H. "diagnostic medical sonographer" means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;

I. "division" means the environmental health bureau of the field operations and infrastructure division of the department;

J. "ionizing radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions; "ionizing radiation" does not include non-ionizing radiation, such as sound waves, radio waves or microwaves, or visible, infrared or ultraviolet light;

K. "license" means a document issued by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to an individual who has met the requirements of licensure;

L. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;

M. "licensure" means a grant of authority through a license or limited license to perform specific medical imaging and radiation therapy services pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

N. "magnetic resonance technologist" means a person other than a licensed practitioner who performs magnetic resonance procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals;

O. "medical imaging" means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes;

P. "medical imaging modality" means:

- (1) diagnostic medical sonography and all of its subspecialties;
- (2) magnetic resonance imaging and all of its subspecialties;
- (3) nuclear medicine technology and all of its subspecialties;
- (4) radiation therapy and all of its subspecialties; and
- (5) radiography and all of its subspecialties;

Q. "medical imaging professional" means a person who is a magnetic resonance technologist, radiographer, nuclear medicine technologist or diagnostic medical sonographer and who is licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

R. "non-ionizing radiation" means the static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound;



S. "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;

T. "physician assistant" means a person licensed pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978 [repealed];

U. "radiation therapy" means the application of ionizing radiation to humans for therapeutic purposes;

V. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

W. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

X. "radiography" means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients;

Y. "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; and

Z. "radiologist assistant" means an individual licensed as a radiographer as defined in the Medical Imaging and Radiation Therapy Health and Safety Act who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies."

**History:** Laws 1983, ch. 317, § 4; 1991, ch. 14, § 1; 1993, ch. 140, § 1; 1994, ch. 82, § 1; 2009, ch. 106, § 4; 2013, ch. 116, § 1.

### **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 licensure standards as may be necessary to effectuate the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act and to maintain high standards of practice as verified by credentialing organizations for medical imaging and radiation therapy; and

B. adopt rules and regulations establishing continuing education requirements as a condition of licensure renewal for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current knowledge and practice as verified by credentialing organizations for medical imaging and radiation therapy.

**History:** Laws 1983, ch. 317, § 5; 2009, ch. 106, § 5.

### **61-14E-5.1. Medical imaging and radiation therapy advisory council; creation and organization.**

A. The "medical imaging and radiation therapy advisory council" is established, consisting of eleven members. The members shall be appointed by the governor, after consultation with the secretary of environment and professional organizations representing medical imaging and radiation therapy, for three-year staggered terms. The governor shall fill any vacancy occurring on the council within sixty days of the vacancy. The replacement appointee shall serve the remainder of the original member's unexpired term.

B. The members of the council shall be:

(1) six medical imaging professionals licensed by the department, representing each medical imaging modality defined under the Medical Imaging and Radiation Therapy Health and Safety Act, including one licensed radiographer and one licensed radiologist assistant;

(2) one individual who holds a certificate of limited practice in radiography;

(3) three physicians licensed pursuant to Section 61-6-1 or 61-10-1 [repealed] NMSA 1978, each of whom represents a different medical specialty, only one of whom shall be a radiologist and at least one of whom shall be from a rural area; and

(4) one member of the general public who is not licensed by the department nor a relative of anyone licensed by the department.

C. The council may create ad hoc disciplinary review committees to consider medical matters and make recommendations to the council. Ad hoc disciplinary review committees shall, at a minimum, include:

(1) one individual licensed by the department in the specific modality in question and who holds similar credentials as the individual under disciplinary review;

(2) one physician, licensed pursuant to Section 61-6-1 or 61-10-1 [repealed] NMSA 1978, who is experienced in the modality in question; and

(3) one member of the general public.

D. A member shall serve no more than two consecutive three-year terms.

E. A member of the council may receive per diem and mileage as provided for non-salaried 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 the duties as a council member.

F. A member failing to attend three consecutive regular and properly noticed meetings of the council without a reasonable excuse shall be automatically removed from the council.

G. In the event of a vacancy, the department shall immediately notify the governor of the vacancy. Within ninety days of receiving notice of a vacancy, the governor shall appoint a qualified person to fill the remainder of the unexpired term.

H. A majority of the council members currently serving constitutes a quorum of the council.

I. The council shall meet at least once a year and at such other times as it deems necessary.

J. The council shall annually elect officers as deemed necessary to administer its duties.

K. Notwithstanding the provisions of Subsections A through I of this section, members shall initially be appointed by the governor so that five members shall be appointed for terms of three years and six members shall be appointed for terms of five years. Thereafter, the additional members shall be appointed by the governor for staggered terms of three years each.

L. As used in this section:

(1) "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parent; and

(2) "rural" means an area or location within a county having fifty thousand or fewer inhabitants as of the last federal decennial census.

**History:** Laws 2009, ch. 106, § 12.

### **61-14E-6. Division; powers; duties.**

The division, pursuant to the rules and regulations promulgated by the board, shall:

A. maintain and enforce licensure standards for magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology, diagnostic medical sonography and radiology and licensure standards for restricted diagnostic radiography;

B. refer to national educational accreditation standards for educational programs and, pursuant to those standards, establish criteria for education programs of magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology and diagnostic medical sonography;

C. provide for surveys of educational programs preparing persons for certification under the Medical Imaging and Radiation Therapy Health and Safety Act;

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;

E. establish procedures for examination, certification and renewal of certificates of applicants; and

F. establish scope of practice and ethics rules.

**History:** Laws 1983, ch. 317, § 6; 2009, ch. 106, § 6.

### **61-14E-7. Licensure; exceptions.**

A. It is unlawful, unless licensed by the department as a medical imaging professional or radiation therapist, for any person to:

(1) use ionizing or non-ionizing radiation on humans;

(2) use any title, abbreviation, letters, figures, signs or other devices to indicate that the person is a licensed medical imaging professional or radiation therapist; or

(3) engage in any of the medical imaging modalities as defined by the Medical Imaging and Radiation Therapy Health and Safety Act.

B. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a medical imaging license shall not apply to:

(1) a licensed practitioner;

(2) a health care practitioner licensed or certified by an independent board operating pursuant to Chapter 61 NMSA 1978 or a state regulatory body; provided that any medical imaging certification and examination program for health care practitioners

established by an independent board or state regulatory body shall be submitted to the advisory council and approved by the board; or

(3) a registered nurse or certified nurse-midwife performing ultrasound procedures; provided that the registered nurse or certified nurse-midwife has documented demonstration of competency within the registered nurse's scope of practice in compliance with board of nursing rules or certified nurse-midwife's scope of practice in compliance with department of health rules. A registered nurse or a certified nurse-midwife may perform ultrasound procedures limited to a focused imaging target. A registered nurse or certified nurse-midwife shall not perform diagnostic ultrasound.

C. The requirement of a medical imaging license 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 or dental hygiene to apply radiation to humans under the supervision of a licensed practitioner or under the direct supervision of a licensed medical imaging professional or radiation therapist.

D. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a license shall not apply to a student completing clinical requirements of an approved education program working under the supervision of a licensed practitioner or under the direct supervision of a medical imaging professional or radiation therapist licensed in the practice for which the student is seeking licensure.

E. The department shall adopt rules and regulations for the education and licensure of advanced medical imaging professionals.

F. The department may require students in medical imaging and radiation therapy educational programs to register with the department while enrolled in an approved education program.

G. A registered nurse or a certified nurse-midwife shall not perform ionizing procedures, including radiography, radiation therapy, nuclear medicine or a non-ionizing magnetic resonance procedure, unless licensed by the department as a medical imaging professional. Nothing in the Medical Imaging and Radiation Therapy Health and Safety Act shall affect the authority of a health care professional licensed pursuant to Chapter 24 or Chapter 61 NMSA 1978 to order or use images resulting from ionizing or non-ionizing procedures in accordance with the licensed health care professional's scope of practice.

**History:** Laws 1983, ch. 317, § 7; 1991, ch. 14, § 2; 1993, ch. 140, § 3; 2009, ch. 106, § 7; 2013, ch. 116, § 2.

### **61-14E-7.1. Emergency provision.**

A person having a valid certificate of limited practice may authorize diagnostic radiography procedures outside the normal scope of a limited radiographic practitioner if the person issued the certificate of limited practice is employed in an area having a federal designation as a medically underserved area and the person issued the certificate of limited practice is confronted with an emergency situation, where, by order of a licensed practitioner, a certified nurse practitioner or a registered physician assistant, the additional diagnostic radiography procedure is medically necessary for the immediate safety or health of the patient.

**History:** Laws 1994, ch. 82, § 2.

### **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.

### **61-14E-9. Fees for licensure.**

After the promulgation of rules and regulations, except as provided in Section 61-1-34 NMSA 1978, the department shall charge and collect the following fees:

- A. an application fee not to exceed ten dollars (\$10.00);
- B. an examination fee not to exceed one hundred fifty dollars (\$150) to cover the costs the department incurs in administering the initial examination required for limited certification;
- C. a biennial licensure fee not to exceed one hundred dollars (\$100);
- D. a temporary licensure fee not to exceed fifty dollars (\$50.00) to cover a period no longer than twelve months when new graduates of an approved program are in the process of taking required licensure examinations; and

E. miscellaneous fees, such as for requests for duplicate or replacement licenses, legal name change and written verification, not to exceed twenty-five dollars (\$25.00).

**History:** Laws 1983, ch. 317, § 9; 1993, ch. 140, § 5; 2009, ch. 106, § 8; 2020, ch. 6, 43.

### **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 Imaging and Radiation Therapy Health and Safety Act 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 Imaging and Radiation Therapy Health and Safety Act, the duties imposed by that act and the promotion of education and standards for medical imaging technology and radiation therapy 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 Imaging and Radiation Therapy Health and Safety Act.

**History:** Laws 1983, ch. 317, § 10; 1989, ch. 324, § 32; 1993, ch. 140, § 6; 2009, ch. 106, § 9.

### **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 license held or applied for under the Medical Imaging and Radiation Therapy Health and Safety Act, pursuant to the procedures established in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], upon grounds that the medical imaging professional, radiation therapist or the applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure a license 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 does not possess a license pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act or otherwise authorized by that act in engaging in the activities of a license holder;

G. has engaged in any practice beyond the scope of authorized activities of an individual licensed or a certificate of limited practice holder pursuant to the Medical Imaging and Radiation Therapy 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 Imaging and Radiation Therapy Health and Safety Act.

**History:** Laws 1983, ch. 317, § 11; 2009, ch. 106, § 10.

### **61-14E-12. Violations; penalties.**

It is a misdemeanor for any person, firm, association or corporation to:

A. knowingly or willfully employ as a medical imaging professional or radiation therapist any person who is required to but does not possess a valid license or certificate of limited practice to engage in the practice of medical imaging or radiation therapy;

B. sell, fraudulently obtain or furnish any medical imaging technology or radiation therapy license or certificate of limited practice or to aid or abet therein;

C. practice medical imaging or radiation therapy as defined by the Medical Imaging and Radiation Therapy Health and Safety Act unless exempted or licensed to do so under the provisions of that act; or

D. otherwise violate any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act.

The department shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Medical Imaging and Radiation Therapy 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. The department shall notify within thirty days of a final disciplinary action any credentialing organization through which the person is credentialed or certified.

**History:** Laws 1983, ch. 317, § 12; 1993, ch. 140, § 7; 2009, ch. 106, § 11.

## **ARTICLE 14F**

### **Uniform Athlete Agents**

#### **61-14F-1. Short title.**

This act [61-14F-1 to 61-14F-19 NMSA 1978] may be cited as the "Uniform Athlete Agents Act".

**History:** Laws 2009, ch. 169, § 1.

#### **61-14F-2. Definitions.**

As used in the Uniform Athlete Agents Act:

A. "agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement contract;

B. "athlete agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. "Athlete agent" includes an individual who represents to the public that the individual is an athlete agent. "Athlete agent" does not include the spouse, parent, sibling, grandparent or guardian of a student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

C. "athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

D. "contact" means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract;

E. "endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance;

F. "intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

G. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

H. "professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization or as a professional athlete;

I. "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

J. "registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

K. "secretary" means the secretary of state;

L. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

M. "student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

**History:** Laws 2009, ch. 169, § 2.

### **61-14F-3. Service of process; subpoenas.**

A. By acting as an athlete agent in this state, a nonresident individual appoints the secretary as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

B. The secretary may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

**History:** Laws 2009, ch. 169, § 3.

### **61-14F-4. Athlete agents; registration required; void contracts.**

A. Except as otherwise provided in Subsection B of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to Section 6 [61-14F-6 NMSA 1978] or 8 [61-14F-8 NMSA 1978] of the Uniform Athlete Agents Act.

B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) a student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

C. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

**History:** Laws 2009, ch. 169, § 4.

### **61-14F-5. Registration as athlete agent; form; requirements.**

A. An applicant for registration shall submit an application for registration to the secretary in a form prescribed by the secretary. An application filed under this section is a public record. The application shall be in the name of an individual and, except as otherwise provided in Subsection B of this section, shall be signed or otherwise authenticated by the applicant under penalty of perjury and shall state or contain:

(1) the name of the applicant and the address of the applicant's principal place of business;

(2) the name of the applicant's business or employer, if applicable;

(3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) a description of the applicant's:

(a) formal training as an athlete agent;

(b) practical experience as an athlete agent; and

(c) educational background relating to the applicant's activities as an athlete agent;

(5) the names and addresses of three individuals, not related to the applicant, who are willing to serve as references;

(6) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) the names and addresses of all persons who are:

(a) with respect to the athlete agent's business if it is not a corporation, partners, members, officers, managers, associates or profit-sharers of the business; and

(b) with respect to a corporation employing the athlete agent, officers, directors and any shareholders of the corporation having an interest of five percent or greater;

(8) whether the applicant or any person named pursuant to Paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) whether there has been an administrative or judicial determination that the applicant or any person named pursuant to Paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;

(10) any instance in which the conduct of the applicant or any person named pursuant to Paragraph (7) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;

(11) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to Paragraph (7) of this subsection arising out of occupational or professional conduct; and

(12) whether there has been a denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Paragraph (7) of this subsection as an athlete agent in any state.

B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection A of this section. The secretary shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(3) was signed by the applicant under penalty of perjury.

**History:** Laws 2009, ch. 169, § 5.

### **61-14F-6. Certificate of registration; issuance or denial; renewal.**

A. Except as otherwise provided in Subsection B of this section, the secretary shall issue a certificate of registration to an individual who complies with Subsection A of Section 5 [61-14F-5 NMSA 1978] of the Uniform Athlete Agents Act or whose application has been accepted pursuant to Subsection B of that section.

B. The secretary may refuse to issue a certificate of registration if the secretary determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary may consider whether the applicant has:

(1) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(2) made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) engaged in conduct prohibited by Section 14 [61-14F-14 NMSA 1978] of the Uniform Athlete Agents Act;

(5) had a registration or licensure as an athlete agent suspended, revoked or denied or was refused renewal of registration or licensure as an athlete agent in any state;

(6) engaged in conduct the consequence of which was that a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution; or

(7) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

C. In making a determination under Subsection B of this section, the secretary shall consider:

- (1) how recently the conduct occurred;
- (2) the nature of the conduct and the context in which it occurred; and
- (3) any other relevant conduct of the applicant.

D. An athlete agent may apply to renew a certificate of registration by submitting an application for renewal in a form prescribed by the secretary. An application filed under this section is a public record. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

E. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to Subsection D of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

- (1) was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
- (2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
- (3) was signed by the applicant under penalty of perjury.

F. A certificate of registration or a renewal of a certificate of registration is valid for two years.

**History:** Laws 2009, ch. 169, § 6.

### **61-14F-7. Suspension, revocation or refusal to renew registration.**

A. The secretary may suspend, revoke or refuse to renew a certificate of registration for conduct that would have justified denial of registration pursuant to Subsection B of Section 6 [61-14F-6 NMSA 1978] of the Uniform Athlete Agents Act.

B. The secretary may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

**History:** Laws 2009, ch. 169, § 7.

### **61-14F-8. Temporary registration.**

The secretary may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

**History:** Laws 2009, ch. 169, § 8.

### **61-14F-9. Registration and renewal fees.**

Except as provided in Section 61-1-34 NMSA 1978, an application for registration or renewal of registration shall be accompanied by a fee in the following amount:

- A. two hundred fifty dollars (\$250) for an initial application for registration;
- B. two hundred dollars (\$200) for an application for registration based upon a certificate of registration or licensure issued by another state;
- C. two hundred fifty dollars (\$250) for an application for renewal of registration; or
- D. two hundred dollars (\$200) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

**History:** Laws 2009, ch. 169, § 9; 2021, ch. 92, § 11.

### **61-14F-10. Required form of contract.**

A. An agency contract shall be in a record, signed or otherwise authenticated by the parties.

B. An agency contract shall state or contain:

- (1) the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;
- (2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract;
- (3) a description of any expenses that the student athlete agrees to reimburse;
- (4) a description of the services to be provided to the student athlete;
- (5) the duration of the contract; and
- (6) the date of execution.

C. An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

**"WARNING TO STUDENT ATHLETE  
IF YOU SIGN THIS CONTRACT:**

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

D. An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

E. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

**History:** Laws 2009, ch. 169, § 10.

### **61-14F-11. Notice to educational institution.**

A. Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

B. Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.

**History:** Laws 2009, ch. 169, § 11.

### **61-14F-12. Student athlete's right to cancel.**



A. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

B. A student athlete shall not waive the right to cancel an agency contract.

C. If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

**History:** Laws 2009, ch. 169, § 12.

### **61-14F-13. Required records.**

A. An athlete agent shall retain the following records for a period of five years:

- (1) the name and address of each individual represented by the athlete agent;
- (2) any agency contract entered into by the athlete agent; and
- (3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

B. Records required pursuant to Subsection A of this section to be retained are open to inspection by the secretary during normal business hours.

**History:** Laws 2009, ch. 169, § 13.

### **61-14F-14. Prohibited conduct.**

A. An athlete agent, with the intent to induce a student athlete to enter into an agency contract, shall not:

- (1) give any materially false or misleading information or make a materially false promise or representation;
- (2) furnish anything of value to a student athlete before the student athlete enters into the agency contract; or
- (3) furnish anything of value to any individual other than the student athlete or another registered athlete agent.

B. An athlete agent shall not intentionally:

- (1) initiate contact with a student athlete unless registered pursuant to the Uniform Athlete Agents Act;

(2) refuse or fail to retain or permit inspection of the records required to be retained pursuant to Section 13 [61-14F-13 NMSA 1978] of the Uniform Athlete Agents Act;

(3) fail to register when required pursuant to Section 4 [61-14F-4 NMSA 1978] of the Uniform Athlete Agents Act;

(4) provide materially false or misleading information in an application for registration or renewal of registration;

(5) predate or postdate an agency contract; or

(6) fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

**History:** Laws 2009, ch. 169, § 14.

### **61-14F-15. Criminal penalties.**

An athlete agent who violates the provisions of Section 14 [61-14F-14 NMSA 1978] of the Uniform Athlete Agents Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 2009, ch. 169, § 15.

### **61-14F-16. Civil remedies.**

A. An educational institution has a right of action against an athlete agent for damages caused by a violation of the provisions of the Uniform Athlete Agents Act. In an action pursuant to this section, the court may award to the prevailing party costs and reasonable attorney fees.

B. Damages of an educational institution pursuant to Subsection A of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of the Uniform Athlete Agents Act or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

C. A right of action pursuant to this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent.

D. The Uniform Athlete Agents Act does not restrict rights, remedies or defenses of any person under law or equity.

**History:** Laws 2009, ch. 169, § 16.

### **61-14F-17. Administrative penalty.**

The secretary may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of the Uniform Athlete Agents Act.

**History:** Laws 2009, ch. 169, § 17.

### **61-14F-18. Uniformity of application and construction.**

In applying and construing the Uniform Athlete Agents Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**History:** Laws 2009, ch. 169, § 18.

### **61-14F-19. Federal Electronic Signatures in Global and National Commerce Act.**

The provisions of the Uniform Athlete Agents Act governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the federal Electronic Signatures in Global and National Commerce Act and supersede, modify and limit the federal Electronic Signatures in Global and National Commerce Act.

**History:** Laws 2009, ch. 169, § 19.

## **ARTICLE 15**

### **Architects**

#### **61-15-1. Purposes of the act. (Repealed effective July 1, 2030.)**

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 [61-15-1.1 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.

### **61-15-1.1. Short title. (Repealed effective July 1, 2030.)**

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.

### **61-15-2. Definitions (Repealed effective July 1, 2030.)**

As used in the Architectural Act [61-15-1.1 NMSA 1978]:

A. "architect" means any individual registered under the Architectural Act to practice architecture;

B. "architectural services" means the services, as defined by rule of the board, performed in the practice of architecture. These services include predesign services, programming and planning, providing designs, drawings, specifications, other technical submissions, administration of construction contracts, coordination of technical submissions prepared by others and such other professional services as may be necessary to the planning, progress and completion of any architectural services. 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 the incidental practice of activities properly classifiable as engineering; provided that the architect does not hold himself out to be an engineer or as performing engineering services and further provided that the architect performs only that part of the work for which the architect is professionally qualified and uses qualified professional engineers, architects 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, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an architect's professional seal;

C. "board" means the board of examiners for architects;

D. "construction administration", when performed by an architect, means the interpretation of the drawings and specifications, the establishment of standards of acceptable workmanship and the observation of construction to determine its consistency with the general intent of the construction documents. Inspection of buildings by contractors, subcontractors or building inspectors or their agents shall not constitute construction administration;

E. "incidental practice" means the performance of other professional services that are related to an architect's performance of architectural services;

F. "intern architect" means a person who is actively pursuing completion of the requirements for diversified training in accordance with rules of the board;

G. "practice of architecture" means rendering or offering to render architectural services in connection with the design, construction, enlargement or alteration of a building or group of buildings and the space within the site surrounding those buildings, which have as their principal purpose human occupancy or habitation. "Practice of architecture" does not include the practice of engineering as defined in the Engineering and Surveying Practice Act [61-23-1 NMSA 1978] but may include such engineering work as is incidental practice;

H. "project" means the building or group of buildings and the space within the site surrounding the buildings as defined by the construction documents; and

I. "responsible charge" means that all architectural services have been or will be performed under the direction, guidance and restraining power of a registered architect who has exercised professional judgment with respect thereto.

**History:** 1978 Comp., § 61-15-2, enacted by Laws 1979, ch. 362, § 2; 1987, ch. 282, § 3; 1999, ch. 263, § 1.

### **61-15-3. Board of examiners for architects created; terms; qualifications. (Repealed effective July 1, 2030.)**

A. The "board of examiners for architects" is created 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, and one of the six architects shall be from the public sector and not in private practice. 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 the 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 a 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 the person

replaces. Each member of the board whose term has not expired on the effective date of this section shall serve out the member's unexpired term.

D. Each member of the board shall receive a certificate of appointment from the governor and, before beginning the member's 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 rules of the board.

E. The board shall elect a chair, a vice chair 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; 2017, ch. 52, § 5.

#### **61-15-4. Powers and duties of the board. (Repealed effective July 1, 2030.)**

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. A board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person if:

(1) each member participating by conference telephone can be identified when speaking;

(2) all participants are able to hear each other at the same time; and

(3) members of the public attending the meeting are able to hear all board members who speak during the hearing.

C. The board may establish committees to carry out the provisions of the Architectural Act. The board or any committee of the board shall have the power to subpoena any witness, to administer oaths and to take testimony concerning matters within its jurisdiction. It is within the jurisdiction of the board to determine and prescribe by rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] 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 shall not make rules inconsistent with law.

D. The board may offer, engage in and promote educational and other activities as it deems necessary to fulfill its duty to promote the public welfare.

E. The board may, for the purpose of protecting the citizens of New Mexico and promoting current architectural knowledge and practice, promulgate rules establishing continuing education requirements as a condition of registration renewal.

F. 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. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized reimbursement and 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 chair or the chair's designee; provided, however, that at no time shall the total warrants issued exceed the total amount of funds accumulated under the Architectural Act. All money derived from the operation of the Architectural Act, not including fines, shall be deposited with the state treasurer, who shall keep the money in the fund of the board of examiners for architects.

G. The board shall by rule provide for the examinations required for registration. The board shall keep a complete record of all examinations.

H. Upon application for registration, upon a prescribed form and upon payment by the applicant of a fee set by the board, the board shall consider the application and shall issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that the person is fully qualified to practice architecture.

I. It is the duty of the board to report to the district attorney of the district where the offense was committed any criminal violation of the Architectural Act.

J. The board may deny, review, suspend or revoke a registration to practice architecture and may censure, fine, reprimand and place on probation and stipulation any architect in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause as stated in the Architectural Act.

K. The board, in cooperation with the state board of licensure for professional engineers and professional surveyors 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 public welfare, the purpose of the committee is to promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its duties and powers shall be in accordance with identical resolutions adopted by each board.

L. Pursuant to the notice and hearing requirements of the Uniform Licensing Act, the board may impose a civil penalty in an amount not to exceed seven thousand five hundred dollars (\$7,500) for each violation on a person found to be engaging in the practice of architecture without being registered pursuant to the Architectural Act. Civil penalties shall be deposited to the credit of the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

**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; 1999, ch. 263, § 2; 2017, ch. 107, § 1; 2022, ch. 39, § 67.

### **61-15-4.1. Repealed.**

### **61-15-5. Additional duties of the board. (Repealed effective July 1, 2030.)**

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 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, 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. The report shall be available to the public.

D. Board records and papers that 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 and investigation files. All data, communications and information acquired by the board relating to actual or potential disciplinary action is confidential and shall not be disclosed except to the extent necessary to fulfill the duties of the board.

E. A roster showing the names and addresses of all registered architects shall be prepared annually by the board and shall be made available to each registered architect and placed on file with the secretary of state. Copies of the roster may be distributed or sold to the public.



F. The board shall, by rule, set application, registration, renewal, examination and other fees.

G. The board may, by rule, set criteria for the training of intern architects.

**History:** Laws 1931, ch. 155, § 4; 1939, ch. 82, § 4; 1941 Comp., § 51-1404; 1953 Comp., § 67-12-4; 1987, ch. 282, § 6; 1999, ch. 263, § 3; 2017, ch. 107, § 2.

**61-15-6. Requirements for registration. (Repealed effective July 1, 2030.)**

A. To be eligible for registration, a person shall be of good character and repute.

B. An applicant for registration shall submit evidence satisfactory to the board that the applicant is fully qualified to practice architecture in New Mexico.

C. All applicants for registration shall be required to pass any examinations required by the board.

D. All applicants for registration shall be required to complete all forms and affidavits required by the board.

E. An applicant for registration by examination shall have:

(1) a professional degree from an architectural program accredited by the national architectural accreditation board or its equivalent as prescribed by rule;

(2) certified completion of the architectural experience program of the national council of architectural registration boards; and

(3) passed all divisions of the architectural registration examination.

F. A person registered as an architect in another jurisdiction who has been certified by the national council of architectural registration boards may apply for registration without an examination by presenting for review by the board:

(1) a certificate of good standing issued by the national council of architectural registration boards or its equivalent as prescribed by rule;

(2) evidence satisfactory to the board of qualification in comprehensive design as prescribed by rule of the board; and

(3) evidence satisfactory to the board of meeting all of the requirements prescribed by rule of the board.

G. A person registered as an architect in another jurisdiction who has held the registration in a position of responsibility for a period of time as prescribed by the rule of the board and who does not have a certificate issued by the national council of architectural registration boards may apply for registration by presenting evidence of broad experience as an architect, as required by rule of the board, of academic training and work experience directly related to architecture, including evidence satisfactory to the board of qualification in comprehensive design.

H. No sole proprietorship, partnership, corporation, association or other business entity shall be registered under the Architectural Act. No sole proprietorship, partnership, corporation, association or other business entity shall practice or offer to practice architecture in the state except as provided in Subsections I, J and K of this section.

I. Registered architects may practice under the Architectural Act as individuals or through partnerships, associations, corporations or other business entities.

J. In the case of practice through a business entity primarily offering architectural services, at least one of the owners shall be a registered architect under the Architectural Act, and registered architects shall control a majority interest in the business entity. All plans, designs, drawings, specifications or reports issued by or for the business entity for a project physically located within New Mexico shall bear the seal of a registered architect who shall be responsible for such work.

K. In the case of practice through a business entity primarily offering engineering services, registrants under the Architectural Act or licensees under the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978] may offer architectural services; provided that:

(1) an architect registered in New Mexico is in responsible charge of the architectural services of the business entity and has the authority to bind the entity by contract;

(2) the architect in responsible charge provides the board with an affidavit documenting the architect's authority;

(3) all plans, designs, drawings, specifications or reports that are involved in the practice and issued by or for the business shall bear the seal and signature of the architect in responsible charge of the work when issued; and

(4) the architect shall notify the board of a termination of the architect's authority.

L. A business entity that offers project delivery through a teaming of architectural and construction services may render architectural services only with an architect in

responsible charge who is registered in New Mexico. This provision does not apply to business entities providing services that are exempted by Section 61-15-9 NMSA 1978.

**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; 1999, ch. 263, § 4; 2017, ch. 107, § 3.

### **61-15-7. Certificates of registration. (Repealed effective July 1, 2030.)**

A. The board shall issue a certificate of registration to each architect. An architect 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". All plans, specifications, plats and reports prepared by an architect or under an architect's responsible charge shall be signed and sealed by that architect, including all plans and specifications prepared by an architect or under an architect's responsible charge on work described in Subsection B of Section 61-15-9 NMSA 1978.

B. Certificates of registration shall be valid for a period of time as set by rule and shall be invalid after the date of expiration unless renewed.

C. Except as provided in Section 61-1-34 NMSA 1978, issuance or renewal may be effected at any time prior to expiration by the payment of a fee in an amount set by the board. Fees shall be paid to the board.

D. The failure on the part of any registrant to renew a certificate prior to expiration shall not deprive that person of the right of renewal within three years of the expiration date of the certificate. Except as provided in Section 61-1-34 NMSA 1978, reinstatement of the certificate may be effected in a manner prescribed by rule and may include penalties and fees.

E. Except as provided in Section 61-1-34 NMSA 1978, renewal of a certificate that has been expired for more than three years shall require a demonstration of continued proficiency and qualification to practice architecture in addition to payment of penalties and fees and such other requirements as may be required by rule.

**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; 1999, ch. 263, § 5; 2021, ch. 92, § 12.

### **61-15-8. Exemptions; from registration. (Repealed effective July 1, 2030.)**

A. The following are exempt from the provisions of the Architectural Act:

(1) architects who have no established places of business in this state and who are not registered pursuant to the Architectural Act may act as consulting associates of an architect registered under the provisions of the Architectural Act; provided that the architects are registered as architects in another jurisdiction; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system or architects acting on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction.

B. Nothing in the Architectural Act shall prevent a registered architect from employing non-registrants to work under the architect's responsible charge.

**History:** Laws 1931, ch. 155, § 7; 1939, ch. 82, § 7; 1941 Comp., § 51-1407; 1953 Comp., § 67-12-7; 1987, ch. 282, § 9; 1999, ch. 263, § 6; 1999, ch. 272, § 28; 2017, ch. 107, § 4.

### **61-15-9. Project exemptions. (Repealed effective July 1, 2030.)**

A. The state and its political subdivisions are not exempt from the requirements of the Architectural Act.

B. A person who is not an architect may prepare building plans and specifications, 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 that 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 that are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection; or

(4) nonresidential buildings, as defined in applicable state or local building codes, 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 rule, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or a political subdivision of the state to secure the services of an architect or engineer for a public work project that consists of repair, replacement or remodeling if the alteration does not affect structural or life safety features of a building and does not require the issuance of a building permit under any applicable code.

D. A New Mexico registered professional engineer who has complied with all the laws of New Mexico relating to the practice of engineering has a right to engage in the incidental practice, as defined by rule, of activities properly classified as architectural services; provided that the engineer does not make any representation as being an architect or as performing architectural services; and further provided that the engineer performs only that part of the work for which the engineer is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer is not qualified. The engineer shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an engineer's professional seal.

**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; 1999, ch. 263, § 7; 1999, ch. 272, § 29; 2017, ch. 107, § 5.

### **61-15-10. Violations; penalties. (Repealed effective July 1, 2030.)**

A. A person who knowingly uses a forged architectural registration seal on a document for the purpose of permitting the constructing of a building for human habitation or occupancy is guilty of a fourth degree felony, punishable pursuant to Section 31-18-15 NMSA 1978.

B. Each of the following acts constitutes a misdemeanor, punishable pursuant to Section 31-19-1 NMSA 1978:

(1) 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;

(2) using or attempting to use an expired, suspended or revoked certificate of registration as an architect;

(3) using or permitting another to use the person's official architect's seal to stamp or seal any documents that have not been prepared either by the architect or the architect's responsible charge;

(4) engaging or offering to engage in the practice of architecture, unless exempted or duly registered to do so under the Architectural Act;

(5) using a designation tending to imply to the public that the person is an architect unless:

(a) the person is duly registered to do so under the provisions of the Architectural Act;

(b) the title containing the designation is allowed by rule of the board; or

(c) the title containing the designation does not imply that the person using the designation, when describing occupation, business name or services, is offering to perform architectural services; or

(6) procuring, aiding or abetting any violation of the provisions of the Architectural Act or the rules adopted by the board.

C. If, after a disciplinary hearing conducted in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board determines that based on the evidence, a person committed a violation pursuant to the Architectural Act, the board, in addition to any other sanction, shall issue an order that imposes a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each violation on the person. In determining the amount of the civil penalty, the board shall consider:

- (1) the seriousness of the violation;
- (2) the degree of harm inflicted on individuals or the public;
- (3) the economic benefit received by the person due to the violation;
- (4) the person's history of violations; and
- (5) any other aggravating or mitigating factors relating to the violation.

**History:** 1978 Comp., § 61-15-10, enacted by Laws 1979, ch. 362, § 8; 1987, ch. 282, § 11; 1999, ch. 263, § 8; 2017, ch. 107, § 6; 2022, ch. 39, § 68.

### **61-15-11. Criminal offender's character evaluation. (Repealed effective July 1, 2030.)**

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Architectural Act [61-15-1.1 NMSA 1978].

**History:** 1953 Comp., § 67-12-10, enacted by Laws 1974, ch. 78, § 20; 1987, ch. 282, § 12.

### **61-15-12. Disciplinary actions. (Repealed effective July 1, 2030.)**

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, and the board may impose disciplinary conditions, including a letter of censure or reprimand, a civil penalty pursuant to Section 61-15-10 NMSA 1978, probation, peer review, remedial education and testing and other conditions as deemed necessary by the board to promote the public welfare, upon satisfactory proof being made to the board that the registrant has:

- (1) engaged in any fraud or deceit in obtaining a certificate of registration;
- (2) made a false statement under oath or a false affidavit to the board;
- (3) engaged in gross negligence, incompetency or misconduct in the practice of architecture as set forth by rule;
- (4) stamped with the registrant's official seal any plans, specifications, plats or reports in violation of the Architectural Act;
- (5) practiced architecture without a valid and current registration in the jurisdiction in which the practice took place;
- (6) made any representation as being an architect without having a valid and current certificate of registration as an architect in the jurisdiction in which the representation took place;
- (7) violated any provisions of the Architectural Act or the rules adopted by the board;
- (8) refused to accept or to respond to a certified mail communication from the board;
- (9) failed to provide the board or its representatives in a timely manner all documentation or information in the registrant's possession or knowledge that has been requested by the board for the purposes of investigation of an alleged violation of the Architectural Act or the rules adopted by the board;
- (10) procured, aided or abetted a violation of the Architectural Act or the rules adopted by the board;
- (11) failed to comply with the minimum standards of the practice of architecture;
- (12) habitually or excessively used intoxicants or controlled substances; or
- (13) failed to report to the board any adverse actions taken against the registrant by another jurisdiction, any professional organization, any governmental or

law enforcement agency or any court for an act or conduct that would constitute grounds for actions as provided by this section.

B. The board may deny access to examination, may refuse to issue, may suspend or may revoke any certificate of registration as an architect:

(1) for any applicant found to have violated any provision of the Architectural Act or the rules adopted by the board; or

(2) for any registrant or applicant who is convicted of a felony.

C. 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.

D. The board may modify any prior order of revocation, suspension or refusal to issue a 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.

E. 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.

F. The applicant or registrant shall be liable for all costs of disciplinary proceedings unless exonerated and shall be liable for all costs associated with monitoring compliance with any disciplinary action.

**History:** 1978 Comp., § 61-15-12, enacted by Laws 1979, ch. 362, § 9; 1987, ch. 282, § 13; 1999, ch. 263, § 9; 2017, ch. 107, § 7.

### **61-15-13. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The board of examiners for architects is terminated on July 1, 2029 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Architectural Act until July 1, 2030. Effective July 1, 2030, the Architectural Act 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; 1999, ch. 263, § 10; 2005, ch. 208, § 14; 2011, ch. 30, § 4; 2017, ch. 52, § 6; 2017, ch. 107, § 8; 2023, ch. 15, § 2.



# **ARTICLE 16**

## **Auctions**

### **61-16-1. Auctioneers; puffing; fees.**

It is unlawful for any person who sells at public auction any personal property belonging to another:

- A. to bid on any article placed by him at auction; or
- B. employ or in any way allow puffers to bid for him at an auction.

**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; 2005, ch. 77, § 1.

### **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.

### **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.

### **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.

### **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.

### **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.

### **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.

## **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.

### **61-16-9. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, all applications shall be accompanied by the payment in cash to the municipality or county 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 of the fees 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 the sale is terminated for any violation of Chapter 61, Article 16 NMSA 1978.

**History:** Laws 1941, ch. 45, § 7; 1941 Comp., § 51-1509; 1953 Comp., § 67-13-9; 1978 Comp., § 61-16-9; 2020, ch. 6, § 44.

### **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.

### **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) [61-16-7(E) 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.

### **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.

### **61-16-14. Offenses.**

It shall be unlawful:

A. to employ shills 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) [61-16-7(E) NMSA 1978].

**History:** Laws 1941, ch. 45, § 12; 1941 Comp., § 51-1514; 1953 Comp., § 67-13-14.

### **61-16-15. Penalties.**

Any person or corporation violating the provisions of Section 3(a) [61-16-5(A) 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.

### **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, § 15; 1941 Comp., § 51-1517; 1953 Comp., § 67-13-17.

## **ARTICLE 17**

### **Barbers (Repealed.)**

**61-17-1 to 61-17-42. Repealed.**

## **ARTICLE 17A**

### **Barbers and Cosmetologists**

**61-17A-1. Short title. (Repealed effective July 1, 2026.)**

Chapter 61, Article 17A NMSA 1978 may be cited as the "Barbers and Cosmetologists Act".

**History:** Laws 1993, ch. 171, § 1; 2013, ch. 166, § 3.

## **61-17A-2. Definitions. (Repealed effective July 1, 2026.)**

As used in the Barbers and Cosmetologists Act:

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. "department" means the regulation and licensing department;

E. "electrologist" means a person, other than a student, 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;

F. "enterprise" means a business venture, firm or organization;

G. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading, hairstyling or electrolysis is performed;

H. "esthetician" means a person, other than a student, who for compensation:

(1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams, for the purpose of preserving the health and beauty of the skin and body;

(2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or

(3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;

I. "eyebrow threading" means a method of hair removal in which a thin thread is doubled, twisted and then rolled over areas of unwanted hair, plucking the hair at the follicle level;

J. "hairstylist" means a person, other than a student, who for compensation engages in hairstyling;

K. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or



products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

L. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

M. "school" means a public or private instructional facility approved by the board that teaches cosmetology, barbering or hairstyling; and

N. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering, hairstyling or electrolysis.

**History:** Laws 1993, ch. 171, § 2; 1997, ch. 218, § 1; 2017, ch. 108, § 1; 2017, ch. 112, § 3; 2022, ch. 39, § 69.

### **61-17A-3. Barbering defined. (Repealed effective July 1, 2026.)**

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.

### **61-17A-4. Cosmetology defined. (Repealed effective July 1, 2026.)**

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.

#### **61-17A-4.1. Hairstyling defined. (Repealed effective July 1, 2026.)**

Hairstyling includes any one or any combination of the following practices when done upon the upper part of the male or female human body for cosmetic purposes for the public generally, using the hands or manual, mechanical or electrical implements or appliances:

- A. cleansing, massaging or stimulating the scalp with oils, creams, lotions or other cosmetic or chemical preparations;
- B. applying cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp;
- C. cutting, arranging, applying hair extensions to or styling the hair by any means;
- D. cleansing, coloring, lightening, waving or straightening the hair with cosmetic or chemical preparations; or
- E. trimming a person's beard.

**History:** Laws 2017, ch. 112, § 1.

#### **61-17A-5. License required. (Repealed effective July 1, 2026.)**

- A. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall practice barbering, hairstyling 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, hairstyling, cosmetology or electrology for compensation.
- D. Unless licensed 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; 1997, ch. 218, § 2; 2017, ch. 112, § 4.

**61-17A-6. Board created; membership. (Repealed effective July 1, 2026.)**

A. The "board of barbers and cosmetologists" is created. The board is administratively attached to the regulation and licensing department. The board consists of seven 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 seven members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, one member shall be a licensed barber, one member shall be a licensed hairstylist, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining two members shall be public members. Neither the public members nor their spouses shall have ever been licensed 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 chair and such other officers as it deems necessary. The board shall meet at the call of the chair, 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 rule.

**History:** Laws 1993, ch. 171, § 6; 1997, ch. 218, § 3; 2007, ch. 181, § 15; 2015, ch. 129, § 1; 2017, ch. 112, § 5.

**61-17A-7. Board and department powers and duties. (Repealed effective July 1, 2026.)**

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Barbers and Cosmetologists Act;

- (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, licensure and license renewal of manicurists-pedicurists, estheticians and electrologists;
- (5) keep a record of its proceedings and a register of applicants for licensure;
- (6) provide for the licensure of barbers, hairstylists, cosmetologists, manicurists-pedicurists, estheticians, electrologists, instructors, schools, enterprises and establishments;
- (7) establish administrative penalties and fines;
- (8) create and establish standards and fees for special licenses;
- (9) establish guidelines for schools to calculate tuition refunds for withdrawing students; and
- (10) issue cease and desist orders to persons violating the provisions of the Barbers and Cosmetologists Act and rules promulgated in accordance with that act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The board may establish continuing education requirements as requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

D. The department shall:

- (1) process and issue licenses to applicants who meet the requirements of the Barbers and Cosmetologists Act and board rules;
- (2) investigate persons engaging in practices that may violate the provisions of the Barbers and Cosmetologists Act and report results of investigations to the board;
- (3) approve the selection of and supervise primary staff assigned to the board;
- (4) carry out the operations of the board to include budgetary expenditures;
- (5) maintain records, including financial records; and

(6) 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.

**History:** Laws 1993, ch. 171, § 7; 1997, ch. 218, § 4; 2003, ch. 408, § 23; 2007, ch. 181, § 16; 2013, ch. 162, § 1; 2015, ch. 129, § 2; 2017, ch. 112, § 6; 2022, ch. 39, § 70.

### **61-17A-8. Licensure requirements; barbers. (Repealed effective July 1, 2026.)**

A. Except as provided in Subsection B of this section, a barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has completed a course in barbering of at least one thousand two hundred hours or equivalent credits in a school or apprenticeship approved by the board; and
- (3) has passed an examination approved by the board.

B. A barbering license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, meets the requirements of Paragraphs (1) through (3) of Subsection A of this section and shows proof of having successfully completed a registered barbering apprenticeship approved by the state apprenticeship agency and the board of barbers and cosmetologists.

C. The holder of a barber license has the right and privilege to use the title "barber", and the initials "R.B." following the holder's surname and to use a barber pole, the traditional striped, vertical emblem of the barbering trade.

**History:** Laws 1993, ch. 171, § 8; 1997, ch. 218, § 5; 2015, ch. 85, § 1; 2022, ch. 39, § 71.

### **61-17A-8.1. Licensure requirements; hairstylists. (Repealed effective July 1, 2026.)**

A. Except as provided in Subsection B of this section, a hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has completed a course in hairstyling of at least one thousand two hundred hours in a school approved by the board; and

(3) has passed an examination approved by the board.

B. A hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and meets the requirements of Paragraphs (1) through (3) of Subsection A of this section.

C. The holder of a hairstylist license has the right and privilege to use the title "hairstylist".

**History:** Laws 2017, ch. 112, § 2; 2022, ch. 39, § 72.

### **61-17A-9. Licensure requirements; cosmetologists. (Repealed effective July 1, 2026.)**

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

(1) is at least seventeen years of age;

(2) has completed a course in cosmetology of at least one thousand six hundred hours at a school approved by the board; and

(3) has passed an examination approved by the board.

B. The name of a licensed cosmetologist may be immediately followed by the initials "R.C.", as a right and privilege of licensure.

**History:** Laws 1993, ch. 171, § 9; 1997, ch. 218, § 6; 2022, ch. 39, § 73.

### **61-17A-10. Licensure requirements of manicurists-pedicurists, estheticians and electrologists. (Repealed effective July 1, 2026.)**

A. The board shall provide for the licensure of manicurists-pedicurists. The board shall issue a manicurist-pedicurist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed manicurist-pedicurist may be immediately followed by the initials "R.M.", as a right and privilege of licensure.

B. The board shall provide for the licensure of estheticians. The board shall issue an esthetician license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed esthetician may be immediately followed by the initials "R.F.", as a right and privilege of licensure.

C. The board shall provide for the licensure of electrologists. The board shall issue an electrologist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed electrologist may be immediately followed by the initials "R.E.", as a right and privilege of licensure.

**History:** Laws 1993, ch. 171, § 10; 1997, ch. 218, § 7.

### **61-17A-11. Licensure of instructors. (Repealed effective July 1, 2026.)**

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:

- (1) is a licensed cosmetologist;
- (2) has met all requirements established by the board; and
- (3) 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:

- (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 of compliance with all requirements established by the board.

D. The name of a licensed instructor may be immediately followed by the initials "R.I.", as a right and privilege of licensure.

**History:** Laws 1993, ch. 171, § 11; 1997, ch. 218, § 8; 2022, ch. 39, § 74.

### **61-17A-12. Licensure of schools. (Repealed effective July 1, 2026.)**

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. The board shall establish a corporate surety bond requirement for schools to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school.

**History:** Laws 1993, ch. 171, § 12; 1997, ch. 218, § 9.

### **61-17A-13. Repealed.**

### **61-17A-14. Barbers and cosmetologists fund created. (Repealed effective July 1, 2026.)**

The "barbers and cosmetologists fund" is created in the state treasury. All license fees and charges 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. 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; 2022, ch. 39, § 75.

**61-17A-15. Licensure of all establishments and enterprises.  
(Repealed effective July 1, 2026.)**

The board shall provide for the licensure of all establishments and enterprises. The board shall issue a license to establishments, enterprises 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; 1997, ch. 218, § 10.

**61-17A-16. Fees. (Repealed effective July 1, 2026.)**

Except as provided in Section 61-1-34 NMSA 1978, the board may, by rule, establish initial license and renewal fees not to exceed the following:

establishment license.....	\$200
school license .....	\$600
relocation of a school .....	\$300
cosmetologist license.....	\$100
barber license .....	\$100
hairstylist license.....	\$100
specialty license.....	\$100
instructor license .....	\$100
duplicate license .....	\$50.00
temporary license.....	\$25.00
administrative fee.....	\$100
limited license fee .....	\$100
licensure through reciprocity .....	\$200
transcript .....	\$50.00
examinations.....	\$100.

**History:** Laws 1993, ch. 171, § 16; 1997, ch. 218, § 11; 2017, ch. 112, § 7; 2019, ch. 243, § 1; 2020, ch. 6, § 45.

**61-17A-17. Licensure under prior law; expedited licensure.  
(Repealed effective July 1, 2026.)**

A. A person licensed as a barber, a cosmetologist, an esthetician, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or a person holding an establishment license, clinic license or school owner's license under prior laws of this state, which license is valid on June 18, 1993, shall be

held to be licensed under the provisions of the Barbers and Cosmetologists Act and shall be entitled to the renewal of the person's license as provided in that act.

B. The board shall 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 holds a valid, unrestricted license from another licensing jurisdiction.

C. No later than thirty days after a person files an application for licensure, the board shall process the application and issue an expedited license in accordance with procedures in Section 61-1-31.1 NMSA 1978. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on its website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 1993, ch. 171, § 17; 1997, ch. 218, § 12; 2022, ch. 39, § 76.

### **61-17A-18. License to be displayed; notice of change of place of business. (Repealed effective July 1, 2026.)**

Every holder of a license issued pursuant to the Barbers and Cosmetologists Act shall notify the department of any change in place of business. A license shall be displayed conspicuously at the holder's place of business.

**History:** Laws 1993, ch. 171, § 18; 1997, ch. 218, § 13; 2022, ch. 39, § 77.

### **61-17A-19. License nontransferable. (Repealed effective July 1, 2026.)**

Each license shall be issued under the authority of the Barbers and Cosmetologists Act by the department 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; 2022, ch. 39, § 78.

### **61-17A-20. Duration, restoration and renewal of licenses. (Repealed effective July 1, 2026.)**

A. The original issuance and renewal of licenses to practice as a barber, hairstylist, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of two years or less from the date of issuance. If the licensee fails to renew the

license for the next two-year period, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the licensee may request restoration of the license pursuant to rules promulgated by the board.

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 the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars (\$100) as established by board rules is required.

C. The board may establish a staggered system of license expiration.

**History:** Laws 1993, ch. 171, § 20; 1997, ch. 218, § 14; 2007, ch. 181, § 17; 2017, ch. 112, § 8; 2019, ch. 243, § 2.

### **61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license. (Repealed effective July 1, 2026.)**

A. The board shall, in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 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;
- (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) working in a capacity regulated pursuant to the Barbers and Cosmetologists Act while under the influence of intoxicating liquor or drugs;
- (6) continuing to practice in or be employed by an establishment, an enterprise, a school or an electrology clinic in which the sanitary rules of the board, of the department of health or of any other lawfully constituted board or state agency, promulgated for the regulation of establishments, enterprises, schools or electrology clinics, are known by the licensee to be violated;
- (7) default of a licensee 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 person not licensed 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, enterprise, school or electrology clinic or by a licensee; or
- (13) 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 department or any agent of the department upon demand.

**History:** Laws 1993, ch. 171, § 21; 1997, ch. 218, § 15; 2022, ch. 39, § 79.

### **61-17A-22. Exemptions. (Repealed effective July 1, 2026.)**

The following persons are exempt from the provisions of the Barbers and Cosmetologists Act 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;
- D. funeral service practitioners; and
- E. persons providing only eyebrow-threading services.

**History:** Laws 1993, ch. 171, § 22; 2017, ch. 108, § 2.

### **61-17A-23. Penalties. (Repealed effective July 1, 2026.)**

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 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.

### **61-17A-24. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)**

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978].

**History:** Laws 1993, ch. 171, § 24.

### **61-17A-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)**

The board of barbers and cosmetologists is terminated on July 1, 2025 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 Barbers and Cosmetologists Act until July 1, 2026. Effective July 1, 2026, the Barbers and Cosmetologists Act is repealed.

**History:** Laws 1993, ch. 171, § 27; 1997, ch. 218, § 16; 2001, ch. 100, § 1; 2005, ch. 208, § 15; 2013, ch. 166, § 4; 2019, ch. 168, § 2.

## **ARTICLE 17B**

### **Body Art Safe Practices Act**

#### **61-17B-1. Short title. (Repealed effective July 1, 2028.)**

Chapter 61, Article 17B NMSA 1978 may be cited as the "Body Art Safe Practices Act".

**History:** Laws 2007, ch. 181, § 1; 2015, ch. 129, § 3.

#### **61-17B-2. Purpose. (Repealed effective July 1, 2028.)**

The purpose of the Body Art Safe Practices Act is to provide a safe and healthy environment for the administration of body art.

**History:** Laws 2007, ch. 181, § 2.

### **61-17B-3. Definitions. (Repealed effective July 1, 2028.)**

As used in the Body Art Safe Practices Act:

- A. "board" means the board of body art practitioners;
- B. "body art" means tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico medical board;
- C. "body art establishment" means a fixed or mobile place where body art is administered on the premises;
- D. "body artist" means a person who administers body piercing, tattooing or scarification;
- E. "body piercing" means to cut, stab or penetrate the skin to create a permanent hole or opening;
- F. "equipment" means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances;
- G. "instruments used for body art" means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art;
- H. "operator" means the owner in charge of a body art establishment;
- I. "scarification" means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin;
- J. "sharps" means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades;
- K. "single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves;
- L. "sterilization" means destruction of all forms of microbotic life, including spores; and
- M. "tattooing" means the practice of depositing pigment, which is either permanent, semipermanent or temporary, into the epidermis using needles by someone other than

a state-licensed physician or a person under the supervision of a state-licensed physician and includes permanent cosmetics, dermography, micropigmentation, permanent color technology and micropigment implantation.

**History:** Laws 2007, ch. 181, § 3; 2015, ch. 129, § 4.

#### **61-17B-4. Issuance of a body art license. (Repealed effective July 1, 2028.)**

The board has authority to issue a body art license to a body artist who has demonstrated the ability to perform body art and who conforms with the board's rules with respect to safety, sterilization and sanitation and a body art operator license to an operator who conforms with the board's rules.

**History:** Laws 2007, ch. 181, § 4.

#### **61-17B-5. License; application; renewal; expedited licensure; revocation; suspension. (Repealed effective July 1, 2028.)**

A. A body artist shall obtain a body art license, and an operator shall obtain a body art establishment license, the requirements for which shall be defined by the board by rules promulgated in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and shall include the requirement that a body artist applicant demonstrate that the body artist has the training and experience necessary to perform body piercing, tattooing or scarification and the requirement that a sanitary and sterile body art establishment be maintained; provided that the board shall grant credit for training and experience obtained from any source, whether obtained within or outside the state, if the applicant demonstrates that the applicant meets the training and experience required pursuant to the Body Art Safe Practices Act.

B. An operator or body artist shall possess and post in a conspicuous place a valid license issued by the board in accordance with the Body Art Safe Practices Act and the rules promulgated pursuant to that act. An operator or a body artist shall not display a license unless it has been issued to that operator or body artist by the board and has not been suspended or revoked.

C. An operator or body artist shall apply to the board for the issuance or renewal of a license annually and shall pay license fees established by the board. Except as provided in Section 61-1-34 NMSA 1978, the board shall set license fees and license renewal fees not to exceed three hundred dollars (\$300) and late fees not to exceed one hundred dollars (\$100). If an operator or body artist fails to renew a license for the next year, the license is void; provided that the voided license may be restored at any time during the year following the license's expiration upon the payment of the appropriate license renewal fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the operator or body artist fails to restore a license

within one year following the license's expiration, the operator or body artist may request restoration of the license pursuant to rules promulgated by the board.

D. As soon as practicable, but no later than thirty days after an application is submitted, the board shall process the application and issue an expedited license in accordance with Section 61-1-31.1 NMSA 1978 to a person licensed in another licensing jurisdiction. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and those foreign countries from which it will accept an application for expedited licensure. The lists of disapproved and approved licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

E. The board may suspend or revoke a license for a body art establishment or a body artist who fails to comply with a provision of the Body Art Safe Practices Act or rules promulgated pursuant to that act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]. A license shall not be suspended or revoked without providing the operator or the body artist with an opportunity for an administrative hearing unless conditions in the body art establishment warrant immediate suspension pursuant to Section 61-17B-9 NMSA 1978. The hearing officer shall not be a person previously involved in the suspension or revocation action. An inspection made more than twenty-four months prior to the most recent inspection shall not be used as a basis for suspension or revocation.

F. Except as provided in Section 61-1-34 NMSA 1978, the board shall charge a fee not to exceed three hundred dollars (\$300) for the application to issue a new or renewed license. The applicant shall provide proof of current immunization as required by the board and proof of the applicant's attendance at a blood-borne pathogen training program and other training as required by the board before a license is issued or renewed.

G. A current body art license or body art establishment license shall not be transferable from one person to another.

H. The following information shall be kept on the premises of a body art establishment and shall be available for inspection by the board:

- (1) the full names of all employees in the establishment and their exact duties;
- (2) the board-issued license with identification photograph for the operator and any body artists;
- (3) the body art establishment name and hours of operation;
- (4) the name and address of the operator;



(5) a complete description of all body art performed at the body art establishment;

(6) a list of all instruments, body jewelry, sharps and inks used at the body art establishment, including names of manufacturers and serial or lot numbers or invoices or other documentation sufficient to identify and locate the manufacturer of those items; and

(7) a current copy of the Body Art Safe Practices Act.

I. An operator shall notify the board in writing not less than thirty days before changing the location of a body art establishment. The notice shall include the street address of the body art establishment's new location.

**History:** Laws 2007, ch. 181, § 5; 2015, ch. 129, § 5; 2019, ch. 245, § 1; 2020, ch. 6, § 46; 2021, ch. 92, § 13; 2022, ch. 39, § 80.

### **61-17B-6. Inspection by board. (Repealed effective July 1, 2028.)**

A. The board shall annually inspect body art establishments to determine compliance with the Body Art Safe Practices Act. An operator or body artist shall allow a board official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy records of the body art establishment. The operator or body artist shall be given an opportunity to accompany the board official on the inspection and to receive a report of the inspection within fourteen days after the inspection.

B. Refusal to allow an inspection is grounds for suspension or revocation of the license of the operator or body artist, provided that the board official tendered proper identification prior to the refusal.

**History:** Laws 2007, ch. 181, § 6.

### **61-17B-7. Exemptions. (Repealed effective July 1, 2028.)**

A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act.

B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

**History:** Laws 2007, ch. 181, § 7.

### **61-17B-8. Sterile procedures and sanitation. (Repealed effective July 1, 2028.)**

The board shall establish by rule requirements for:

A. the use and disposal of equipment and instruments; provided that:

(1) all sharps shall be sterilized prior to use;

(2) single use items shall not be used on more than one client for any reason;  
and

(3) all body art stencils shall be single use and disposable;

B. the sterilization or sanitation of non-disposable items;

C. the prohibition of off-site sterilization; and

D. procedures to control disease borne by contact with customer or body artist skin mucosa.

**History:** Laws 2007, ch. 181, § 8.

### **61-17B-9. Immediate suspension. (Repealed effective July 1, 2028.)**

The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 5 [61-17B-5 NMSA 1978] of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

**History:** Laws 2007, ch. 181, § 9.

### **61-17B-10. Judicial review. (Repealed effective July 1, 2028.)**

An applicant denied a license or an operator or body artist whose license is suspended or revoked by the board may appeal pursuant to Section 39-3-1.1 NMSA 1978.

**History:** Laws 2007, ch. 181, § 10.

### **61-17B-11. Enforcement. (Repealed effective July 1, 2028.)**

A. The board may seek relief in district court to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the Body Art Safe Practices Act.

B. The district court may impose a civil penalty not exceeding five hundred dollars (\$500) for a violation of the Body Art Safe Practices Act. Each violation of the provisions of the Body Art Safe Practices Act constitutes a separate offense.

C. The board may promulgate rules imposing a schedule of penalties for violations of the Body Art Safe Practices Act. Except as provided in Subsection D of this section, no penalty shall exceed one hundred fifty dollars (\$150).

D. Penalties for the following violations shall not exceed one thousand dollars (\$1,000):

(1) obtaining or attempting to obtain a license by fraudulent misrepresentation;

(2) willfully falsifying by oath or affirmation information required pursuant to the Body Art Safe Practices Act; or

(3) practicing or attempting to practice under an assumed name or by fraudulent misrepresentation.

**History:** Laws 2007, ch. 181, § 11; 2013, ch. 162, § 2.

### **61-17B-12. Repealed.**

**History:** Laws 2007, ch. 181, § 12; repealed by Laws 2015, ch. 129, § 11.

### **61-17B-13. Municipalities. (Repealed effective July 1, 2028.)**

The Body Art Safe Practices Act provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.

**History:** Laws 2007, ch. 181, § 13.

### **61-17B-14. Repealed.**

**History:** Laws 2007, ch. 181, § 14; repealed by Laws 2015, ch. 129, § 11.

### **61-17B-15. Board created; membership. (Repealed effective July 1, 2028.)**

A. The "board of body art practitioners" is created. The board is administratively attached to the regulation and licensing department and consists of five 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 for the terms of subsequent appointments to be staggered. Vacancies shall be filled in the manner of the original appointment.

B. Of the five members of the board, two shall be licensed pursuant to the Body Art Safe Practices Act and shall have at least five years' practical experience in their occupations. Of those two, one member shall be an operator and one member shall be a body artist. The remaining three members shall be public members. The public members shall not have ever been licensed pursuant to the provisions of the Body Art Safe Practices Act or similar prior legislation or have a financial interest in a body art 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 chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than two times each year. A majority of members currently serving constitutes a quorum for the conduct of business.

E. A board member shall not serve more than two full consecutive terms, and a member who fails to attend three meetings shall automatically be recommended for removal unless the member's absence is excused for reasons set forth by board rule.

**History:** Laws 2015, ch. 129, § 6; 2019, ch. 245, § 2.

### **61-17B-16. Board powers and duties. (Repealed effective July 1, 2028.)**

A. The board shall:

(1) in conjunction with the department of health, promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] necessary to implement the provisions of the Body Art Safe Practices Act;

(2) establish fees;

(3) establish standards and provide for the issuance of new and renewal operator and body artist licenses to applicants;

(4) adopt a seal;

- (5) furnish copies of rules and sanitation and sterilization requirements promulgated by the board to each operator of a body art establishment;
- (6) keep a record of its proceedings, a register of applicants for licensure and a register of licensed operators and body artists;
- (7) issue cease and desist orders to persons who violate the provisions of the Body Art Safe Practices Act or rules promulgated pursuant to that act; and
- (8) deny, suspend or revoke a license or undertake any other disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The board may establish continuing education or other requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a body art establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act.

**History:** Laws 2015, ch. 129, § 8; 2022, ch. 39, § 81.

### **61-17B-17. Body art practitioners fund created. (Repealed effective July 1, 2028.)**

The "body art practitioners fund" is created in the state treasury. The fund consists of appropriations, gifts, grants and donations; license fees and charges that are imposed by the board; and money otherwise accruing to the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Body Art Safe Practices Act. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the chair of the board or the chair's authorized representative. Any balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2015, ch. 129, § 7; 2022, ch. 39, § 82.

### **61-17B-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2028.)**

The board of body art practitioners is terminated on July 1, 2027 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Body Art Safe Practices Act until July 1, 2028. Effective July 1, 2028, the Body Art Safe Practices Act is repealed.

**History:** Laws 2015, ch. 129, § 9; 2022, ch. 39, § 83.

# **ARTICLE 18**

## **Collection Agencies (Repealed.)**

**61-18-1 to 61-18-67. Repealed.**

# **ARTICLE 18A**

## **Collection Agencies**

### **61-18A-1. Short title.**

Chapter 61, Article 18A NMSA 1978 may be cited as the "Collection Agency Regulatory Act".

**History:** Laws 1987, ch. 252, § 1; 2019, ch. 144, § 24.

### **61-18A-2. Definitions.**

As used in the Collection Agency Regulatory Act:

A. "division" means the financial institutions division of the regulation and licensing department;

B. "director" means the director of the division or a duly authorized agent designated by the director;

C. "collection agency" means a 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, or a person engaging in the business the principal purpose of which is the collection of debts. The term also includes a creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's own that would indicate that a third person is collecting or attempting to collect the debts. The term does not include:

(1) an officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(2) a 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) an officer or employee of the United States, a state or a political subdivision thereof to the extent that collecting or attempting to collect a debt is in the performance of official duties;

(4) a person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of a debt;

(5) a nonprofit organization that, 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) an attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; or

(7) a person collecting or attempting to collect a 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 that was originated by such person;

(c) concerns a debt that 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 a person through any medium;

E. "creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but the term does not include a person to the extent that the person 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 an obligation or alleged obligation of a debtor to pay money arising out of a transaction in which the money, property, insurance or services that 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 an attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client;

H. "debtor" means a natural person obligated or allegedly obligated to pay a debt;

I. "location information" means a debtor's place of abode and the telephone number at such place or the debtor's 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. "nationwide multistate licensing system and registry" means a licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 to manage mortgage licenses and other financial services licenses, or a successor registry;

L. "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;

M. "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

N. "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; 2019, ch. 144, § 25; 2021, ch. 31, § 12.

### **61-18A-3. Administration and enforcement.**

A. The administration and enforcement of the Collection Agency Regulatory Act shall be vested in the office of the director as set forth in that act.

B. 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.

C. 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.

D. Any examination reports or other documents or information developed in administration of this section are confidential and not subject to subpoena.

E. Applicants for a license issued pursuant to the Collection Agency Regulatory Act shall apply on a form prescribed by the director. Information required on the form shall be set forth by rule, instruction or procedure of the director and may be changed or



updated as necessary by the director in order to carry out the purposes of the Collection Agency Regulatory Act.

F. In order to fulfill the purposes of the Collection Agency Regulatory Act, the director may establish relationships or contracts with the nationwide multistate licensing system and registry or other entities designated by the nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licenses issued pursuant to the Collection Agency Regulatory Act.

G. An applicant for a license pursuant to the Collection Agency Regulatory Act shall, at a minimum, furnish to the nationwide multistate licensing system and registry information concerning the applicants identity, including:

(1) the applicant's personal history and experience in a form prescribed by the nationwide multistate licensing system and registry; and

(2) authorization for the nationwide multistate licensing system and registry and the director to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction regarding the applicant.

H. The director may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information provided pursuant to Paragraphs (1) and (2) of Subsection G of this section to and from any source as deemed appropriate by the director.

**History:** Laws 1987, ch. 252, § 3; 2019, ch. 144, § 26.

#### **61-18A-4. Rules; violations.**

A. The director shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules as are reasonable or necessary for the examination and licensing of collection agencies, repossessioners, managers and solicitors, for the conduct of such persons and for the general enforcement of the various provisions of the Collection Agency Regulatory Act in the protection of the public.

B. The violation of any provisions of the Collection Agency Regulatory Act or of rules promulgated by the director is sufficient ground for revocation of a license or for other disciplinary action as provided in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

C. A provision of the Collection Agency Regulatory Act imposing a liability shall not apply to an act done or omitted in good faith in conformity with a rule of the director, notwithstanding that after the act or omission has occurred, the rule is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

**History:** Laws 1987, ch. 252, § 4; 2022, ch. 39, § 84.

### **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.

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.

### **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 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.**

A. 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.

B. Applicants for an original license issued pursuant to the Collection Agency Regulatory Act for the period beginning July 1, 2020 and ending December 31, 2020 shall pay an amount equal to one-half of the original license fee for the applicable license as established pursuant to Section 61-18A-30 NMSA 1978.

C. Applicants for renewal of a license issued pursuant to the Collection Agency Regulatory Act with an expiration date of June 30, 2020 may apply for renewal of the license for the period beginning July 1, 2020 and ending December 31, 2020 and shall pay an amount equal to one-half of the renewal license fee for the applicable license as established pursuant to Section 61-18A-30 NMSA 1978.

D. Applicants for all licenses issued pursuant to the Collection Agency Regulatory Act beginning on or after January 1, 2021, and ending at the conclusion of the calendar year for which the license may be issued, shall pay an amount equal to the applicable original or renewal license fee as established pursuant to Section 61-18A-30 NMSA 1978.

**History:** Laws 1987, ch. 252, § 7; 1993, ch. 213, § 2; 2019, ch. 144, § 27.

### **61-18A-8. Applications; required information.**

A. 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.

B. The application shall state:

- (1) in the case of an individual, the full residence address of the applicant;
- (2) in the case of a partnership, the true names and complete residence addresses of all partners;
- (3) in the case of a corporation, the true names and complete residence addresses of all directors and officers and 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
- (4) in the case of a nonstock corporation or an unincorporated association, the true names and complete residence addresses of all officers, directors and trustees.

C. 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.

D. The director may establish, by rule, regulation or order, requirements for a license application as necessary, including:

- (1) background checks for criminal history through fingerprint or other databases;

- (2) civil or administrative records;
- (3) credit history; and
- (4) other information as deemed relevant and necessary by the director.

**History:** Laws 1987, ch. 252, § 8; 2019, ch. 144, § 28.

### **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. have reached the age of majority;
- B. not have been convicted of a felony or crime involving moral turpitude;
- C. be a graduate of a high school or provide proof to the director that the licensed manager is possessed of the equivalent of a high school education;
- D. pass the examination required;
- E. pay the examination fee to the director;
- F. 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
- G. have a good credit record.

**History:** Laws 1987, ch. 252, § 11; 1999, ch. 272, § 30; 2021, ch. 70, § 10.

### **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 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 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 in the state; provided that the foreign corporation or partnership shall establish and maintain a collection agency in New Mexico at all times during the life of any collection agency license issued to the foreign corporation or partnership. All records of the collection agency located in New Mexico shall be maintained at the collection agency's principal office in New Mexico unless the collection agency records are maintained electronically, in which case, electronic records may be maintained at a location where the collection agency regularly maintains records.

**History:** Laws 1987, ch. 252, § 14; 2012, ch. 11, § 1.

### **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 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 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 and any rules and regulations established thereunder.

**History:** Laws 1987, ch. 252, § 17.

## **61-18A-18. Repealed.**

**History:** Laws 1987, ch. 252, § 18; repealed by Laws 2019, ch. 144, § 31.

## **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 repossession 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.

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. 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 and shall be renewed annually upon application accompanied by the manager's renewal license fee, which application is to be filed with the division on or before November 30 of each year. Unless so renewed, each manager's license shall expire on January 1 unless previously revoked or canceled.

B. As used in this section, "under the active charge of a licensed manager" means that a licensed manager shall 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; 2019, ch. 144, § 29.

### **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. Repealed.**

## **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 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; provided that no suit allowed by this section may be instituted on behalf of a collection agency in a court unless the collection agency appears by a duly authorized and licensed attorney-at-law.

**History:** Laws 1987, ch. 252, § 26; 2021, ch. 31, § 13.

## **61-18A-27. Renewal of license; fee.**

A. A licensee desiring renewal of the licensee's license shall, on or before November 30 of each year, file with the director an application for renewal on forms as may be designated by the director. The application shall be accompanied by the renewal fee.

B. The director shall issue a renewal license that shall be dated January 1 next ensuing and shall bear the date to and including which the license is renewed.

**History:** Laws 1987, ch. 252, § 27; 2019, ch. 144, § 30.

## **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.

### **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 [7-9-1 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.

### **61-18A-29. Repealed.**

### **61-18A-30. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, 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 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 division 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 division the actual travel costs incurred to perform the examination or investigation; and

K. an original license fee or renewal license fee for a repossessor of two hundred fifty dollars (\$250).

**History:** Laws 1987, ch. 252, § 30; 1993, ch. 213, § 3; 2020, ch. 6, § 47.

### **61-18A-31. Deposit of money.**

All money received under the Collection Agency Regulatory Act by the director shall be deposited in the general fund.

**History:** Laws 1987, ch. 252, § 31; 2022, ch. 39, § 85.

### **61-18A-32. Judicial review.**

A person aggrieved by the decision of the director in the enforcement of the Collection Agency Regulatory Act [61-18A-1 NMSA 1978] may obtain judicial review in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** Laws 1987, ch. 252, § 32; 1998, ch. 55, § 76; 1999, ch. 265, § 77.

### **61-18A-33. Grandfather clause.**

Any person properly licensed pursuant to the Collection Agency Act [61-18A-1 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.

## **ARTICLE 19 Cosmetology (Repealed.)**

**61-19-1 to 61-19-47. Repealed.**

## **ARTICLE 19A Cosmetology (Repealed.)**

**61-19A-1 to 61-19A-34. Repealed.**

## **ARTICLE 20**

### **Dry Cleaning Industry (Repealed.)**

**61-20-1 to 61-20-14. Repealed.**

## **ARTICLE 21**

### **Embalmers and Funeral Directors (Repealed.)**

**61-21-1 to 61-21-37. Repealed.**

## **ARTICLE 22**

### **Employment Agencies (Repealed.)**

**61-22-1 to 61-22-16. Repealed.**

## **ARTICLE 23**

### **Engineering and Surveying**

**61-23-1. Short title. (Repealed effective July 1, 2030.)**

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.

**61-23-1.1. Repealed.**

**61-23-2. Declaration of policy. (Repealed effective July 1, 2030.)**

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 the person is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with the person's name or otherwise assume, use or advertise any title or description

tending to convey the impression that the person is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. A person who engages in the business or acts in the capacity of an engineer or surveyor in New Mexico, except as otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable.

**History:** Laws 1987, ch. 336, § 2; 1993, ch. 218, § 2; 1999, ch. 259, § 1; 2003, ch. 233, § 1; 2017, ch. 42, § 1.

### **61-23-3. Definitions. (Repealed effective July 1, 2030.)**

As used in the Engineering and Surveying Practice Act:

- A. "approved" means acceptable to the board;
- B. "authorized company officer" means an employee of a business entity duly authorized by the business entity to contractually obligate the business entity;
- C. "board" means the state board of licensure for professional engineers and professional surveyors;
- D. "business entity" means a corporation, professional corporation, limited liability corporation, professional limited liability corporation, general partnership, limited partnership, limited liability partnership, professional limited liability partnership, a joint stock association or any other form of business, whether or not for profit;
- E. "conviction" means a final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;
- F. "engineer" means a person who has completed engineering education and has training and experience in the application of engineering principles and the interpretation of engineering data;
- G. "engineering accreditation commission" means the engineering accreditation commission of the accreditation board for engineering and technology, incorporated, or any successor commission or organization;
- H. "engineering" or "practice of engineering" means any creative or engineering work that requires engineering education, training and experience in the application of engineering principles and the interpretation of engineering data 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 ensuring 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 engineering work. The "practice of engineering" may include the use of photogrammetric methods to derive topographical and other data. 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 workplace;

I. "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, including the promulgation and adoption of rules of professional responsibility for professional engineers exclusive to the practice of engineering;

J. "engineer intern" means a person who has qualified for, taken and passed an examination in fundamental engineering subjects;

K. "fund" means the professional engineers' and surveyors' fund;

L. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

M. "person" means an individual or business entity;

N. "professional development" means education by a licensee in order to maintain, improve or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge to maintain licensure;

O. "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who has been licensed as a professional engineer by the board;

P. "responsible charge" means responsibility for the direction, control and supervision of engineering or surveying work, as the case may be, to ensure that the work product has been critically examined and evaluated for compliance with appropriate professional standards by a licensee in that profession, and by sealing or signing the documents, the professional engineer or professional surveyor accepts responsibility for the engineering or surveying work, respectively, represented by the documents and that applicable engineering or surveying standards have been met;

Q. "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;

(3) the application of photogrammetric methods used to derive topographic and other data;

(4) the establishment of horizontal and vertical controls that will be the basis for all geospatial data used for future design surveys, including construction staking surveys, surveys to lay out horizontal and vertical alignments, topographic surveys, control surveys for aerial photography for the collection of topographic and planimetric data using photogrammetric methods and construction surveys of engineering and architectural public works projects;

(5) the preparation and perpetuation of maps, records, plats, field notes, easements and property descriptions; and

(6) the depiction and transmittal by paper or digital means of any digital geospatial data for use in geographic information systems or land information systems that purports to be the authoritative location of points or features of a survey regulated by the Engineering and Surveying Practice Act, but excludes data used solely for a cadastre, such as assessment and tax mapping purposes, or general representations of surveyed or historic data used for mapping purposes, such as land parcels and built infrastructure;

R. "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, including the promulgation and adoption of rules of professional responsibility for professional surveyors exclusive to the practice of surveying;

S. "surveyor", "professional surveyor", "licensed surveyor" or "registered surveyor" means a person who is licensed as a professional surveyor by the board and who is a professional specialist qualified to practice surveying by reason of the person's education in the principles of mathematics and the related physical and applied sciences requisite to surveying of real property;



T. "surveyor intern" means a person who is certified as a surveyor intern by the board and who has qualified for, taken and passed an examination in the fundamentals of surveying subjects;

U. "surveying work" means the work performed in the practice of surveying; and

V. "supplemental surveying work" means surveying work performed in order to densify, augment and enhance previously performed survey work or site information but excludes the surveying of real property for the establishment of land boundaries, rights of way and easements and the dependent or independent surveys or resurveys of the public land system.

**History:** Laws 1987, ch. 336, § 3; 1993, ch. 218, § 3; 1999, ch. 259, § 2; 2003, ch. 233, § 2; 2005, ch. 69, § 1; 2012, ch. 46, § 1; 2017, ch. 42, § 2; 2023, ch. 79, § 1.

#### **61-23-4. Criminal offender's character evaluation. (Repealed effective July 1, 2030.)**

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.

**History:** Laws 1987, ch. 336, § 4.

#### **61-23-5. State board of licensure for professional engineers and professional surveyors; members; terms. (Repealed effective July 1, 2030.)**

A. There is created the "state board of licensure for professional engineers and professional surveyors" that shall consist of five licensed professional engineers, at least one of whom shall be in engineering education, three licensed 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; 1999, ch. 259, § 3; 2005, ch. 69, § 2.

### **61-23-6. Board members; qualifications. (Repealed effective July 1, 2030.)**

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 as a professional engineer licensed in New Mexico, 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 licensed 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 as a professional surveyor licensed in New Mexico.

C. Each public member shall be a citizen of the United States, a resident of New Mexico, shall not have been licensed nor be qualified for licensure 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; 1999, ch. 259, § 4; 2005, ch. 69, § 3.

### **61-23-7. Reimbursement of board members. (Repealed effective July 1, 2030.)**

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.

## **61-23-8. Removal of members of board. (Repealed effective July 1, 2030.)**

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.

## **61-23-9. Board; organization; meetings. (Repealed effective July 1, 2030.)**

A. There shall be an "engineering committee" composed of the five members of the board who serve as licensed 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 rules 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 board members may be substituted for a non-attending member in order to have a quorum. The committee shall elect a chair and vice chair 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 licensed 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 rules 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 board members may serve on this committee. The committee shall elect a chair and vice chair 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. Committee actions shall be reported to the board.

D. There shall be a joint engineering and surveying standing committee of the board composed of two members from the professional engineering committee, the public member and the chair, and two members from the professional surveying committee, the public member and the chair. If the public member is currently the chair of either committee, the vice chair will serve as the professional member on the standing committee.

E. 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 rules of the board shall provide procedures for giving notice of all meetings and for holding special meetings. The board shall elect annually a chair, a vice chair and a secretary, who shall be members of the board. A member of the board shall not be elected to the same office for more than two consecutive years. 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; 1999, ch. 259, § 5; 2005, ch. 69, § 4.

### **61-23-10. Duties and powers of the board. (Repealed effective July 1, 2030.)**

A. The board shall administer the provisions of the Engineering and Surveying Practice Act and exercise the authority granted the board in that act. The board is the sole state agency with the power to certify the qualifications of professional engineers and professional surveyors. The board may engage such personnel, including an executive director, as it deems necessary.

B. The board may promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] that are reasonable for the proper performance of its duties and the regulation of its procedures, meeting records and examinations and the conduct of examinations. The board shall promulgate rules of professional responsibility for professional engineers and professional surveyors that are not exclusive to the practice of engineering or exclusive to the practice of surveying. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

C. The professional engineering committee shall promulgate rules of professional responsibility exclusive to the practice of engineering. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

D. The professional surveying committee shall promulgate rules of professional responsibility exclusive to the practice of surveying. All such rules shall be binding upon all persons licensed pursuant to the Engineering and Surveying Practice Act.

E. The joint engineering and surveying standing committee has exclusive authority over practice disputes between engineers and surveyors to determine if proposed rules of professional responsibility are exclusive to the practice of engineering or exclusive to the practice of surveying so that rulemaking authority is delegated to the engineering committee or to the surveying committee. Determination of exclusive practice of engineering or surveying requires an affirmative vote by no less than three members of the joint committee. If an affirmative vote of three members cannot be achieved, the determination of exclusivity shall be made by the full board.

F. To effect the provisions of the Engineering and Surveying Practice Act, the board may, under the chair's hand and the board's seal, subpoena witnesses and compel the production of books, papers and documents in any disciplinary action conducted in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] against a licensee or a person practicing or offering to practice without licensure. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If a person refuses to obey a 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 a person willfully fails to comply with such an order, that person may be held in contempt of court.

G. 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.

H. The board may subject an applicant for licensure to such examinations as it deems necessary to determine the applicant's qualifications.

I. The board shall create enforcement advisory committees composed of licensees as necessary. Each committee shall include at least four licensees in the same category as the respondent. An engineering enforcement advisory committee shall have at least one licensee in the same branch as the respondent. Enforcement advisory committees shall provide technical assistance to the board and its staff. The board shall select members from a list of volunteers submitting their resumes and letters of interest.

J. No action or other legal proceedings for damages shall be instituted against the board, a board member or an agent, an employee or a member of an advisory committee of the board for any act done in good faith and in the intended performance of any power or duty granted pursuant to 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.

K. 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.

L. As used in the Engineering and Surveying Practice Act, "incidental practice" shall be defined by identical rules of the board and the board of examiners for architects.

**History:** Laws 1987, ch. 336, § 10; 1993, ch. 218, § 7; 1999, ch. 259, § 6; 2005, ch. 69, § 5; 2022, ch. 39, § 86.

### **61-23-11. Receipts and disbursement; fund created. (Repealed effective July 1, 2030.)**

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the 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 chair and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

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 fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to 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; 1999, ch. 259, § 7; 2017, ch. 42, § 3.

### **61-23-12. Records and reports. (Repealed effective July 1, 2030.)**

A. The board shall keep a record of its proceedings and a register of all applications for licensure, 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 licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The 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 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 chair, secretary and executive director.

**History:** Laws 1987, ch. 336, § 12; 1993, ch. 218, § 9; 1999, ch. 259, § 8; 2017, ch. 42, § 4.

### **61-23-13. Roster of licensed professional engineers and professional surveyors. (Repealed effective July 1, 2030.)**

A roster showing the names and addresses of all licensed professional engineers and licensed professional surveyors shall be maintained by the board and shall be placed on file with the state commission of public records and made available to the public.

**History:** Laws 1987, ch. 336, § 13; 1993, ch. 218, § 10; 1999, ch. 259, § 9; 2012, ch. 46, § 2; 2017, ch. 42, § 5.

#### **61-23-13.1. Repealed.**

### **61-23-14. Certification as an engineer intern; requirements. (Repealed effective July 1, 2030.)**

A. An applicant for certification as an engineer intern shall file the appropriate application that demonstrates that the applicant:

- (1) is of good moral character and reputation as determined by board rules;
- (2) has obtained at least a senior status in a board-approved, four-year curriculum in engineering or in a board-approved, four-year curriculum in engineering technology that is accredited by the engineering technology accreditation commission of the accreditation board for engineering and technology; and

(3) has three references, one of whom shall be a licensed 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.

C. An applicant may be certified as an engineer intern upon successfully completing the examination; provided that the applicant has:

(1) graduated from a board-approved engineering curriculum of four years or more or graduated from an engineering master's program that is accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying; or

(2) graduated from a board-approved, four-year engineering technology program accredited by the engineering technology accreditation commission of the accreditation board for engineering and technology and augmented by at least two years of board-approved, post-graduate engineering experience.

D. The certification as 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; 1999, ch. 259, § 10; 2005, ch. 69, § 6; 2023, ch. 79, § 2.

### **61-23-14.1. Licensure as a professional engineer; requirements. (Repealed effective July 1, 2030.)**

A. Licensure as a professional engineer may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application in which it shall be demonstrated that the applicant:

(1) is of good moral character and reputation as determined by board rules; and

(2) has five references, three of whom shall be licensees 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 non-licensed engineer references having personal knowledge of the applicant's engineering experience and reputation may be accepted by the board if a satisfactory written explanation is given.



B. An applicant may be licensed through examination if the applicant can demonstrate the following:

(1) the applicant is certified as an engineer intern and has at least one of the following combinations of education and experience; provided that experience shall only be considered after receiving the first qualifying engineering degree:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience;

(b) received a bachelor's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience;

(c) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience;

(d) received a master's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills through evaluation the required curricular content and educational standards as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience;

(e) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least two years of engineering experience; or

(f) at least six years of board-approved engineering experience after graduation from a school offering a board-approved, four-year engineering technology curriculum accredited by the engineering technology accreditation commission of the accreditation board for engineering and technology, including the two years for engineer intern certification; or

(2) the applicant is not certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has twelve years of engineering experience subsequent to receiving the degree;

(b) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least six years of engineering experience subsequent to receiving the degree; or

(c) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least four years of engineering experience subsequent to receiving the degree.

C. Upon successfully completing the examination, required experience and all the requirements as noted in this section, the applicant shall be eligible to be licensed as a professional engineer upon action of the board.

D. An applicant may be licensed by endorsement or comity if the applicant:

(1) is currently licensed as an engineer in another state, the District of Columbia or a territory of the United States; provided that the licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required by the licensure or the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed;

(2) is currently licensed as an engineer in a foreign country and can demonstrate, to the board's satisfaction, evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act and can satisfactorily demonstrate to the board competence in current engineering standards and procedures; or

(3) is not applying for licensure in the structural discipline but is currently licensed as an engineer in another state, the District of Columbia or a territory of the United States; provided that the applicant:

(a) has been actively licensed for the continuous ten years immediately preceding application to New Mexico;

(b) has not received any form of disciplinary action related to the practice of engineering or professional conduct from any jurisdiction within the five years preceding application to New Mexico;

(c) has not had the applicant's professional license suspended or revoked at any time from any jurisdiction; and

(d) has passed the principles and practice of engineering examination administered by the national council of examiners for engineering and surveying relevant to the discipline in which the applicant is seeking licensure.

**History:** 1978 Comp., § 61-23-14.1, enacted by Laws 1993, ch. 218, § 12; 1999, ch. 259, § 11; 2003, ch. 233, § 3; 2005, ch. 69, § 7; 2012, ch. 46, § 3; 2017, ch. 42, § 6; 2019, ch. 220, § 3; 2023, ch. 79, § 3.

### **61-23-15, 61-23-16. Repealed.**

### **61-23-17. Application and examination fees. (Repealed effective July 1, 2030.)**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Except as provided in Section 61-1-34 NMSA 1978, 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 the applicant's 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 any crime that may impede the ability of the applicant to perform professionally as determined by board rules.

**History:** 1987, ch. 336, § 17; 2005, ch. 69, § 8; 2012, ch. 46, § 4; 2020, ch. 6, § 48; 2023, ch. 79, § 4.

### **61-23-17.1. Repealed.**

### **61-23-18. Engineering; examinations. (Repealed effective July 1, 2030.)**

The examinations for engineering certification and licensure 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; 1999, ch. 259, § 12.

**61-23-19. Engineering; licenses; seals; incidental architectural work; supplemental surveying work. (Repealed effective July 1, 2030.)**

A. The board shall issue licenses pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals and may approve alternative authentications to physical or electronic seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to the engineer's work as an engineer; provided that the engineer shall not make any representation as being an architect or as performing architectural services unless duly registered as such.

D. The board shall recognize that there may be occasions when professional engineers need to obtain supplemental survey information for the planning and design of an engineering project. A professional engineer who has primary engineering responsibility and control of an engineering project may perform supplemental surveying work in obtaining data incidental to that project. Supplemental surveying work may be performed by a professional engineer only on a project for which the engineer is providing engineering design services.

**History:** Laws 1987, ch. 336, § 19; 1993, ch. 218, § 14; 1999, ch. 259, § 13; 2012, ch. 46, § 5; 2017, ch. 42, § 7; 2019, ch. 220, § 4.

**61-23-20. Engineering; licensure and renewal fees; expirations. (Repealed effective July 1, 2030.)**

A. Licensure shall be for a period of two years as prescribed in the rules of procedure. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional engineers. Except as provided in Section 61-1-34 NMSA 1978, licensure renewal is accomplished upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be sent at least one month in advance of the date of expiration of the license.

D. Each licensee shall have the responsibility to notify the board of any change of address within thirty days of the change.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional engineer for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee apply to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application and fee as provided in Section 61-23-17 NMSA 1978. The board, in considering the reapplication, may consider the applicant's qualifications for licensure if the requirements for licensure have changed since the applicant was first licensed. The board may adopt rules for inactive and retired status.

**History:** Laws 1987, ch. 336, § 20; 1993, ch. 218, § 15; 1999, ch. 259, § 14; 2005, ch. 69, § 9; 2012, ch. 46, § 6; 2017, ch. 42, § 8; 2020, ch. 6, § 49; 2023, ch. 79, § 5.

### **61-23-21. Practice of engineering. (Repealed effective July 1, 2030.)**

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity 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 pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the practice, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, or that are 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 a business entity other than a partnership, services or work involving the practice of engineering may be offered through that business entity; provided that the person in responsible charge of the activities of the business entity that constitute engineering practice is a professional engineer who has authority to bind such business entity by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, or that are issued by or for such business entity, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual or business entity 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 or business entity is qualified to practice engineering in accordance with the requirements of the Engineering and Surveying Practice Act.

D. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

**History:** Laws 1987, ch. 336, § 21; 1993, ch. 218, § 16; 1999, ch. 259, § 15; 2017, ch. 42, § 9.

### **61-23-22. Engineering; exemptions. (Repealed effective July 1, 2030.)**

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 make any representation as being a professional engineer or as performing engineering services; and further provided that the architect shall perform only that part of the work for which the architect is professionally qualified and shall use 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 the architect's professional seal.

B. An engineer employed by a business entity who performs only the engineering services involved in the operation of the business entity's or an affiliated business entity'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; and provided further that any such engineering services are limited to the legal boundaries of the property owned, leased or lawfully operated by the business entity or an affiliated business entity that employs the engineer. Performance of engineering on public works projects pursuant to Section 61-23-26 NMSA 1978 or within off-premises easements constitutes engineering services to the public and is subject to the Engineering and Surveying Practice Act.

**History:** 1978 Comp., § 61-23-22, enacted by Laws 1993, ch. 218, § 17; 1998, ch. 43, § 1; 2017, ch. 42, § 10; 2023, ch. 79, § 6.

## **61-23-23. Repealed.**

### **61-23-23.1. Authority to investigate; civil penalties for unlicensed persons; engineering. (Repealed effective July 1, 2030.)**

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional engineer within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional engineer or to solicit or propose to perform work involving the practice of engineering.

B. If after the hearing the board determines that based on the evidence the person committed a violation pursuant to the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved by the board's decision may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor, and upon conviction the person shall be sentenced pursuant to Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

**History:** Laws 2003, ch. 233, § 4; 2012, ch. 46, § 7.

### **61-23-24. Engineering; violations; disciplinary action; penalties; reissuance of licenses. (Repealed effective July 1, 2030.)**

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may suspend, refuse to renew or revoke a license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), 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;

(2) attempted to use the license of another;

(3) given false or forged evidence to the board or to a board member for obtaining a license;

(4) falsely impersonated another licensee of like or different name;

(5) attempted to use an expired, suspended or revoked license;

(6) falsely purported 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 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 of the board.

B. Except as provided in Subsection C of Section 61-23-21 NMSA 1978, 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 F and H 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 a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall



be grounds for further action against the licensee by the board and for judicial sanctions or relief.

E. A person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against a licensed professional engineer. 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 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 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, trivial, resolved by reprimand or settled informally, shall be heard in accordance with the provisions 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 a board member may initiate proceedings pursuant to 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 license to a person whose license has been revoked or suspended if a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of the reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee.

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 seven thousand five hundred dollars (\$7,500) 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 nonlicensee.

K. 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 where the violation occurs.

**History:** 1978 Comp., § 61-23-24, enacted by Laws 1993, ch. 218, § 18; 1999, ch. 259, § 16; 2005, ch. 69, § 10; 2012, ch. 46, § 8; 2017, ch. 42, § 11; 2022, ch. 39, § 87.

**61-23-24.1. Engineering; professional development. (Repealed effective July 1, 2030.)**

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.

**61-23-25. Repealed.**

**61-23-26. Engineering; public work. (Repealed effective July 1, 2030.)**

It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving engineering unless the engineering is under the responsible charge of a licensed professional engineer.

**History:** Laws 1987, ch. 336, § 26; 1993, ch. 218, § 20; 1999, ch. 259, § 17; 2017, ch. 42, § 12.

**61-23-27. Engineering; public officer; licensure required. (Repealed effective July 1, 2030.)**

No person except a licensed 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; 1999, ch. 259, § 18.

**61-23-27.1, 61-23-27.2. Repealed.**

**61-23-27.3. Certification of surveyor intern; requirements. (Repealed effective July 1, 2030.)**

A. An applicant for certification as a surveyor intern shall file the appropriate application and demonstrate that the applicant:

- (1) is of good moral character and reputation as determined by board rules;

(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 licensed 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 intern 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 a board-approved but related curriculum of at least four years, to be considered for certification as a surveyor intern, shall have a specific record of two years of combined office and field board-approved surveying experience obtained under the direction of a licensed professional surveyor. Class time will not be counted in the two years of required experience, but work prior to or while attending school may be counted toward the two years of required experience at the discretion of the board.

**History:** 1978 Comp., § 61-23-27.3, enacted by Laws 1993, ch. 218, § 24; 1999, ch. 259, § 19; 2012, ch. 46, § 9; 2019, ch. 220, § 5; 2023, ch. 79, § 7.

#### **61-23-27.4. Licensure as a professional surveyor; general requirements. (Repealed effective July 1, 2030.)**

A. Licensure as a professional surveyor may be either through examination or through endorsement or comity. In either case, an applicant shall file the appropriate application to demonstrate that the applicant:

(1) is of good moral character and reputation as determined by board rules;

(2) is certified as a surveyor intern;

(3) has at least four years of board-approved surveying experience if graduated from a four-year, board-approved surveying curriculum as defined by board rule;

(4) has five references, three of which shall be from licensed professional surveyors having personal knowledge of the applicant's surveying experience; and

(5) if graduated from a board-approved, four-year related science curriculum as specifically defined by board rules, has a minimum of four years of board-approved surveying experience subsequent to certification as a surveyor intern.

B. The applicant's experience pursuant to Paragraphs (3) and (5) of Subsection A of this section shall, at 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 licensed professional surveyor.

C. After acceptance of the application by the board, the applicant shall be allowed to take the appropriate examination for licensure as a professional surveyor.

D. Upon successfully completing the examination, the applicant shall be eligible to be licensed as a professional surveyor upon action of the board.

E. If otherwise qualified, an applicant may be licensed if the applicant is currently licensed as a professional surveyor in:

(1) another state, the District of Columbia or a territory of the United States; provided that:

(a) licensure does not conflict with the provisions of the Engineering and Surveying Practice Act and that the standards required for licensure and the applicant's qualifications equaled or exceeded the licensure standards in New Mexico at the time the applicant was initially licensed; and

(b) the applicant has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in this state;

(2) another state, the District of Columbia or a territory of the United States; and provided further that the applicant:

(a) has been actively licensed for the continuous fifteen years immediately preceding application to New Mexico;

(b) has not received any form of disciplinary action related to the practice of surveying or professional conduct from any jurisdiction within the five years preceding application to New Mexico;

(c) has not had the applicant's professional license suspended or revoked at any time from any jurisdiction; and

(d) has passed examinations the board deems necessary to determine the applicant's qualifications, including a written examination that includes questions on laws, procedures and practices pertaining to surveying in New Mexico; or

(3) a foreign country and can demonstrate to the board's satisfaction:

(a) evidence that the licensure was based on standards that equal or exceed those currently required for licensure by the Engineering and Surveying Practice Act; and

(b) 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; 1999, ch. 259, § 20; 2005, ch. 69, § 11; 2012, ch. 46, § 10; 2023, ch. 79, § 8.

### **61-23-27.5. Surveying; application and examination fees. (Repealed effective July 1, 2030.)**

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure or certification on forms prescribed and furnished by the board. Except as provided in Section 61-1-34 NMSA 1978, 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 the applicant's 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 that may impede the ability of the applicant to perform professionally as determined by board rules.

**History:** 1978 Comp., § 61-23-27.5, enacted by Laws 1993, ch. 218, § 26; 1999, ch. 259, § 21; 2017, ch. 42, § 13; 2020, ch. 6, § 50; 2023, ch. 79, § 9.

### **61-23-27.6. Surveying; examinations. (Repealed effective July 1, 2030.)**

The examinations for surveying certification and licensure 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; 1999, ch. 259, § 22.

**61-23-27.7. Surveying; licensure and renewal fees; expirations. (Repealed effective July 1, 2030.)**

A. Licensure for surveyors shall be for a period of two years as prescribed in the rules of procedure. Initial certificates of licensure shall be issued to coincide with the biennial period. Initial licenses shall be issued in accordance with the board's rules.

B. The board shall establish by rule a biennial fee for professional surveyors. Except as provided in Section 61-1-34 NMSA 1978, renewal shall be granted upon payment of the required fee and satisfactory completion of the requirements of professional development.

C. The executive director of the board shall send a renewal notice to each licensee's last known address. Notice shall be sent at least one month in advance of the date of expiration of the license.

D. It shall be the responsibility of the licensee to notify the board of any change of address and to keep the license current.

E. Upon receipt of a renewal fee and fulfillment of other requirements, the board shall issue a licensure renewal card that shall show the name and license number of the licensee and shall state that the person named has been granted licensure to practice as a professional surveyor for the biennial period.

F. Every license shall automatically expire if not renewed on or before December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee wish to renew an expired license after the March 1 deadline has elapsed, the licensee shall submit a formal application as provided in Section 61-23-27.4 NMSA 1978. The board, in considering the reapplication, need not question the applicant's qualifications for licensure unless the qualifications have changed since the license expired.

**History:** 1978 Comp., § 61-23-27.7, enacted by Laws 1993, ch. 218, § 28; 1999, ch. 259, § 23; 2005, ch. 69, § 12; 2012, ch. 46, § 11; 2020, ch. 6, § 51; 2023, ch. 79, § 10.

**61-23-27.8. Surveying licenses and seals. (Repealed effective July 1, 2030.)**

A. The board shall issue surveying licenses pursuant to the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals and may approve alternative authentications to physical or electronic seals.

**History:** 1978 Comp., § 61-23-27.8, enacted by Laws 1993, ch. 218, § 29; 1999, ch. 259, § 24; 2012, ch. 46, § 12; 2019, ch. 220, § 6.

**61-23-27.9. Surveying; practice of surveying; mandatory disclosure.  
(Repealed effective July 1, 2030.)**

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice surveying in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional surveyors may engage in the practice of surveying and perform surveying work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. All plats, drawings and reports that are involved in the practice, or that are 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 business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to the Engineering and Surveying Practice Act. 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 business entity other than a partnership, services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has authority to bind the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

D. An individual or business entity 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 or business entity is qualified to practice surveying in accordance with the requirements of the Engineering and Surveying Practice Act.

E. For all contracts and agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating:

(1) the minimum terms and conditions of professional liability insurance coverage, including limits and exceptions; or

(2) the absence of professional liability insurance coverage.

**History:** 1978 Comp., § 61-23-27.9, enacted by Laws 1993, ch. 218, § 30; 1999, ch. 259, § 25; 2005, ch. 69, § 13; 2017, ch. 42, § 14.

### **61-23-27.10. Surveying exemptions. (Repealed effective July 1, 2030.)**

A surveyor employed by a business entity who performs only the surveying services involved in the operation of the business entity's or an affiliated business entity'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; and provided further that any such surveying services are limited to the legal boundaries of the property owned, leased or lawfully operated by the business entity or an affiliated business entity that employs the surveyor; and provided further that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Performance of surveying on public works projects pursuant to Section 61-23-27.13 NMSA 1978 or within off-premises easements constitutes work within a public space and is subject to the Engineering and Surveying Practice Act.

**History:** 1978 Comp., § 61-23-27.10, enacted by Laws 1993, ch. 218, § 31; 1999, ch. 259, § 26; 2017, ch. 42, § 15; 2023, ch. 79, § 11.

### **61-23-27.11. Surveying; violations; disciplinary actions; penalties; reissuance of licenses. (Repealed effective July 1, 2030.)**

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand a 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;

(2) attempted to use the license of another;

(3) given false or forged evidence to the board or to a board member for obtaining a license;

(4) falsely impersonated another licensee of like or different name;



- (5) attempted to use an expired, suspended or revoked license;
- (6) falsely purported 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 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 adopted by the board.

B. The board may by rule and in accordance with the Uniform Licensing Act 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 a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Uniform Licensing Act is a misdemeanor and shall be grounds for further action against the licensee by the board and for judicial sanctions or relief.

D. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a professional surveyor. 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 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 professional surveying committee, acting for the board, or to the board. All charges, unless dismissed as unfounded, trivial, resolved by reprimand or settled informally, 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 if the charges are made in good faith and are not frivolous or malicious.

F. The board or a board member may initiate proceedings pursuant to 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 license to a person whose license has been revoked or suspended; provided that a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee determined by the board.

H. 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 seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.

I. 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 nonlicensee.

J. 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; 1999, ch. 259, § 27; 2005, ch. 69, § 14; 2012, ch. 46, § 13; 2017, ch. 42, § 16; 2022, ch. 39, § 88.

### **61-23-27.12. Surveying; professional development. (Repealed effective July 1, 2030.)**

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.

### **61-23-27.13. Surveying; public work. (Repealed effective July 1, 2030.)**

It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor.

**History:** 1978 Comp., § 61-23-27.13, enacted by Laws 1993, ch. 218, § 34; 1999, ch. 259, § 28; 2017, ch. 42, § 17.

**61-23-27.14. Surveying; public officer; licensure required.  
(Repealed effective July 1, 2030.)**

No person except a licensed professional surveyor shall be eligible to hold any responsible office or position for the state or any political subdivision of the state that requires the performance or responsible charge of surveying work.

**History:** 1978 Comp., § 61-23-27.14, enacted by Laws 1993, ch. 218, § 35; 1999, ch. 259, § 29.

**61-23-27.15. Authority to investigate; civil penalties for unlicensed persons; surveying. (Repealed effective July 1, 2030.)**

A. The board may investigate and initiate a hearing on a complaint against a person who does not have a license, who is not exempt from the Engineering and Surveying Practice Act and who acts in the capacity of a professional surveyor within the meaning of the Engineering and Surveying Practice Act. A valid license is required for a person to act as a professional surveyor or to solicit or purport to perform work involving the practice of surveying.

B. If after the hearing the board determines that based on the evidence the person committed a violation under the Engineering and Surveying Practice Act, it shall, in addition to any other sanction, action or remedy, issue an order that imposes a civil penalty up to seven thousand five hundred dollars (\$7,500) per violation.

C. In determining the amount of the civil penalty it imposes, the board shall consider:

- (1) the seriousness of the violation;
- (2) the economic benefit to the violator that was generated by the violator's commission of the violation;
- (3) the violator's history of violations; and
- (4) any other considerations the board deems appropriate.

D. A person aggrieved may appeal a decision made or an order issued pursuant to Subsection B of this section to the district court pursuant to Section 39-3-1.1 NMSA 1978.

E. Failure to pay a fine levied by the board or to otherwise comply with an order issued by the board pursuant to the Engineering and Surveying Practice Act is a misdemeanor and upon conviction the person shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Conviction shall be grounds for further action against the person by the board and for judicial sanctions or relief, including a petition for injunction.

**History:** Laws 2003, ch. 233, § 5; 2012, ch. 46, § 14.

### **61-23-28. Reference marks; removal or obliteration; replacement. (Repealed effective July 1, 2030.)**

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 licensed 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 of the county wherein located, showing clearly the position of the marks established with reference to the position of the 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; 1999, ch. 259, § 30; 2011, ch. 56, § 26.

#### **61-23-28.1. Repealed.**

#### **61-23-28.2. Surveying; record of survey. (Repealed effective July 1, 2030.)**

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of remonumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the completion of the survey, a professional surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches or as required by the local governing authority.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.

C. For those surveys that create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority.

**History:** Laws 1999, ch. 259, § 34; 2011, ch. 134, § 20; 2017, ch. 42, § 18.

## **61-23-29. Repealed.**

### **61-23-29.1. Repealed.**

## **61-23-30. Right of entry on public and private property; responsibility. (Repealed effective July 1, 2030.)**

The engineers and surveyors of the United States and licensed professional engineers and surveyors of the state 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; 1999, ch. 259, § 31.

## **61-23-31. Licensure under prior laws. (Repealed effective July 1, 2030.)**

Any person holding a valid license as a professional engineer, professional surveyor, professional engineer and surveyor or certification as an engineer intern or surveyor intern granted by the board pursuant to 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 licensure upon the terms and conditions of the Engineering and Surveying Practice Act.

**History:** Laws 1987, ch. 336, § 31; 1993, ch. 218, § 37; 1999, ch. 259, § 32.

### **61-23-31.1. Good samaritan. (Repealed effective July 1, 2030.)**

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 aircraft structure, structural, aeronautical, 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, such as a terrorist act, 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 or governmentally 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; 2005, ch. 69, § 15.

### **61-23-32. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The state board of licensure for professional engineers and professional surveyors is terminated on July 1, 2029 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 until July 1, 2030. Effective July 1, 2030, the Engineering and Surveying Practice Act is repealed.

**History:** Laws 1987, ch. 336, § 32; 1993, ch. 218, § 39; 1999, ch. 259, § 33; 2005, ch. 208, § 16; 2011, ch. 30, § 5; 2012, ch. 46, § 16; 2017, ch. 42, § 19; 2017, ch. 52, § 7; 2023, ch. 15, § 3; 2023, ch. 79, § 12.

### **61-23-33. Notice of boundary survey; certain land grants. (Repealed effective July 1, 2030.)**

A. If a boundary survey of property is conducted within or bordering the common lands of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978, the surveyor shall give written notice by certified mail to the board of trustees or commissioners of the affected land grant prior to recording the boundary survey or plat with the county clerk. The notice shall indicate where and when the boundary survey will be or was conducted.

B. The board of trustees or commissioners of a community land grant governed and operating pursuant to Chapter 49, Article 6, 7, 8 or 10 NMSA 1978 shall record with the county clerk of the county within which the land grant is located the address and contact information of the appropriate officer of the board or commission to which notice shall be given pursuant to Subsection A of this section. Any change in address or contact information shall be updated and recorded as soon as practicable to ensure that timely notice may be accomplished by certified mail.

C. A surveyor shall give proof of the notice required by Subsection A of this section by having the tracking number of the certified mailing and the address of the land grant as recorded with the county clerk acknowledged and recorded on the boundary survey or plat. A boundary survey or plat recorded pursuant to Section 61-23-28.2 NMSA 1978 without proof of the notice required by Subsection A of this section shall not be considered a valid filing or recording of the boundary survey or plat.

**History:** Laws 2010, ch. 6, § 1.

### **61-23-34. Repealed.**

**History:** Laws 2012, ch. 46, § 15; repealed by Laws 2013, ch. 3, § 1.

### **61-23-35. Engineering and surveying university support program. (Repealed effective July 1, 2030.)**

A. The board may establish an "engineering and surveying university support program" that provides strategies to enhance recruitment and retention of New Mexico professional engineers and professional surveyors, increase career and educational opportunities and improve interaction with the engineering and surveying professions and institutions of higher education. The program may provide direct educational and training scholarships through qualified New Mexico educational institutions to candidates for the engineering and surveying professions willing to reside and practice in New Mexico. The program may also provide funding for equipment and related materials at qualified New Mexico educational institutions to support the education of engineering and surveying students. The amount of funding provided pursuant to the program shall not exceed annually two hundred fifty thousand dollars (\$250,000) in the aggregate.

B. The board may request and use appropriations to establish, implement and maintain the engineering and surveying university support program. Any appropriation shall be deposited in the engineering and surveying university support fund.

**History:** Laws 2019, ch. 220, § 1; 2023, ch. 79, § 13.

### **61-23-36. Engineering and surveying university support fund created. (Repealed effective July 1, 2030.)**

The "engineering and surveying university support fund" is created in the state treasury to support the engineering and surveying university support program. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. Any income earned on investment of the fund shall remain in the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the board, and money in the fund is appropriated to the board to carry out the purposes of the engineering and surveying university support program. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers approved by the chair and signed by the executive director of the board.

**History:** Laws 2019, ch. 220, § 2; 2023, ch. 79, § 14.

## **ARTICLE 24**

### **Hearing Aid Dealers and Fitters (Repealed.)**

**61-24-1 to 61-24-21. Repealed.**

## **ARTICLE 24A**

### **Hearing Aid Dispensers (Repealed.)**

**61-24A-1 to 61-24A-21. Repealed.**

## **ARTICLE 24B**

### **Landscape Architects**

**61-24B-1. Short title. (Repealed effective July 1, 2026.)**

Chapter 61, Article 24B NMSA 1978 may be cited as the "Landscape Architects Act".

**History:** Laws 1985, ch. 151, § 1; 1998, ch. 23, § 1.

**61-24B-2. Purpose of act. (Repealed effective July 1, 2026.)**

The purpose of the Landscape Architects Act is to ensure public safety and to promote quality performance by registration of landscape architects.

**History:** Laws 1985, ch. 151, § 2.

**61-24B-3. Definitions. (Repealed effective July 1, 2026.)**



As used in the Landscape Architects Act:

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 an individual registered under the Landscape Architects Act to practice landscape architecture;

D. "landscape architect in training" means an individual certified under the Landscape Architects Act who is actively pursuing completion of the requirements for licensure pursuant to that act; and

E. "landscape architecture" means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts. 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 Chapter 61, Articles 15 and 23 NMSA 1978.

**History:** Laws 1985, ch. 151, § 3; 2001, ch. 155, § 1; 2007, ch. 126, § 1.

#### **61-24B-4. Registration required. (Repealed effective July 1, 2026.)**

No person shall practice landscape architecture or represent himself as a landscape architect unless he has a certificate of registration issued pursuant to the Landscape Architects Act.

**History:** Laws 1985, ch. 151, § 4; 2001, ch. 155, § 2.

#### **61-24B-5. Exemptions. (Repealed effective July 1, 2026.)**

A. The following shall be exempt from the provisions of the Landscape Architects Act as long as they do not hold themselves out as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act:

(1) 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 landscape architect registered under the provisions of the Landscape Architects Act; provided that the nonresident landscape architect meets equivalent registration qualifications in the landscape architect's own state or country;

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or a multifamily residential complex of four units or less except when it is part of a larger complex.

B. 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 the architect's, engineer's or land surveyor's licensure.

C. Nothing in the Landscape Architects Act is intended to limit, interfere with or prevent the landscape architects in training, drafters, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the 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 landscape architects by whom the plans and specifications of any landscape architectural services were prepared.

**History:** Laws 1985, ch. 151, § 5; 1999, ch. 272, § 31; 2001, ch. 155, § 3; 2007, ch. 126, § 2.

### **61-24B-6. Board created; members; qualifications; terms; vacancies; removal. (Repealed effective July 1, 2026.)**

A. The "board of landscape architects" is created. The board is administratively attached to the regulation and licensing department. The board shall consist of five members, three of whom shall be landscape architects. The landscape architect members shall have been registered as landscape architects for at least five years. The two public members 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. The members of the board shall be appointed by the governor for staggered terms of three years, and appointments shall be made in 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 beginning of a fiscal year and elect from its membership a chairman and vice chairman. The board shall meet at 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, 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 a member from the board for neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board rule or for any reason that would justify the suspension or revocation of his registration to practice landscape architecture.

E. A board member shall not serve more than two consecutive full terms, and a 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 rules.

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.

**History:** Laws 1985, ch. 151, § 6; 1991, ch. 189, § 23; 2001, ch. 155, § 4; 2003, ch. 408, § 24.

### **61-24B-7. Board; powers and duties. (Repealed effective July 1, 2026.)**

The board shall:

A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Landscape Architects Act;

B. provide for the examination, registration and re-registration of applicants;

C. adopt and use a seal;

D. administer oaths and take testimony on matters within the board's jurisdiction;

E. grant, deny, renew, suspend or revoke certificates of registration to practice landscape architecture in accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] for any cause stated in the Landscape Architects Act;

F. grant, deny, renew, suspend or revoke landscape architect in training certificates in accordance with the provisions of the Uniform Licensing Act 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. in cooperation with the state board of examiners for architects and the state board of licensure for professional engineers and surveyors, create a joint standing committee to be known as the "joint practice committee" to safeguard life, health and property and to promote the public welfare. The committee shall promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the 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; 2001, ch. 155, § 5; 2003, ch. 408, § 25; 2007, ch. 126, § 3; 2022, ch. 39, § 89.

### **61-24B-8. Qualifications for registration. (Repealed effective July 1, 2026.)**

A 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 and has a minimum of two years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect;

B. has graduated from a nonaccredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree 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 landscape architect;

C. has graduated from a program in a field related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of five years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a landscape architect; or

D. has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, at least one year of which shall be under the supervision of a landscape architect, provided that:

(1) each satisfactorily completed year of study in an accredited program of landscape architecture may be accepted in lieu of one year of practical experience required under this subsection; or

(2) a baccalaureate degree from a school, college or university may be accepted in lieu of two years of practical experience required under this subsection.

**History:** Laws 1985, ch. 151, § 8; 2001, ch. 155, § 6; 2007, ch. 126, § 4.

### **61-24B-8.1. Qualifications for certification as landscape architect in training. (Repealed effective July 1, 2026.)**

A person desiring to be certified as a landscape architect in training 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 has practical experience in landscape architectural work acceptable to the board and has:

A. graduated from an accredited program in landscape architecture at a school, college or university;

B. graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum; or

C. graduated from a program related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum.

**History:** Laws 2007, ch. 126, § 5.

### **61-24B-9. Registration of landscape architects; examinations; exemptions; expedited registration. (Repealed effective July 1, 2026.)**

A. Applicants for certificates of registration shall be required to pass the board's examination for landscape architects. An applicant who 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 if the applicant complies with the rules established by the board.

D. The board shall issue an expedited 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 licensing jurisdiction if the applicant demonstrates that the person holds a valid, unrestricted license and is in good standing with the licensing board in the other licensing jurisdiction. The board shall, as soon as practicable but no later than thirty days after an out-of-state registrant or licensee files an application for a license accompanied by required fees, process the application and issue an expedited certificate of registration in accordance with Section 61-1-31.1 NMSA 1978. The board by rule shall determine the states and territories of the United States and the District of Columbia from which it will not accept applications for expedited registration and foreign countries from which it will accept applications for expedited licensure. The board shall post on its website the list of disapproved licensing jurisdictions and the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 1985, ch. 151, § 9; 2001, ch. 155, § 7; 2022, ch. 39, § 90.

### **61-24B-9.1. Inactive status. (Repealed effective July 1, 2026.)**

A certificate of registration in good standing may be transferred to inactive status upon written request to the board and payment of an annual inactive status fee set by the board. The request shall be made prior to expiration of the certificate of registration. The registrant shall not practice in New Mexico during the time the certificate of registration is inactive. A registrant may reactivate his certificate of registration upon submission of a renewal form provided by the board, the payment of the annual renewal fee for the current year, proof of continuing education units for the period of inactive status and any additional proof of competency required by the board.

**History:** Laws 1998, ch. 23, § 2.

### **61-24B-9.2. Certification as landscape architect in training; examination. (Repealed effective July 1, 2026.)**

A. Applicants for certification as a landscape architect in training shall be required to pass the board's examination for landscape architect in training. An applicant who passes the examination may be issued a certificate as a landscape architect in training. The certification is intended to demonstrate that the applicant has obtained certain skills in landscape architecture fundamentals and is pursuing a career in landscape architecture.

B. The board shall conduct examinations of applicants for certification as landscape architects in training 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 if the applicant complies with the rules established by the board.

D. Certification as a landscape architect in training is limited in duration in accordance with the rules established by the board.

**History:** Laws 2007, ch. 126, § 6.

### **61-24B-10. Other licensing provisions. (Repealed effective July 1, 2026.)**

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.

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.

### **61-24B-11. Fees. (Repealed effective July 1, 2026.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish a schedule of reasonable fees for applications, certificates of registration, certificates as a landscape architect in training, temporary permits, re-registration, inactive status and late registration renewal as follows:

A. the initial application fee shall be set in an amount not to exceed one hundred dollars (\$100);

B. the initial certificate of registration fee shall be set in an amount not to exceed three hundred dollars (\$300);

C. the certificate of registration renewal fee shall be set in an amount not to exceed four hundred dollars (\$400);

D. the initial and the renewal fee for landscape architect in training certification shall be set in an amount not to exceed two hundred dollars (\$200);

E. the annual inactive status fee shall be set at one-half the renewal fee for the year; and

F. the late fee for registration renewal shall be set at an amount not to exceed twice the renewal fee.

**History:** Laws 1985, ch. 151, § 11; 1998, ch. 23, § 3; 2007, ch. 126, § 7; 2020, ch. 6, § 52.

### **61-24B-12. Denial, suspension, revocation and reinstatement of certificate of registration. (Repealed effective July 1, 2026.)**

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 [this article] 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.

### **61-24B-13. Criminal offender's character evaluation. (Repealed effective July 1, 2026.)**

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.



**History:** Laws 1985, ch. 151, § 13.

**61-24B-14. Landscape architects fund created; disposition; method of payment. (Repealed effective July 1, 2026.)**

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 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.

**61-24B-15. Board; rules. (Repealed effective July 1, 2026.)**

The board shall make rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Landscape Architects Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** Laws 1985, ch. 151, § 15; 2022, ch. 39, § 91.

**61-24B-16. Enforcement. (Repealed effective July 1, 2026.)**

A. Violation of any provision of the Landscape Architects Act 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.

**61-24B-17. Termination of agency life; delayed repeal. (Repealed effective July 1, 2026.)**

The board of landscape architects is terminated on July 1, 2025 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 Landscape Architects Act until July 1, 2026. Effective July 1, 2026, the Landscape Architects Act is repealed.

**History:** Laws 1985, ch. 151, § 18; 1991, ch. 189, § 24; 1997, ch. 46, § 18; 2005, ch. 208, § 17; 2013, ch. 166, § 5; 2019, ch. 168, § 3.

## **ARTICLE 24C**

### **Interior Designers**

#### **61-24C-1. Short title.**

Chapter 61, Article 24C NMSA 1978 may be cited as the "Interior Designers Act".

**History:** Laws 1989, ch. 53, § 1; 2000, ch. 4, § 13.

#### **61-24C-2. Findings.**

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 licensed "interior designer" by unlicensed persons.

**History:** Laws 1989, ch. 53, § 2; 2007, ch. 245, § 1.

#### **61-24C-3. Definitions.**

As used in the Interior Designers Act:

A. "applicant" means a person applying to the department for an interior designer license;

B. "department" means the regulation and licensing department;

C. "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; and

D. "licensed interior designer" or "licensed designer" means a person licensed pursuant to the Interior Designers Act.

**History:** Laws 1989, ch. 53, § 3; 2007, ch. 245, § 2; 2023, ch. 190, § 30.

#### **61-24C-4. Repealed.**

**History:** Laws 1989, ch. 53, § 4; 2003, ch. 408, § 26; 2007, ch. 245, § 3; repealed by Laws 2023, ch. 190, § 53.

### **61-24C-5. Powers and duties of the department.**

The department:

A. shall administer, coordinate and enforce the provisions of the Interior Designers Act. The department may investigate allegations of violations of the provisions of the Interior Designers Act;

B. shall adopt rules to carry out the purposes and policies of the Interior Designers Act, including rules relating to professional conduct, standards of professional examination and licensure, and reasonable license, application, renewal and late fees;

C. shall require a licensee, as a condition of the renewal of the license, to undergo continuing education requirements pursuant to the Interior Designers Act;

D. shall maintain an official roster showing the name, address and license number of each interior designer licensed pursuant to the Interior Designers Act;

E. may adopt a common seal for use by licensed interior designers; and

F. shall do all other things reasonable and necessary to carry out the provisions of the Interior Designers Act.

**History:** Laws 1989, ch. 53, § 5; 2003, ch. 408, § 27; 2007, ch. 245, § 4; 2023, ch. 190, § 31.

### **61-24C-6. Repealed.**

**History:** Laws 1989, ch. 53, § 6; repealed by Laws 2023, ch. 190, § 53.

### **61-24C-7. Repealed.**

**History:** Laws 1989, ch. 53, § 7; repealed by Laws 2023, ch. 190, § 53.

### **61-24C-8. Requirements for licensure.**

Each applicant for licensure shall apply to the department. Except as otherwise provided in the Interior Designers Act, each applicant shall take and pass the national council for interior design qualification examination or another nationally recognized examination approved by the department and have an active certification from the national council for interior design qualification or another nationally recognized certification.

**History:** Laws 1989, ch. 53, § 8; 2023, ch. 190, § 32.

### **61-24C-9. License without examination.**

If a person applies for licensure but does not satisfy the requirements of Section 61-24C-8 NMSA 1978, the department may on a case-by-case basis review and issue a license to an applicant who provides evidence to the department that the applicant:

A. has active licensure in another state or country where the qualifications are equal to or exceed those required by the Interior Designers Act and the applicant complies with all other requirements of the Interior Designers Act; or

B. has apprenticed for at least eight years under a licensed interior designer who passed the national council for interior design qualification examination or another nationally recognized examination approved by the department.

**History:** Laws 1989, ch. 53, § 9; 2023, ch. 190, § 33.

### **61-24C-10. License; issuance; renewal; denial, suspension or revocation.**

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; provided that the applicant has reached the age of majority and, except as provided in Section 61-1-34 NMSA 1978, pays the required fees.

B. Each original license shall authorize the holder to use the title of and be known as a licensed interior designer from the date of issuance to the next renewal date unless the license is suspended or revoked.

C. All licenses shall expire four years after the date of issuance and shall be renewed by submitting a completed renewal application, and except as provided in Section 61-1-34 NMSA 1978, accompanied by the required fees.

D. A license may not be renewed until the licensee submits satisfactory evidence to the department that, since the initial issuance or last renewal if the license has been renewed, the licensee has participated in not less than twenty hours of continuing education approved by the department. The department may make exceptions from this continuing education requirement in cases that the licensee provides evidence of an emergency or hardship.

E. The holder of a license that has expired through failure to renew may renew the license, upon approval of the department.

F. In accordance with the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the department 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 an act of fraud or deceit in professional conduct;
- (3) made any representation as being a licensed interior designer prior to being issued a license, except as authorized under the provisions of the Interior Designers Act;
- (4) been found by the department to have aided or abetted an unlicensed person in violating the provisions of the Interior Designers Act; or
- (5) failed to comply with the provisions of the Interior Designers Act or rules adopted pursuant to that act.

**History:** Laws 1989, ch. 53, § 10; 2007, ch. 245, § 5; 2020, ch. 6, § 53; 2023, ch. 190, § 34.

### **61-24C-11. License required; penalty.**

A. A person shall not knowingly:

- (1) use the name or title of licensed interior designer when the person is not the holder of a current, valid license issued pursuant to the Interior Designers Act;
- (2) use or present as the person's own the license of another;
- (3) give false or forged evidence to the department or a department employee for the purpose of obtaining a license;
- (4) use or attempt to use an interior design license that has been suspended, revoked or placed on inactive status; or
- (5) conceal information relative to violations of the Interior Designers Act.

B. A person who violates a provision of this section shall be penalized pursuant to the provisions of the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978]; provided that a licensee or applicant shall be afforded notice and an opportunity to be heard before the department has authority to take any action that would result in a penalty or fine, including suspension, revocation, denial or withholding of a license or other corrective action.

**History:** Laws 1989, ch. 53, § 11; 2007, ch. 245, § 6; 2023, ch. 190, § 35.

### **61-24C-12. Repealed.**

**History:** Laws 1989, ch. 53, § 12; 2007, ch. 245, § 7; repealed by Laws 2023, ch. 190, § 53.

### **61-24C-13. Exemptions.**

A. Nothing in the Interior Designers Act shall be construed as preventing or restricting the practice, services or activities of:

(1) engineers licensed pursuant to the Engineering and Surveying Practice Act [Chapter 61, Article 23 NMSA 1978];

(2) architects licensed pursuant to the Architectural Act [Chapter 61, Article 15 NMSA 1978];

(3) contractors licensed pursuant to the Construction Industries Licensing Act [Chapter 60, Article 13 NMSA 1978];

(4) 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

(5) builders, home furnishings salespersons and similar purveyors of goods and services relating to homemaking.

B. Nothing contained in the Interior Designers Act shall prevent any person from rendering or offering to render any of the services that constitute the practice of interior design, provided that such person shall not be permitted to use or be identified by the title "licensed interior designer" unless licensed in accordance with the provisions of that act or as otherwise provided by law.

C. Nothing in the Interior Designers 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; 2007, ch. 245, § 8.

### **61-24C-14. License fees.**

Except as provided in Section 61-1-34 NMSA 1978, any fees for an original license or renewal of license, late charges or any other fees authorized by the provisions of the Interior Designers Act shall be set by rule of the department. The fee for initial licensure shall not exceed two hundred dollars (\$200).

**History:** Laws 1989, ch. 53, § 14; 2021, ch. 92, § 14; 2023, ch. 190, § 36.

### **61-24C-15. Disclosure requirements.**

A. Interior design documents prepared by a licensed 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, a licensed interior designer shall clearly determine the scope and nature of the project and the methods of compensation. The licensed 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 licensed interior designer shall have the responsibility of fully disclosing to the client the manner in which all compensation is to be paid.

C. A licensed interior designer shall not accept any form of compensation from a supplier of goods and services in cash or in kind, unless the licensed interior designer first informs the client of the compensation.

**History:** Laws 1989, ch. 53, § 15; 2007, ch. 245, § 9.

### **61-24C-16. Fund established; disposition; method of payment.**

A. There is created the "interior design fund".

B. All money collected under the Interior Designers Act shall be deposited with the state treasurer. The state treasurer shall credit the money to the interior design fund.

C. Payments out of the interior design fund shall be on vouchers issued by the superintendent of regulation and licensing 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 fund are subject to appropriation by the legislature and shall 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 fund for use in accordance with the provisions of the Interior Designers Act.

**History:** Laws 1989, ch. 53, § 16; 2007, ch. 245, § 10; 2023, ch. 190, § 37.

### **61-24C-17. Repealed.**

**History:** 1978 Comp., § 61-24C-17, enacted by Laws 1993, ch. 83, § 5; 2000, ch. 4, § 14; 2005, ch. 208, § 18; 2011, ch. 30, § 6; 2017, ch. 52, § 10; repealed by Laws 2023, ch. 190, § 53.

## **ARTICLE 24D**

### **Home Inspector Licensing**

#### **61-24D-1. Short title.**

Chapter 61, Article 24D NMSA 1978 may be cited as the "Home Inspector Licensing Act".

**History:** Laws 2019, ch. 239, § 1; 2022, ch. 39, § 92.

#### **61-24D-2. Definitions.**

As used in the Home Inspector Licensing Act:

A. "approved examination" means a national home inspector licensing examination that has been third-party accredited as complying with the prevailing standards of the Standards for Educational and Psychological Testing and assesses an applicant's knowledge of:

- (1) roofing;
- (2) exterior;
- (3) interior;
- (4) structure;
- (5) electrical;
- (6) plumbing;
- (7) heating and cooling;
- (8) insulation;
- (9) fireplace and chimney; and
- (10) ethical business practices, professional standards and reports;

B. "board" means the New Mexico home inspectors board;



C. "client" means a person or an agent of the person who, through a written pre-inspection agreement, engages the services of a home inspector for the purpose of obtaining a report on the condition of residential real property;

D. "compensation" means the payment for home inspection services pursuant to the written pre-inspection agreement;

E. "foreign home inspector" means a home inspector who does not hold a license but who holds a current and valid home inspector license issued by another jurisdiction in the United States;

F. "home inspection" means a noninvasive, nondestructive examination by a person of the interior and exterior components of a residential real property, including the property's structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its carports, garages and reasonably accessible installed components. "Home inspection" includes the examination of the property's heating, cooling, plumbing and electrical systems, including the operational condition of the systems' controls that are normally operated by a property owner;

G. "home inspector" means a person who performs home inspections for compensation;

H. "license" means a home inspector license issued by the board in accordance with the Home Inspector Licensing Act;

I. "licensee" means the holder of a license;

J. "pre-inspection agreement" means the written agreement signed by the client and a home inspector by which a client engages the services of the home inspector and that sets forth at a minimum the following:

(1) the amount of compensation due and payable to the home inspector for the home inspection and delivery of a report;

(2) a list of all components and systems that will be inspected; and

(3) the date by which the client will receive the report;

K. "report" means a written opinion prepared by a home inspector pursuant to the terms of a pre-inspection agreement regarding the functional and physical condition of the residential real property as determined by a home inspection conducted by a home inspector; and

L. "residential real property" means any real property or manufactured or modular home that is used for or intended to be used for residential purposes and that is a

single-family dwelling, duplex, triplex, quadplex or unit, as "unit" is defined by the Condominium Act [47-7A-1 to 47-7D-20 NMSA 1978].

**History:** Laws 2019, ch. 239, § 2; 2023, ch. 54, § 1.

### **61-24D-3. New Mexico home inspectors board; created; powers and duties.**

A. The "New Mexico home inspectors board" is created and is administratively attached to the regulation and licensing department.

B. The board shall consist of five members, appointed by the governor, who have been residents of the state for at least three consecutive years immediately prior to their appointment. Three members shall be home inspectors. One member shall be a real estate qualifying or associate broker licensed in accordance with Chapter 61, Article 29 NMSA 1978, and one member shall be a member of the public who has never been licensed as a home inspector or real estate broker. No more than one member shall be a resident of any one county in the state. The initial home inspector members appointed shall demonstrate that they have been actively and lawfully engaged in home inspections for at least twenty-four months prior to the effective date of the Home Inspector Licensing Act and have met the requirements of Paragraphs (1) through (4) of Subsection A of Section 61-24D-6 NMSA 1978. The initial home inspector members appointed shall comply with Paragraph (6) of Subsection A of Section 61-24D-6 NMSA 1978 within six months of the effective date of the licensing examination rule promulgated by the board in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]. After the board is initially established, any replacement of a home inspector member shall be a licensee.

C. Board members shall serve for five years or until their successors are appointed and qualified. The governor may remove a member with or without cause. In the event of a vacancy, the governor shall appoint a member to complete the unexpired term. The initial board members appointed shall serve staggered terms from the date of their appointment as follows:

- (1) two members for three-year terms;
- (2) two members for two-year terms; and
- (3) one member for a one-year term.

D. The board shall elect annually from among its members a chair and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

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

F. The board shall possess all powers and perform all duties prescribed by the Home Inspector Licensing Act and as otherwise provided by law and may promulgate rules in accordance with the State Rules Act to carry out the provisions of the Home Inspector Licensing Act.

G. Pursuant to the provisions of the Home Inspector Licensing Act, the board shall:

(1) adopt rules and procedures necessary to administer and enforce the provisions of the Home Inspector Licensing Act;

(2) adopt and publish a code of ethics and standards of practice for persons licensed under the Home Inspector Licensing Act;

(3) issue, renew, suspend, modify or revoke licenses to home inspectors in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(4) establish standards for the training, experience and continuing education requirements of the Home Inspector Licensing Act;

(5) establish the amount and administer the fees charged for examinations, initial licensure, license renewals, reinstatement of revoked or suspended licenses, reactivation of inactive or expired licenses, criminal background checks and other services pursuant to the provisions of the Home Inspector Licensing Act;

(6) adopt an approved examination, which may be administered by a nationally accepted testing service, in compliance with federal Americans with Disabilities Act of 1990 accommodations as required by law;

(7) conduct state and criminal background checks on all applicants for a license;

(8) maintain a list of the names and addresses of all licensees and of all persons whose licenses have been suspended or revoked within that year, together with such other information relative to the enforcement of the provisions of the Home Inspector Licensing Act;

(9) maintain a statement of all funds received and a statement of all disbursements;

(10) mail copies of statements to any person in this state upon request; and

(11) perform other functions and duties as may be necessary to administer or carry out the provisions of the Home Inspector Licensing Act.

**History:** Laws 2019, ch. 239, § 3; 2022, ch. 39, § 93; 2023, ch. 54, § 2.

#### **61-24D-4. Pre-inspection agreement; report; disclaimer; no waiver of duty.**

A. A home inspector shall enter into a pre- inspection agreement with a client prior to commencement of a home inspection. The written pre-inspection agreement shall include, in all capital letters, the following statement: "THE HOME INSPECTOR WILL NOT DETERMINE AND THE REPORT PROVIDED UPON COMPLETION OF THE HOME INSPECTION WILL NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

B. A home inspector shall provide a client with a report of the home inspection by the date set forth in the pre-inspection agreement. If the pre-inspection agreement does not set forth a date by which the report shall be provided to the client, the home inspector shall provide the report to the client no later than five days after the home inspection was performed.

C. The report shall contain the following statement: "THE HOME INSPECTOR DID NOT DETERMINE AND THIS REPORT DOES NOT CONTAIN A DETERMINATION OF WHETHER THE HOME OR COMPONENTS AND/OR SYSTEMS OF THE HOME THAT HAVE BEEN INSPECTED CONFORM TO LOCAL OR STATE BUILDING CODE REQUIREMENTS."

D. Contractual provisions that purport to waive any duty owed pursuant to the Home Inspector Licensing Act or accompanying rules as prescribed by the board or that limit the liability of the home inspector to an amount less than the professional liability insurance minimum coverage per claim as prescribed by the board are invalid.

**History:** Laws 2019, ch. 239, § 4.

#### **61-24D-5. License required; exemptions.**

A. A person who is not a licensee shall not:

(1) conduct home inspections, develop a report or otherwise engage in the business of home inspection;

(2) in the course of conducting business, use the title "home inspector", "certified home inspector", "registered home inspector", "licensed home inspector",

"professional home inspector" or any other title, abbreviation, letters, figures or signs that indicate the person is a licensed home inspector; or

(3) use the terms "state licensed" or "licensed" to refer to an inspection conducted or a report prepared by a person who is not a licensee.

B. A business entity shall not provide home inspection services unless all of the home inspectors employed by the business are licensees.

C. A business entity shall not use, in connection with the name or signature of the business, the title "home inspectors" to describe the business entity's services unless each person employed by the business as a home inspector is a licensee.

D. The Home Inspector Licensing Act does not apply to a person:

(1) licensed by the state as an engineer, an architect, a real estate qualifying or associate broker, a real estate appraiser, a certified general appraiser, a residential real estate appraiser or a pest control operator, when acting within the scope of the person's license;

(2) licensed by the state or a political subdivision of the state as an electrician, a general contractor, a plumber or a heating and air conditioning technician, when acting within the scope of the person's license;

(3) regulated by the state as an insurance adjuster, when acting within the scope of the person's license;

(4) employed by the state or a political subdivision of the state as a code enforcement official, when acting within the scope of the person's employment;

(5) who performs an energy audit of a residential property;

(6) who performs a warranty evaluation of components, systems or appliances within a resale residential property for the purpose of issuing a home warranty; provided that all warranty evaluation reports include a statement that the warranty evaluation performed is not a home inspection and does not meet the standards of a home inspection pursuant to the provisions of the Home Inspector Licensing Act. A home warranty company shall not refer to a warranty evaluation as a home inspection;

(7) who in the scope of the person's employment performs safety inspections of utility equipment in or attached to residential real property pursuant to the provisions of Chapter 62 NMSA 1978 or rules adopted by the public regulation commission; and

(8) hired by the owner or lessor of residential real property to perform an inspection of the components of the residential real property for the purpose of

preparing a bid or estimate for performing construction, remodeling or repair work in the residential real property.

**History:** Laws 2019, ch. 239, § 5.

### **61-24D-6. Licensure.**

A. Unless otherwise provided in the Home Inspector Licensing Act, an applicant for a license shall:

- (1) complete an application on forms provided by the board;
- (2) provide documentation to establish that the applicant is at least eighteen years of age;
- (3) provide the board with the applicant's fingerprints and all information necessary for a state and national criminal background check;
- (4) provide proof of and maintain insurance coverage as provided in Section 61-24D-12 NMSA 1978;
- (5) have completed at least eighty hours of classroom training, the content of which shall be established by rule of the board;
- (6) pass an approved examination and any additional New Mexico-specific licensing examinations as prescribed by the board; and
- (7) have completed at least eighty hours of field training, or its equivalent, as determined by the board.

B. Paragraphs (5) and (7) of Subsection A of this section shall not apply to a person who has:

- (1) worked as a home inspector in each of the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act; and
- (2) performed at least one hundred home inspections for compensation in the twenty-four months immediately preceding the effective date of the Home Inspector Licensing Act.

C. After the board's review of all information obtained by the board and submitted by the applicant as required by this section, if all of the requirements for licensure are met, the board shall issue a license to the applicant.

**History:** Laws 2019, ch. 239, § 6; 2021, ch. 70, § 11; 2023, ch. 54, § 3.

## **61-24D-7. Fingerprints; criminal background checks.**

A. All applicants for licensure shall:

- (1) provide fingerprints to the department of public safety to permit a national criminal background check and to conduct a state background check; and
- (2) have the right to inspect records if the applicant's licensure is denied.

B. Records obtained by the board pursuant to the provisions of this section shall not be disclosed except as provided by law. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the Home Inspector Licensing Act.

C. Records obtained by the board pursuant to the provisions of this section shall not be used for any purpose other than for licensing purposes pursuant to the Home Inspector Licensing Act. Records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

D. A person who releases or discloses records or information contained in those records in violation of the provisions 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 2019, ch. 239, § 7.

## **61-24D-8. License validity period; renewal.**

A license shall be valid for a period not to exceed three years. No later than the last day of the month immediately following the licensee's birth month in the third calendar year after the license becomes effective, a licensee may renew the license by submitting a renewal application, renewal fee, proof of completion of the required continuing education as established by rule of the board and other information necessary for a state and national criminal background check. A home inspection performed based on an expired license shall be deemed a violation of the Home Inspector Licensing Act.

**History:** Laws 2019, ch. 239, § 8.

## **61-24D-9. Licensee; continuing education requirement.**

The board shall adopt rules providing for continuing education programs that offer courses in home inspection practices and techniques. The rules shall require that a

home inspector, as a condition of license renewal, shall successfully complete a minimum of sixty classroom hours of board-approved instruction every three years.

**History:** Laws 2019, ch. 239, § 9.

### **61-24D-10. License recognition; reciprocity.**

A. The board may issue a license to a foreign home inspector; provided that the applicant's resident state license requirements are the same as or similar to the requirements set forth in the Home Inspector Licensing Act as determined by the board. In the event that the state requirements for licensing a home inspector are not substantially similar to the provisions of the Home Inspector Licensing Act, or if the requirements cannot be verified, a foreign home inspector may be issued a license in accordance with Section 6 [61-24D-6 NMSA 1978] of that act.

B. The board may negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. A license granted pursuant to a reciprocity agreement shall be issued upon payment by the applicant of the application fee and verification that the applicant has complied with the licensing jurisdiction's requirements, including continuing education requirements. The applicant shall provide to the board documentation necessary to demonstrate that the applicant currently holds a license in good standing in the licensing jurisdiction.

**History:** Laws 2019, ch. 239, § 10.

### **61-24D-11. Denial, suspension or revocation of a license.**

A. The board may deny issuance of a license or may suspend, revoke, limit or condition a license if the applicant or licensee is convicted of a felony or misdemeanor, provided that the denial, suspension or revocation is in accordance with the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978]; has by false or fraudulent representations obtained a license; or in performing or attempting to perform any of the activities covered by the provisions of the Home Inspector Licensing Act, the applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) violated any of the provisions of the Home Inspector Licensing Act or any rule of the board;
- (3) offered or delivered compensation, inducement or reward to the owner of the inspected property or to the broker or the agent for the referral of any business to the home inspector or the home inspector's company;
- (4) had a license to perform home inspections revoked, suspended, denied, stipulated or otherwise limited in any state, jurisdiction, territory or possession of the



United States or another country for actions of the licensee similar to acts proscribed in this subsection;

(5) failed to furnish the board, its investigators or its representatives with information requested by the board in the course of an official investigation; or

(6) performed or offered to perform for an additional fee any repair to a structure on which the home inspector or the home inspector's company has prepared a report at any time during the twelve months immediately prior to the repair or offer to repair, except that a home inspection company that is affiliated with or that retains a home inspector does not violate this paragraph if the home inspection company performs repairs pursuant to a claim made pursuant to the terms of a home inspection contract.

B. Disciplinary proceedings conducted by the board may be instituted by sworn complaint by any person, including a board member, and shall conform to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

C. All licensing, revocation and suspension proceedings conducted by the board shall be governed by the provisions of the Uniform Licensing Act.

**History:** Laws 2019, ch. 239, § 11.

## **61-24D-12. Insurance requirements.**

A. All licensees and their employers shall carry at all times errors and omissions insurance and professional liability insurance to cover all activities contemplated pursuant to the provisions of the Home Inspector Licensing Act.

B. In addition to the powers and duties granted to the board pursuant to the provisions of Section 3 [61-24D-3 NMSA 1978] of the Home Inspector Licensing Act, the board may adopt rules that establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the board, the rules shall require every applicant for a license and licensee who applies for renewal of a license to provide the board with satisfactory evidence that the applicant or licensee has errors and omissions insurance coverage and professional liability insurance coverage that meet the minimum terms and conditions required by board rule.

C. The board is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group errors and omissions insurance policy and a professional liability insurance policy that comply with the terms and conditions established by board rule. The board may approve one or more policies that comply with the board rules.

D. Licensees shall not be required to contract with the group policy provider. Licensees may satisfy any requirement for errors and omissions insurance coverage

and professional liability insurance coverage by purchasing an individual policy that is consistent with standards established by the board.

**History:** Laws 2019, ch. 239, § 12.

### **61-24D-13. Fees.**

In addition to any fees to cover reasonable and necessary administrative expenses, the board shall establish, charge and collect:

- A. an initial application fee, no less than two hundred fifty dollars (\$250);
- B. a state and national criminal background check fee, not to exceed one hundred dollars (\$100);
- C. except as provided in Section 61-1-34 NMSA 1978, a three-year license fee, no less than one thousand dollars (\$1,000);
- D. a reactivation fee, not to exceed two hundred dollars (\$200);
- E. a reinstatement fee, not to exceed two hundred dollars (\$200); and
- F. a fee for each duplicate license issued because a license is lost or destroyed, not to exceed fifty dollars (\$50.00); provided that an affidavit attesting to the loss or destruction of the license shall be required before issuance of a duplicate license.

**History:** Laws 2019, ch. 239, § 13; 2020, ch. 6, § 54.

### **61-24D-14. Advertising.**

The term "licensed home inspector" along with the license number of the home inspector shall appear on all advertising, correspondence and documents incidental to the business of home inspection, including the pre-inspection agreement and the report.

**History:** Laws 2019, ch. 239, § 14.

### **61-24D-15. Home inspector fund created; deposits; method of payment.**

A. There is created in the state treasury the "home inspector fund" to be administered by the board. All fees received by the board pursuant to the Home Inspector Licensing Act shall be deposited with the state treasurer to the credit of the home inspector fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the home inspector fund is appropriated to the board to meet necessary expenses incurred in the enforcement of the provisions of the Home Inspector Licensing Act, in carrying out the duties imposed by the Home Inspector Licensing Act and for the promotion of education and standards for home inspectors in the state. Payments out of the home inspector 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.

C. All unexpended or unencumbered balances remaining at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 2019, ch. 239, § 15.

### **61-24D-16. Civil and criminal penalties; injunctive relief.**

A. A person who engages in the business or acts in the capacity of a home inspector within New Mexico without a license issued by the board or pursuant to the Home Inspector Licensing Act is guilty of a misdemeanor.

B. If a person is engaged or has engaged in any act or practice violative of a provision of the Home Inspector Licensing Act, the attorney general or the district attorney of the judicial district in which the person resides or in which the violation is occurring or has occurred may maintain an action in the name of the state to prosecute the violation or to enjoin the act or practice.

C. Notwithstanding a provision of the Home Inspector Licensing Act to the contrary, the board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Home Inspector Licensing Act and may assess administrative costs for any investigation or administrative or other proceedings against a home inspector or against a person who is found, through an administrative proceeding, to have acted as a home inspector without a license. Appeals from decisions of the board shall be made as provided in Section 39-3-1.1 NMSA 1978.

**History:** Laws 2019, ch. 239, § 16.

## **ARTICLE 25**

### **Massage Practitioners (Repealed.)**

**61-25-1 to 61-25-14. Repealed.**

## **ARTICLE 26**

### **Polygraphers (Repealed.)**

**61-26-1 to 61-26-15. Repealed.**

## **ARTICLE 27**

### **Private Investigators (Repealed.)**

**61-27-1 to 61-27-49. Repealed.**

## **ARTICLE 27A**

### **Private Investigators and Polygraphers (Repealed, Recompiled.)**

#### **61-27A-1. Recompiled.**

**History:** Laws 1993, ch. 212, § 1; 2000, ch. 4, § 15; 1978 Comp., § 61-27A-1 recompiled as § 61-27B-1 by Laws 2007, ch. 115, § 1.

#### **61-27A-2. Recompiled.**

**History:** Laws 1993, ch. 212, § 2; 1999, ch. 272, § 32; 1978 Comp., § 61-27A-2 recompiled as § 61-27B-2 by Laws 2007, ch. 115, § 2.

#### **61-27A-3. Recompiled.**

**History:** Laws 1993, ch. 212, § 3; 1978 Comp., § 61-27A-3 recompiled as § 61-27B-3 by Laws 2007, ch. 115, § 3.

#### **61-27A-4. Recompiled.**

**History:** Laws 1993, ch. 212, § 3; 1978 Comp., § 61-27A-4 recompiled as § 61-27B-4 by Laws 2007, ch. 115, § 3.

#### **61-27A-5. Recompiled.**

**History:** Laws 1993, ch. 212, § 3; 1978 Comp., § 61-27A-5 recompiled as § 61-27B-5 by Laws 2007, ch. 115, § 3.

#### **61-27A-6. Recompiled.**

**History:** Laws 1993, ch. 212, § 3; 1978 Comp., § 61-27A-6 recompiled as § 61-27B-7 by Laws 2007, ch. 115, § 3.

#### **61-27A-7. Repealed.**

**History:** Laws 1993, ch. 212, § 7; repealed by Laws 2007, ch. 115, § 37.

### **61-27A-8. Repealed.**

**History:** Laws 1993, ch. 212, § 8; repealed by Laws 2007, ch. 115, § 37.

### **61-27A-9. Recompiled.**

**History:** Laws 1993, ch. 212, § 9; 1978 Comp., § 61-27A-9 recompiled as § 61-27B-22 by Laws 2007, ch. 115, § 22.

### **61-27A-10. Repealed.**

**History:** Laws 1993, ch. 212, § 10; 1999, ch. 272, § 34; repealed by Laws 2007, ch. 115, § 37.

### **61-27A-11. Recompiled.**

**History:** Laws 1993, ch. 212, § 11; 1978 Comp., § 61-27A-11 recompiled as § 61-27B-24 by Laws 2007, ch. 115, § 24.

### **61-27A-12. Recompiled.**

**History:** Laws 1993, ch. 212, § 12; 1978 Comp., § 61-27A-12 recompiled as § 61-27B-25 by Laws 2007, ch. 115, § 25.

### **61-27A-13. Recompiled.**

**History:** Laws 1993, ch. 212, § 13; 1978 Comp., § 61-27A-13 recompiled as § 61-27B-26 by Laws 2007, ch. 115, § 26.

### **61-27A-14. Recompiled.**

**History:** Laws 1993, ch. 212, § 14; 1978 Comp., § 61-27A-14 recompiled as § 61-27B-27 by Laws 2007, ch. 115, § 27.

### **61-27A-15. Repealed.**

### **61-27A-16. Recompiled.**

**History:** Laws 1993, ch. 212, § 16; 1978 Comp., § 61-27B-16 recompiled as § 61-27B-28 by Laws 2007, ch. 115, § 28.

### **61-27A-17. Recompiled.**

**History:** Laws 1993, ch. 212, § 17; 1978 Comp., § 61-27B-17 recompiled as § 61-27B-29 by Laws 2007, ch. 115, § 29.

### **61-27A-18. Recompiled.**

**History:** Laws 1993, ch. 212, § 18; 1978 Comp., § 61-27B-18 recompiled as § 61-27B-30 by Laws 2007, ch. 115, § 30.

### **61-27A-19. Repealed.**

**History:** Laws 1993, ch. 212, § 19; repealed by Laws 2007, ch. 115, § 37.

### **61-27A-20. Recompiled.**

**History:** Laws 1993, ch. 212, § 20; 1978 Comp., § 61-27A-20 recompiled as § 61-27B-32 by Laws 2007, ch. 115, § 32.

### **61-27A-21. Repealed.**

**History:** Laws 2000, ch. 4, § 16; 2005, ch. 208, § 19; repealed by Laws 2007, ch. 115, § 37.

## **ARTICLE 27B**

### **Private Investigations**

#### **61-27B-1. Short title. (Repealed effective July 1, 2030.)**

Chapter 61, Article 27B NMSA 1978 may be cited as the "Private Investigations Act".

**History:** Laws 1993, ch. 212, § 1; 2000, ch. 4, § 15; § 61-27A-1 recompiled as § 61-27B-1; Laws 2007, ch. 115, § 1.

#### **61-27B-2. Definitions. (Repealed effective July 1, 2030.)**

As used in the Private Investigations Act:

A. "armored car company" means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

B. "bodyguard" means an individual who physically performs the mission of personal security for another individual;

C. "branch office" means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;

D. "client" means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

E. "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;

F. "department" means the regulation and licensing department;

G. "individual" means a single human being;

H. "legal business entity" means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;

I. "licensee" means a person licensed pursuant to the Private Investigations Act;

J. "polygraph examiner" means an individual licensed by the department to engage in the practice of polygraphy;

K. "polygraphy" means the process of employing 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 or any other device used to measure truthfulness;

L. "private investigation company" means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

M. "private investigator" means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a 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;

(5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;

N. "private investigations employee" means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company;

O. "private investigations manager" means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs, controls or manages a private investigation company for the owner of the company; and

(3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

P. "private patrol company" means a legal business entity, the location of which may be within or outside of the state, including an independent or proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

Q. "private patrol employee" means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

R. "private patrol operations manager" means an individual who:

(1) is licensed as a private patrol operator or registered as a level three security guard and is issued a license by the department as a private patrol operations manager;

(2) directs, controls or manages a private patrol company for the owner of the company; and



(3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

S. "private patrol operator" means an individual who is licensed by the department to:

(1) conduct uniformed or nonuniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the services required of a security guard or security dog handler or provide security services for an armored car company;

T. "proprietary commercial organization" means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

U. "registrant" means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

V. "security dog handler" means an individual who patrols with dogs to detect illegal substances or explosives;

W. "security guard" means an individual who is registered to engage in uniformed or nonuniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts; and

X. "special event" means a parade or other public or private event of short duration requiring security.

**History:** Laws 1993, ch. 212, § 2; 1999, ch. 272, § 32; 1978 Comp., § 61-27A-2 recompiled as § 61-27B-2 by Laws 2007, ch. 115, § 2.

### **61-27B-3. License or registration required. (Repealed effective July 1, 2030.)**

It is unlawful for an individual to:

A. act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations

manager or to make any representation as being a licensee or registrant unless the individual is licensed by the department pursuant to the Private Investigations Act;

B. render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

C. continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager if the individual's license issued pursuant to the Private Investigations Act has expired;

D. falsely represent that the individual is employed by a licensee;

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act; or

F. provide instruction to individuals to qualify for licensure as security guards or any other person who is required to have professional training to be licensed, certified or registered pursuant to the Private Investigations Act without a registration in good standing issued by the department in accordance with the Private Investigations Act.

**History:** Laws 1993, ch. 212, § 3; § 61-27A-3 recompiled as § 61-27B-3; Laws 2007, ch. 115, § 3; 2023, ch. 190, § 38.

#### **61-27B-4. Persons exempted; limitations on unlicensed activities. (Repealed effective July 1, 2030.)**

A. As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

B. The Private Investigations Act does not apply to:

(1) an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

(2) an individual employed exclusively to provide temporary security at a private event that is not open to the public;

(3) individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

(4) an attorney licensed in New Mexico, or the attorney's employee working under the direct supervision of the attorney, conducting private investigations while engaged in the practice of law;

(5) 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 the officer's or employee's official duties;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) 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;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

(10) an 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.

C. A private investigator licensed in New Mexico shall not offer or provide traffic crash reconstruction in New Mexico unless the private investigator has successfully completed a traffic crash reconstruction course approved by rule of the department. A person, other than a certified and commissioned law enforcement officer or a New Mexico professional engineer, who wishes to offer or provide traffic crash reconstruction in New Mexico must be licensed as a private investigator and meet the requirements of this subsection.

D. Skip tracing in New Mexico shall be offered or provided only by:

(1) an employee of a New Mexico state or local law enforcement agency;

(2) a private investigator; or

(3) an attorney licensed to practice in New Mexico or the attorney's employee working under the direct supervision of the attorney.

**History:** Laws 1993, ch. 212, § 4; § 61-27A-4 recompiled as § 61-27B-4; Laws 2007, ch. 115, § 4; 2023, ch. 190, § 39.

**61-27B-5. Administration of act; rules. (Repealed effective July 1, 2030.)**

A. The department shall enforce and administer the provisions of the Private Investigations Act in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

B. The department shall keep a record of each individual licensee.

C. The department shall promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules necessary to carry out the provisions of the Private Investigations Act, including establishing professional ethical standards.

D. The department shall promulgate rules regarding:

(1) licensing private investigators, private investigations managers, private investigation companies, private patrol operators, private patrol operations managers, private patrol employees and polygraph examiners;

(2) registering private investigations employees, security guards, private patrol employees and instructors;

(3) establishing minimum training and educational standards for licensure and registration;

(4) establishing continuing education requirements;

(5) establishing and operating a branch office;

(6) creating a policy on reciprocity with other licensing jurisdictions of the United States;

(7) providing permits for security guards for special events; and

(8) conducting background investigations.

**History:** Laws 1993, ch. 212, § 5; § 61-27A-5 recompiled as § 61-27B-5; Laws 2007, ch. 115, § 5; 2022, ch. 39, § 94; 2023, ch. 190, § 40.

**61-27B-6. Private investigations advisory board; created; members. (Repealed effective July 1, 2030.)**

A. The "private investigations advisory board" is created.

B. The superintendent of regulation and licensing shall appoint members to the advisory board to assist in the conduct of the examination process for licensees and registrants and to assist the department in other manners as requested by the superintendent or provided for in rules of the department.

C. The advisory board members shall consist of at least the following:

- (1) one private investigator;
- (2) one private patrol operator;
- (3) one polygraph examiner; and
- (4) two members of the public.

D. Members of the advisory 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 for each day spent in the discharge of their duties.

E. The public members of the advisory board or their spouses shall not:

- (1) have been licensed pursuant to the Private Investigations Act or any prior similar statutory provisions; or
- (2) have a direct or indirect financial interest in a private investigation company, private patrol company, polygraph business or a related business.

**History:** Laws 2007, ch. 115, § 6; 2017, ch. 52, § 8.

### **61-27B-7. Requirements for private investigator licensure. (Repealed effective July 1, 2030.)**

A. The department shall issue a license as a private investigator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant has met all requirements set forth by the department in rule, including that the applicant:

- (1) is at least twenty-one years of age;
- (2) has successfully passed an examination as required by department rule;
- (3) has not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department; and

(4) has at least three years' experience that has been acquired within the five years preceding the filing of the application with the department of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

B. Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers and shall be subject to independent verification by the department as it deems warranted. The burden of proving necessary experience is on the applicant.

**History:** Laws 1993, ch. 212, § 6; 1999, ch. 272, § 33; § 61-27A-6 recompiled as § 61-27B-7; Laws 2007, ch. 115, § 7; 2023, ch. 190, § 41.

### **61-27B-8. Private investigation company; requirements for licensure. (Repealed effective July 1, 2030.)**

A. The department shall issue a license for a private investigation company to a person that files a completed application accompanied by the required fees and that submits satisfactory evidence that the applicant:

(1) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards; or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense or an offense involving intentional violent acts or the illegal use or possession of deadly weapons and have not been found to have violated professional ethical standards;

(2) has an owner or a licensed private investigations manager who is licensed as a private investigator and who manages the daily operations of the private investigation company;

(3) maintains a physical location in New Mexico where records are maintained and made available for department inspection;

(4) maintains a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico; and

(5) meets all other requirements set forth in the rules of the department.

B. A private investigation company shall maintain a general liability certificate of insurance in an amount required by the department. The department shall suspend the license issued pursuant to this section of a private investigation company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private investigation company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private investigation company's general liability certificate of insurance in effect. The department may deny an application for reinstatement of a private investigation company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private investigation company license or that would be cause for a suspension or revocation of a private investigation company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect.

**History:** Laws 2007, ch. 115, § 8; 2023, ch. 190, § 43.

**61-27B-9. Private investigations manager; requirements for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2030.)**

A. The department shall issue a license for a private investigations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) possesses a current license in good standing as a private investigator;

(2) has successfully passed an examination required by department rules;

(3) is employed by the private investigation company that the applicant is being licensed to manage; and

(4) meets other requirements set forth in the rules of the department.

B. A private investigations manager who ceases to be employed by the private investigation company that the manager is licensed to manage, before leaving the

company, shall surrender the private investigations manager's license to the owner, officer or director who is required to temporarily take over the management of the private investigation company. The owner, officer or director who temporarily takes over managing the private investigation company within thirty days of the termination from employment of the private investigations manager shall:

(1) notify the department of the termination of the employment of the private investigations manager;

(2) submit the surrendered license; and

(3) submit an application to the department naming a new private investigations manager, who shall not begin to perform the duties of a private investigations manager until and unless the department grants the applicant a private investigations manager's license.

C. Failure to notify the department within thirty days of the private investigations manager's termination from employment subjects the license of the private investigation company to suspension or revocation by the department.

D. Reinstatement of the private investigation company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

**History:** Laws 2007, ch. 115, § 9.

### **61-27B-10. Private patrol operator; requirements for licensure. (Repealed effective July 1, 2030.)**

A. The department shall issue a license for a private patrol operator to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) is of good moral character;

(3) has successfully passed an examination as required by department rules;

(4) has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;

(5) has at least three years' experience of actual work performed as a security guard or an equivalent position, one year of which shall have been in a supervisory capacity. The experience shall have been acquired within five years preceding the filing



of the application with the department. Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted. The burden of proving necessary experience is on the applicant;

(6) is firearm certified, if the position will require being armed with a firearm; and

(7) meets other requirements set forth in rules of the department.

B. A private patrol operator may not investigate acts except those that are incidental to a theft, embezzlement, loss, misappropriation or concealment of property or other item that the private patrol operator has been engaged or hired to protect, guard or watch.

**History:** Laws 2007, ch. 115, § 10.

### **61-27B-11. Private patrol company; requirements for licensure. (Repealed effective July 1, 2030.)**

A. The department shall issue a license for a private patrol company to a person who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) if an individual, is of good moral character; or if a legal business entity, the owners, officers or directors of the entity are of good moral character;

(2) if an individual, has not been convicted of a felony offense, an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards, or if a legal business entity, the owners, officers or directors of the entity, either singly or collectively, have not been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and have not been found to have violated professional ethical standards;

(3) has an owner or a licensed private patrol operations manager who manages the daily operations of the private patrol company;

(4) maintains a physical location in New Mexico where records are maintained and made available for department inspection;

(5) maintains a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico; and

(6) meets all other requirements set forth in the rules of the department.

B. The owner or the chief executive officer of a private patrol company shall maintain a general liability certificate of insurance in an amount required by the department. The department shall suspend the license issued pursuant to this section of a private patrol company that fails to maintain an effective general liability certificate of insurance as required. The department shall not reinstate the license of a private patrol company that has had its license suspended pursuant to this subsection until an application is submitted to the department with the necessary fees and a copy of the private patrol company's general liability certificate of insurance newly in effect. The department may deny an application for reinstatement of a private patrol company's license, notwithstanding the applicant's compliance with this subsection for:

(1) a reason that would justify a denial to issue a new private patrol company license or that would be cause for a suspension or revocation of a private patrol company's license; or

(2) the performance by the applicant of an act requiring a license issued pursuant to the Private Investigations Act while the applicant's license is under suspension for failure to maintain the applicant's general liability certificate of insurance in effect.

**History:** Laws 2007, ch. 115, § 11.

**61-27B-12. Private patrol operations manager; requirement for licensure; notification of department in event of termination of employment. (Repealed effective July 1, 2030.)**

A. The department shall issue a license for a private patrol operations manager to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) possesses a current license in good standing as a private patrol operator or a registration as a level three security guard;

(2) has successfully passed an examination required by department rule;

(3) is employed by the private patrol company that the applicant is being licensed to manage; and

(4) meets other requirements set forth in the rules of the department.

B. A private patrol operations manager who ceases to be employed by the private patrol company that the manager is licensed to manage, before leaving the company, shall surrender the private patrol operations manager's license to the owner, officer or director who is required to temporarily take over the management of the private patrol

company. The owner, officer or director who temporarily takes over managing the private patrol company within thirty days of the termination from employment of the private patrol operations manager shall:

- (1) notify the department of the termination of the employment of the private patrol operations manager;
- (2) submit the surrendered license; and
- (3) submit an application to the department naming a new private patrol operations manager, who shall not begin to perform the duties of a private patrol operations manager until the department grants the applicant a private patrol operations manager's license.

C. Failure to notify the department within thirty days of the private patrol operations manager's termination from employment subjects the license of the private patrol company to suspension or revocation by the department.

D. Reinstatement of the private patrol company's license may occur only upon the filing of an application for reinstatement and payment of the reinstatement fee.

**History:** Laws 2007, ch. 115, § 12.

### **61-27B-13. Polygraph examiner. (Repealed effective July 1, 2030.)**

The department shall issue a license as a polygraph examiner to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- A. is at least eighteen years of age;
- B. is of good moral character;
- C. possesses a high school diploma or its equivalent;
- D. has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- E. has graduated from an accredited polygraph examiners course approved by the department;
- F. has:
  - (1) completed a probationary operational competency period and passed an examination of ability approved by the department to practice polygraphy; or

(2) submitted proof of holding, for a minimum of two years immediately preceding the date of application, a current license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; and

G. meets other requirements set forth in the rules of the department.

**History:** Laws 2007, ch. 115, § 13.

**61-27B-14. Private investigations or private patrol employee; registration; requirements. (Repealed effective July 1, 2030.)**

A. Every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

B. Every individual who seeks employment as or is currently employed as a private patrol employee or who provides services on a contract basis to a private patrol company shall file an application for registration as a private patrol employee with the department.

C. The department shall issue a registration for a private investigations or private patrol employee to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) possesses a high school diploma or its equivalent;
- (3) has successfully completed an examination as required by department rule;
- (4) has not been convicted of a felony involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- (5) shall be employed by, or shall contract with a private investigation company to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator or shall be employed by, or shall contract with a private patrol company to provide private patrol services for, a private patrol company under the direct control and supervision of a private patrol operations manager or a level three security guard, as applicable; and
- (6) meets other requirements set forth in rules of the department.

D. If the contract or employment of a private investigations employee with a private investigation company or a private patrol employee with a private patrol company terminates for any reason, the registration of the individual as a private investigations employee or private patrol employee immediately terminates. The private investigations employee or private patrol employee shall turn over the employee's registration to the private investigation company or private patrol company upon ceasing employment with that company.

E. A private investigation company or private patrol company shall notify the department within thirty days from the date of termination of employment of a private investigations employee or private patrol employee, as applicable, of the employment termination and return the employee's registration to the department.

**History:** Laws 2007, ch. 115, § 14; 2023, ch. 190, § 44.

### **61-27B-15. Security guard; levels of registration. (Repealed effective July 1, 2030.)**

A. A security guard shall be registered at one of the three levels enumerated in this section that are based on experience, age and other qualifications of the registrant:

(1) level one is the entry level registration for security guards who will be working in a position not requiring the registrant to carry arms;

(2) level two is the intermediate level registration for security guards who are required to be armed but not with firearms; and

(3) level three is the advanced level registration for security guards who may be required to be armed with a firearm.

B. Each security guard shall receive a card issued by the department in the security guard's name with a definite expiration date that shall be carried by the security guard at all times when the security guard is performing duties that require the security guard to be registered pursuant to the provisions of this section. A security guard is not required to obtain a new card each time the security guard changes employment.

**History:** Laws 2007, ch. 115, § 15.

### **61-27B-16. Security guard; level one; registration; requirements. (Repealed effective July 1, 2030.)**

A. On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level one security guard to an individual 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 successfully completed an examination as required by department rule;
- (4) has not been convicted of a felony or an offense involving dishonesty, an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards;
- (5) has completed a curriculum approved in department rule consisting of level one security guard training prior to being placed on a guard post for the first time as a level one security guard; that training may be provided by:
  - (a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act [Chapter 21, Article 23 NMSA 1978];
  - (b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department; or
  - (c) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;
- (6) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager; and
- (7) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level one security guard of the employment termination.

**History:** Laws 2007, ch. 115, § 16.

**61-27B-17. Security guard; level two; registration; requirements.  
(Repealed effective July 1, 2030.)**

A. On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level two security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

(1) meets the requirements to be granted registration as a level one security guard and maintains in good standing a current registration as a level one security guard;

(2) has successfully completed an examination as required by department rule;

(3) possesses a high school diploma or its equivalent;

(4) in addition to the training required to be registered as a level one security guard, has completed a curriculum approved in department rule of level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act [Chapter 21, Article 23 NMSA 1978];

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;

(5) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, a level three security guard or a private patrol operations manager; and

(6) meets other requirements set forth in department rules.

C. A private patrol company shall notify the department within thirty days from the date of termination of a level two security guard of the employment termination.

**History:** Laws 2007, ch. 115, § 17.

**61-27B-18. Security guard; level three; registration; requirements.  
(Repealed effective July 1, 2030.)**

A. Every individual seeking employment or employed as a level three security guard shall file an application for registration with the department.

B. The department shall issue a registration for a level three security guard to an individual who files a completed application accompanied by the required fees and who submits satisfactory evidence that the applicant:

- (1) is at least twenty-one years of age;
- (2) meets the requirements to be granted registration as a level two security guard and maintains in good standing a current registration as a level two security guard;
- (3) has successfully completed an examination as required by department rule;
- (4) possesses a high school diploma or its equivalent;
- (5) in addition to the training required to be registered as a level two security guard and before the applicant shall be placed for the first time at a guard post as a level three security guard, has completed a curriculum approved by the department consisting of the minimum training for firearm certification prescribed by the department; provided that the additional training required by the department is provided by:
  - (a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act [Chapter 21, Article 2 NMSA 1978];
  - (b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department;
  - (c) the New Mexico law enforcement academy; or
  - (d) any other department-approved educational institution using a curriculum approved by the department and complying with department standards set forth in department rules;
- (6) is firearm certified by the New Mexico law enforcement academy or the national rifle association;
- (7) is employed by a private patrol company under the direct supervision of a licensed private patrol operator, another level three security guard or a private patrol operations manager; and
- (8) meets other requirements set forth in department rules.



C. A private patrol company shall notify the department within thirty days from the date of termination of a level two security guard of the employment termination.

**History:** Laws 2007, ch. 115, § 18; 2023, ch. 190, § 45.

**61-27B-19. Special event permit; nonresident security guard procedure; qualifications; prohibited. (Repealed effective July 1, 2030.)**

A. A private patrol company employing a nonresident security guard temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

B. A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

C. To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the department.

D. A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

- (1) is not a resident of New Mexico;
- (2) does not hold a registration as a security guard in New Mexico; and
- (3) meets other requirements specified by the department.

E. A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

F. It is a violation of the Private Investigations Act for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.

**History:** Laws 2007, ch. 115, § 19.

**61-27B-19.1. Requirements for registration as instructor; curriculum approval; firearms training. (Repealed effective July 1, 2030.)**

A. Every individual seeking to register as an instructor shall complete an application on a form provided by the department and submit the required application fee. The application shall include:

- (1) fingerprints and other information for a state and federal criminal history background check submitted in accordance with rules of the department;
- (2) proof of instructor certification issued by a law enforcement academy, federal government entity, the military or the federal law enforcement training centers or one year of verifiable training experience or the equivalent to be reviewed and recommended by the private investigations advisory board and approved by the department;
- (3) proof of further qualifying training specific to advanced levels of training the instructor is applying for as provided by rule of the department; and
- (4) any other information sought by the department.

B. The department shall register each successful instructor applicant.

C. A level two or level three registered instructor may teach individuals who are seeking licensure as a level one security guard. A registered instructor shall not teach above the instructor's registration level. The department may suspend, revoke or refuse to renew the registration of an instructor who teaches above the instructor's registration level.

D. If a level three instructor offers firearms certification, the instructor shall provide proof of the instructor's current firearms certification to the department.

E. The department shall approve the curriculum for level one, two and three security guard training. The private investigations advisory board shall review curricula submitted for approval and make recommendations to the department for final action.

F. The registration of an instructor registered with the department on the effective date of this section shall remain in effect until renewal unless the department suspends, revokes or refuses to renew the registration.

**History:** Laws 2023, ch. 190, § 42.

**61-27B-20. Fees. (Repealed effective July 1, 2030.)**

Except as provided in Section 61-1-34 NMSA 1978, the department shall establish a schedule of reasonable fees as follows:

A. private investigator fees:

- (1) application fee, not to exceed one hundred dollars (\$100);
- (2) initial private investigator's license fee or license renewal fee, not to exceed three hundred dollars (\$300); and
- (3) initial private investigations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);

B. private patrol operator fees:

- (1) application fee, not to exceed one hundred dollars (\$100);
- (2) initial private patrol operator's license fee or license renewal fee, not to exceed three hundred dollars (\$300); and
- (3) initial private patrol operations manager license fee or license renewal fee, not to exceed two hundred dollars (\$200);

C. private investigations employee or private patrol employee, initial registration fee or registration renewal fee, not to exceed one hundred dollars (\$100);

D. private investigation company or private patrol company, initial license fee or renewal license fee, not to exceed three hundred dollars (\$300);

E. security guard fees:

- (1) level one or level two security guard registration fee or registration renewal fee, not to exceed fifty dollars (\$50.00); and
- (2) level three security guard registration fee or registration renewal fee, not to exceed seventy-five dollars (\$75.00);

F. polygraph examiners:

- (1) application fee, not to exceed one hundred dollars (\$100);
- (2) initial polygraph examiner's license fee or license renewal fee, not to exceed four hundred dollars (\$400); and
- (3) examination fee, not to exceed one hundred dollars (\$100);

G. instructors:

- (1) application fee, not to exceed one hundred dollars (\$100); and
- (2) initial registration or registration renewal, not to exceed one hundred dollars (\$100); and

H. other fees applying to private investigators, private patrol operators, polygraph examiners and instructors:

- (1) change in license fee, not to exceed two hundred dollars (\$200);
- (2) late fee on license or registration renewals, not to exceed one hundred dollars (\$100);
- (3) special event permit fee, not to exceed one hundred dollars (\$100); and
- (4) special event license fee for a private patrol company, not to exceed fifty dollars (\$50.00).

**History:** Laws 2007, ch. 115, § 20; 2020, ch. 6, § 55; 2023, ch. 190, § 46.

### **61-27B-21. License and registration renewal. (Repealed effective July 1, 2030.)**

A. A license or registration granted pursuant to the provisions of the Private Investigations Act shall be renewed by the department biennially unless the term of the license is set by the department in rule to be a longer period.

B. A licensee or registrant with an expired license or registration shall not perform an activity for which a license or registration is required pursuant to the Private Investigations Act until the license or registration has been renewed or reinstated.

C. The department may require proof of continuing education credits or other proof of competency as a requirement of renewal or reinstatement of a license or registration.

D. A license or registration issued to a person pursuant to the Private Investigations Act shall not be transferred or assigned.

**History:** Laws 2007, ch. 115, § 21; 2023, ch. 190, § 47.

### **61-27B-22. Display of license; notification of changes. (Repealed effective July 1, 2030.)**

A. A license shall at all times be posted in a conspicuous place in the principal place of business in New Mexico of the licensee.

B. A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

C. A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

D. A security guard shall wear the registration card on the outside of the guard's uniform so that the card is visible to others.

E. A licensee, including owners, officers or directors of a private investigation company or a private patrol company, or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

F. Failure to notify the department within thirty days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

**History:** Laws 1993, ch. 212, § 9; § 61-27A-9 recompiled as § 61-27B-22; Laws 2007, ch. 115, § 22.

**61-27B-23. General operations provisions of companies; management; liability for employees' conduct; maintenance of records required; required and permitted activities; allowed categories of unlicensed employees. (Repealed effective July 1, 2030.)**

A. An owner of a private investigation company providing services in New Mexico shall operate, direct, control and manage that company provided that the owner is licensed as a private investigator. An owner of a private investigation company who is not licensed as a private investigator shall employ a private investigator as a private investigations manager and shall turn over the operation, direction, control and management of the private investigation company to that manager.

B. An owner of a private patrol company providing services in New Mexico shall operate, direct, control and manage that company, provided that the owner is licensed as a private patrol operator or registered as a level three security guard. An owner of a private patrol company who is not licensed as a private patrol operator or registered as a level three security guard shall employ a private patrol operations manager and shall turn over the operation, direction, control and management of the private patrol company to that manager.

C. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

D. A private investigation company is liable for the conduct of the company's employees, including the conduct of its private investigations manager.

E. A private patrol company is liable for the conduct of the company's employees, including the conduct of its private patrol operations manager.

F. A private investigation company or a private patrol company shall maintain records of the qualifications, performance and training of all of its current and former employees as required by the department. The records are subject to inspection by the department upon reasonable notice to the owner or private investigations manager or private patrol operations manager.

G. Except as otherwise provided in this section, every employee of a licensed private investigation company or private patrol company shall be licensed or registered by the department as employees of the company with which the employee is employed; provided, however, that a licensee or registrant may work for more than one company concurrently.

H. A licensee or registrant shall notify the department in writing within thirty days of each change in the licensee's or registrant's employment by filing an amendment to the licensee's or registrant's application obtained from the department. If a licensee or registrant ceases to be employed by a private investigation company or a private patrol company, the licensee or registrant shall notify the department in writing within thirty days from the date the licensee or registrant ceases employment with that company.

I. A private investigation company or a private patrol company shall notify the department within thirty days of a change in ownership structure or, if a corporation, a change in the membership of the board of directors.

J. Employees of a private investigation company or a private patrol company who are engaged exclusively to perform stenographic, typing, word processing, secretarial, receptionist, accounting, bookkeeping, information technology or other business applications or support functions and who do not perform the work of a private investigator, a private patrol operator or a security guard are not required to be licensed or registered pursuant to the Private Investigations Act.

K. An individual who is not licensed or qualified to be employed as a private investigations manager or a private patrol operations manager shall not be employed to perform the duties required of those managers.

**History:** Laws 2007, ch. 115, § 23.

### **61-27B-24. Liability insurance. (Repealed effective July 1, 2030.)**

A private investigation company or a private patrol company shall maintain a general liability certificate of insurance in an amount required by the department.

**History:** Laws 1993, ch. 212, § 11; § 61-27A-11 recompiled as § 61-27B-24; Laws 2007, ch. 115, § 24; 2023, ch. 190, § 48.

### **61-27B-25. Prohibited acts. (Repealed effective July 1, 2030.)**

A. A licensee or registrant may divulge to a law enforcement officer or district attorney, the attorney general or the attorney general's representatives information the licensee or registrant acquires concerning a criminal offense, but the licensee or registrant shall not divulge to any other person, except as the licensee or registrant is required by law, information acquired by the licensee or registrant except at the direction of the licensee's or registrant's employer or the client for whom the information was obtained.

B. No licensee or registrant shall knowingly make a false report to the licensee's or registrant's 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, or a person authorized by the licensee, 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 private investigator, private investigations manager or private investigations employee shall use a badge in connection with the official activities of the licensee's or employee's employment for a private investigation company.

E. No licensee or registrant shall use a title or wear a uniform, use an insignia, use an identification card or make a statement with the intent to give an impression that the licensee or registrant is connected in any way with the federal or state government or a political subdivision of either.

F. No private patrol operator licensee, private patrol operations manager or level three security guard shall use a badge except when engaged in guard or patrol work and while wearing a uniform.

G. No licensee or registrant shall appear as an assignee party in a proceeding involving a claim and delivery action to recover or possess property 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 an activity not previously and specifically agreed to by written consent.

**History:** Laws 1993, ch. 212, § 12; § 61-27A-12 recompiled as § 61-27B-25; 2007, ch. 115, § 25.

### **61-27B-26. Denial, suspension or revocation of license or registration. (Repealed effective July 1, 2030.)**

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 a license or registration held or applied for under the Private Investigations Act or reprimand or place on probation a licensee or registrant 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 registration or renewal or reinstatement of a license or registration;

B. violated a provision of the Private Investigations Act;

C. violated a rule of the department adopted pursuant to the Private Investigations Act;

D. has been convicted of a felony or any crime involving dishonesty or illegally using, carrying or possessing a deadly weapon;

E. impersonated or permitted or aided and abetted an employee of a private investigation company or private patrol company to impersonate a law enforcement officer or employee of the United States or of a state or political subdivision of either;

F. committed or permitted an employee of a private investigation company or a private patrol company to commit an act while the license or registration of the person licensed or registered pursuant to the Private Investigations Act was expired that would be cause for the suspension or revocation of a license or registration or grounds for the denial of an application for a license or registration;

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 a person without justification;



I. knowingly violated or advised, encouraged or assisted the violation of a court order or injunction in the course of business of the licensee or registrant;

J. knowingly issued a worthless or otherwise fraudulent payroll check that is not redeemed within two days of denial of payment by a 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;

M. while unlicensed, committed or aided and abetted the commission of any act for which a license is required under the Private Investigations Act; or

N. has been found to have violated the requirements of a state or federal labor, tax or employee benefit law or rule.

**History:** Laws 1993, ch. 212, § 13; § 61-27A-13 recompiled as § 61-27B-26; Laws 2007, ch. 115, § 26.

### **61-27B-27. Hearing; penalties. (Repealed effective July 1, 2030.)**

A. A person who is denied a license or registration or who has a license or 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 received by the department. The procedures of the Uniform Licensing Act shall [61-1-1 to 61-1-31 NMSA 1978] be followed pertaining to the hearing to the extent that they do not conflict with the provisions of the Private Investigations Act.

B. In accordance with the provisions of the Uniform Licensing Act, and in addition to other penalties provided by law, the department may impose the following:

(1) for a violation of the Private Investigations Act, a civil penalty not to exceed one thousand dollars (\$1,000) for each violation; and

(2) against a person who is found by the department to be engaging in a practice regulated by the department without an appropriate license or registration, civil penalties not to exceed two thousand dollars (\$2,000).

**History:** Laws 1993, ch. 212, § 14; § 61-27A-14 recompiled as § 61-27B-27; Laws 2007, ch. 115, § 27; 2017, ch. 52, § 9.

### **61-27B-28. License not transferable. (Repealed effective July 1, 2030.)**

A. A license or registration issued pursuant to the Private Investigations Act shall not be transferred or assigned.

B. The department shall adopt by rule procedures for changes in the name or management of a private investigation company or private patrol company. If the private investigation company or private patrol company fails to comply with the procedures established by department rule, the private investigation company or private patrol company shall be considered to be operating without a license.

**History:** Laws 1993, ch. 212, § 16; § 61-27A-16 recompiled as § 61-27B-28; Laws 2007, ch. 115, § 28.

### **61-27B-29. Local regulations. (Repealed effective July 1, 2030.)**

The provisions of the Private Investigations Act shall not prevent the local authorities of a city or county by ordinance and within the exercise of the police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act.

**History:** Laws 1993, ch. 212, § 17; § 61-27A-17 recompiled as § 61-27B-29; Laws 2007, ch. 115, § 29.

### **61-27B-30. Fund established. (Repealed effective July 1, 2030.)**

A. The "private investigations fund" is created in the state treasury.

B. All license and registration fees received by the department pursuant to the Private Investigations Act shall be deposited in the fund and are appropriated to the department to be used for the administration and implementation of that act.

C. 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.

D. All balances in the fund shall remain in the fund and shall not revert to the general fund.

E. The department shall administer the fund, and money in the fund shall be expended by warrant issued by the secretary of finance and administration on vouchers signed by the superintendent of regulation and licensing.

F. No more than five percent of the fund shall be used by the department for administration of the fund.

**History:** Laws 1993, ch. 212, § 18; § 61-27A-18 recompiled as § 61-27B-30; Laws 2007, ch. 115, § 30.

### **61-27B-31. Firearms. (Repealed effective July 1, 2030.)**

A private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol employee may carry a firearm upon successful completion of mandatory firearm training required by rules of the department and successfully passing a psychological evaluation prescribed by the department to determine suitability for carrying a firearm.

**History:** Laws 2007, ch. 115, § 31; 2023, ch. 190, § 49.

### **61-27B-32. Penalties. (Repealed effective July 1, 2030.)**

A. A person who engages in a business regulated by the Private Investigations Act who fraudulently makes a representation as being a licensee or registrant is guilty of a misdemeanor and if convicted shall be sentenced pursuant Section 31-19-1 NMSA 1978.

B. An individual who fraudulently represents that the individual is employed by a licensee is guilty of a petty misdemeanor and if convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

C. A person who violates a mandatory requirement, as set forth by the department in rule, of the Private Investigations Act, is guilty of a petty misdemeanor except as provided in Subsection A of this section and if convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

**History:** Laws 1993, ch. 212, § 20; § 61-27A-20 recompiled as § 61-27B-32; Laws 2007, ch. 115, § 32.

### **61-27B-33. Reciprocity. (Repealed effective July 1, 2030.)**

A. The department may enter into a reciprocity agreement with another state for the purpose of licensing or registering applicants to perform activities regulated by the Private Investigations Act.

B. An applicant from another state at the time of application for licensure or registration in New Mexico shall be licensed or registered in that other state to perform the services for which the applicant is seeking a New Mexico license or registration.

C. The department may develop rules that allow for reciprocity on a temporary or limited basis without requiring an applicant licensed or registered in another state subject to a reciprocity agreement to be licensed or registered in New Mexico; provided that the state of licensure or registration:

(1) has licensure or registration requirements that meet or exceed those of New Mexico;

(2) has no record of disciplinary action taken against the applicant in the last year; and

(3) can verify that the applicant has engaged in activities for at least one year in the state with reciprocity that are required to be licensed or registered pursuant to the Private Investigations Act.

**History:** Laws 2007, ch. 115, § 33.

### **61-27B-34. Background investigations. (Repealed effective July 1, 2030.)**

A. The department shall adopt rules that:

(1) are developed in conjunction with the department of public safety that require background investigations of all persons licensed or registered pursuant to the Private Investigations Act to determine if the person has a criminal history;

(2) require all applicants for licensure or registration to be fingerprinted only upon initial licensure or registration on two fingerprint cards or electronically as required for submission to the federal bureau of investigation to conduct a national criminal history investigation and for submission to the department of public safety to conduct a state criminal history investigation;

(3) provide for an applicant to inspect or challenge the validity of the record developed by the background investigation if the applicant is denied a license or registration; and

(4) establish a fee for fingerprinting and conducting a background investigation for an applicant.

B. Arrest record information received from the federal bureau of investigation and department of public safety shall be privileged and shall not be disclosed to individuals not directly involved in the decision affecting the specific applicant or employee.

C. The applicant shall pay the cost of obtaining criminal history information from the federal bureau of investigation and the department of public safety.

D. Electronic live scans may be used for conducting criminal history investigations.

**History:** Laws 2007, ch. 115, § 34; 2019, ch. 209, § 6.

### **61-27B-35. Repealed.**

**History:** Laws 2007, ch. 115, § 36; repealed by Laws 2023, ch. 190, § 53.

## **61-27B-36. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The private investigations advisory board is terminated on July 1, 2029 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 Private Investigations Act until July 1, 2030. Effective July 1, 2030, Chapter 61, Article 27B NMSA 1978 is repealed.

**History:** Laws 2007, ch. 115, § 35; 2011, ch. 48, § 1; 2017, ch. 52, § 11; 2023, ch. 15, § 4; 2023, ch. 190, § 50.

## **ARTICLE 28 Public Accountants (Repealed.)**

**61-28-1 to 61-28-34. Repealed.**

## **ARTICLE 28A Public Accountancy (Repealed.)**

**61-28A-1 to 61-28A-28. Repealed.**

## **ARTICLE 28B 1999 Public Accountancy Act**

**61-28B-1. Short title. (Repealed effective July 1, 2030.)**

Chapter 61, Article 28B NMSA 1978 may be cited as the "1999 Public Accountancy Act".

**History:** Laws 1999, ch. 179, § 1.; 2007, ch. 219, § 1.

**61-28B-2. Purpose. (Repealed effective July 1, 2030.)**

The purpose of the 1999 Public Accountancy Act is to protect the public interest by regulating the practice of public accountancy.

**History:** Laws 1999, ch. 179, § 2.

**61-28B-3. Definitions. (Repealed effective July 1, 2030.)**

As used in the 1999 Public Accountancy Act:

A. "attest" means to provide the following services:

- (1) an audit or other engagement performed in accordance with the statements on auditing standards;
- (2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;
- (3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and
- (4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board;

B. "board" means the New Mexico public accountancy board;

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public Accountancy Act or prior law;

D. "certified public accountant" means a person certified by this state or by another state to practice public accountancy and use the designation;

E. "compilation" means a service provided to management, applying accounting and financial reporting expertise, in the presentation of financial statements and reports without undertaking to obtain or provide assurance that there are no material modifications that should be made to the financial statements or reports to be in accordance with the applicable financial reporting framework;

F. "contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained or upon which the amount of the fee is dependent upon a finding or result. "Contingent fee" does not mean a fee set by the court or a public authority on a tax matter;

G. "director" means the executive director of the board;

H. "firm" means a sole proprietorship, professional corporation, partnership, limited liability company, limited liability partnership or other legal business entity that practices public accountancy;

I. "licensee" means a person, certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law;

J. "peer review" means a study, appraisal or review of one or more aspects of the professional work of a firm by a certified public accountant who is not affiliated with the firm being reviewed;

K. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

L. "practice" means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public as being a permit holder or registered firm;

M. "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;

N. "registered public accountant" means a person who is registered by the board to practice public accountancy and use the designation;

O. "report" means a written communication issued by an accountant or an accountant firm that:

(1) when used in reference to an audit, review or examination service, expresses or disclaims an opinion or a conclusion as to whether subject matter is presented in accordance with specified criteria; and

(2) when used in reference to a compilation, agreed-upon procedures service or other service that is not an audit, review or examination service, includes a statement or implication that the accountant or accountant firm that issued the report has special knowledge or competence in accounting or attest services such as by the use of names or titles indicating that the person or firm is an accountant or an accountant firm or by the contents of the report itself; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the requirements of Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978.

**History:** Laws 1999, ch. 179, § 3; 2000, ch. 91, § 1; 2008, ch. 30, § 1; 2017, ch. 12, § 1.

**61-28B-4. Board created; terms; officers; meetings; reimbursement.  
(Repealed effective July 1, 2030.)**

A. The "New Mexico public accountancy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall

consist of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act.

B. Members of the board shall serve for terms of three years or less, staggered in a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just cause.

C. The board shall elect annually from among its members a chairman and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses 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:** Laws 1999, ch. 179, § 4; 2003, ch. 408, § 28.

**61-28B-5. Board; powers and duties. (Repealed effective July 1, 2030.)**

A. The board may:

(1) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act;

(2) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;

(3) contract, sue and be sued and have and use a seal;



(4) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and

(5) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to carry out the provisions of the 1999 Public Accountancy Act, including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall:

(1) maintain a registry of the names and addresses of certificate and permit holders;

(2) develop, in conjunction with the department of public safety, rules requiring a criminal history background check of an applicant for initial or reciprocal certification in New Mexico as provided for in the 1999 Public Accountancy Act; and

(3) conduct disciplinary or licensure proceedings in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** Laws 1999, ch. 179, § 5; 2003, ch. 408, § 29; 2007, ch. 219, § 2; 2022, ch. 39, § 95.

### **61-28B-6. Fund created. (Repealed effective July 1, 2030.)**

A. The "public accountancy fund" is created in the state treasury. All money received by the board and interest earned on investment of the fund shall be credited to the fund.

B. Payments from the public accountancy fund shall be made upon warrants of the secretary of finance and administration pursuant to vouchers issued by the director in accordance with the budget approved by the department of finance and administration.

C. Money in the fund shall be used only to pay the expenses of carrying out the provisions of the 1999 Public Accountancy Act and rules adopted pursuant to that act.

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 a fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

**History:** Laws 1999, ch. 179, § 6.

### **61-28B-7. Repealed.**

**History:** Laws 1999, ch. 179, § 7; 2004, ch. 34, § 1; repealed by Laws 2017, ch. 12, § 5.

**61-28B-8. Qualifications for a certificate as a certified public accountant. (Repealed effective July 1, 2030.)**

A. An applicant for a certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that the applicant:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.

C. The education requirement for examination shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with thirty semester hours in accounting or the equivalent as determined by the board. An applicant for a certificate shall have at least one hundred fifty semester hours of college education or its equivalent earned at a college or university acceptable to the board.

D. The examination for certification shall be offered continuously via a computer-based testing system at a designated testing center and shall test an applicant's knowledge of the subjects of accounting and auditing and other related subjects as prescribed by the board. The board shall prescribe the method of applying for the examination and the dissemination of scores, and it shall rely on the American institute of certified public accountants for the grading of the examination. The board may use all or any part of the uniform certified public accountant examination services of the national association of state boards of accountancy to perform administrative services with respect to the examination. The board or its designee shall report all eligibility and score data to the national candidate database, and it shall, to the extent possible, provide that the passing scores are uniform with passing scores of other states.

E. An applicant must pass all sections of the examination to qualify for a certificate. A passing scaled score for each section shall be seventy-five. Sections may be taken individually and in any order. Credit for any section passed shall be valid for eighteen months from the date the passing score is released to the applicant, without having to attain a minimum score on any failed test section and without regard to whether the applicant has taken other test sections. An applicant must pass all four test sections within a continuous eighteen-month period, which begins on the date that the first passing scores are released to the applicant. If all four test sections are not passed within the continuous eighteen-month period, credit for any test section passed outside the eighteen-month period will expire, and that test section must be retaken.

F. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.

G. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.

H. An applicant for initial issuance of a certified public accountant certificate shall show that the applicant has had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

**History:** Laws 1999, ch. 179, § 8; 2004, ch. 34, § 2; 2008, ch. 30, § 2; 2020, ch. 27, § 1; 2023, ch. 85, § 26.

### **61-28B-8.1. Fingerprinting; criminal history background checks. (Repealed effective July 1, 2030.)**

A. All applicants for certification as provided for in the 1999 Public Accountancy Act shall:

(1) be required to provide fingerprints on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied certification as established by board rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the board pursuant to the provisions of this section are confidential. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the 1999 Public Accountancy Act.

D. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions 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 2007, ch. 219, § 5.

**61-28B-9. Issuance and renewal of certificate; maintenance of competency; nonresident maintenance of competency requirements. (Repealed effective July 1, 2030.)**

A. The board shall grant or renew a certificate upon application and demonstration that the applicant's qualifications are in accordance with the 1999 Public Accountancy Act or that they are eligible under the substantial equivalency standard provided in that act.

B. The board may establish by rule for the issuance of annual certificates and may prescribe the expiration date of certificates. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration date of the license, the certificate shall be subject to cancellation. A certificate holder whose certificate has been canceled for failure to pay the annual renewal fee may secure reinstatement of the certificate only upon application and payment of the renewal fee and reinstatement fee and upon approval by the board.

C. The board shall grant or deny an application for certification no later than one hundred twenty days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a certificate, the board may issue a provisional certificate for no longer than ninety days while the board reconsiders its decision.

E. To renew a certificate, a certificate holder shall provide satisfactory proof to the board of continuing professional education that is designed to maintain competency. Continuing professional education courses shall comply with board rules. The board may create an exception to the requirement to maintain continuing professional education for certificate holders who do not provide services to the public. A certificate holder granted such an exception must place the word "inactive" or "retired" adjacent to

the certificate holder's certified public accountant title or registered public accountant title on a business card, letterhead or other document or device, except for a board-issued certificate.

F. A nonresident certificate holder seeking to renew a certificate shall be determined to have met the continuing professional education requirement in this state if the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; provided that:

(1) the nonresident signs a statement on the renewal application that the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; and

(2) the state where the nonresident's principal place of business is located requires continuing professional education.

G. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

**History:** Laws 1999, ch. 179, § 9; 2005, ch. 84, § 1; 2017, ch. 12, § 2.

### **61-28B-10. Repealed.**

**History:** Laws 1999, ch. 179, § 10; repealed by Laws 2008, ch. 30, § 7.

### **61-28B-11. Certificates issued to holders of a certificate, license or permit issued by another state. (Repealed effective July 1, 2030.)**

A. The board may issue a certificate to a holder of a certificate, license or permit issued by another state upon a showing that the applicant:

(1) passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in New Mexico;

(2) passed the examination upon which the applicant's out-of-state certificate was based and has two years of experience acceptable to the board or meets equivalent requirements prescribed by board rule, within the ten years immediately preceding the application; and

(3) if the applicant's certificate, license or permit was issued more than four years prior to application, has fulfilled the board's requirements of continuing professional education.

B. A person licensed by another state who wishes to establish a principal place of business in New Mexico shall apply to the board for a certificate prior to establishing the business. The board may issue a certificate to the person if the person provides proof from a board-approved national qualification appraisal service that the person's certified public accountant qualifications are substantially equivalent to the certified public accountant certification requirements of Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978.

C. The board may issue a certificate to a holder of a substantially equivalent foreign designation; provided that:

(1) the foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by New Mexico to obtain such foreign authority's comparable designation;

(2) the foreign designation:

(a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(b) entitles the holder to issue reports upon financial statements; and

(c) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and

(3) the applicant:

(a) received the designation based on educational and examination standards substantially equivalent to those in effect in New Mexico at the time the foreign designation was granted;

(b) completed an experience requirement in the jurisdiction that granted the foreign designation that is substantially equivalent to the requirement provided for in the 1999 Public Accountancy Act or has completed four years of professional experience in New Mexico or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application; and

(c) passed a uniform qualifying examination on national standards and an examination on the laws, rules and code of ethical conduct in effect in New Mexico that is acceptable to the board.

D. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

E. The board has the sole authority to interpret the application of the provisions of this section.

**History:** Laws 1999, ch. 179, § 11; 2008, ch. 30, § 3.

### **61-28B-12. Registered public accountants and firms of registered public accountants. (Repealed effective July 1, 2030.)**

A. A person who on July 1, 1999 holds a certificate as a registered public accountant issued pursuant to prior New Mexico law shall be entitled to have his certificate renewed upon fulfillment of the continuing professional education requirements, application and payment of fees prescribed for certificate renewal.

B. A registered public accountant firm holding a permit issued pursuant to prior New Mexico law shall be entitled to have its permit renewed pursuant to the requirements for permit renewal for a certified public accountant firm in the 1999 Public Accountancy Act.

C. As long as a registered public accountant and a registered public accountant firm hold a valid certificate and permit, they shall be entitled to perform attest services to the same extent as a certified public accountant and certified public accountant firm. In addition, they shall be entitled to use the titles "registered public accountant" and "registered public accountants", but no other title.

**History:** Laws 1999, ch. 179, § 12.

### **61-28B-13. Firm permits to practice, attest experience, peer review. (Repealed effective July 1, 2030.)**

A. The board may grant or renew a permit to practice as a certified public accountant firm to an applicant that demonstrates its qualifications in accordance with this section.

B. A permit issued pursuant to this section shall be required for the following:

(1) a firm with an office in New Mexico performing attest services as defined by the 1999 Public Accountancy Act;

(2) a firm with an office in New Mexico that uses the title "CPA" or "CPA firm";  
or

(3) a firm that does not have an office in New Mexico but offers or renders attest services for a client in New Mexico, except as provided in Subsection C of this section.

C. A firm that does not have an office in New Mexico may offer or render attest services for a client in New Mexico and may use the title "CPA" or "CPA firm" without a permit issued pursuant to this section only if:

(1) the firm offers or renders the services through a person with practice privileges under Section 61-28B-26 NMSA 1978; provided that the firm can lawfully perform the services in the state where the person's primary place of business is located;

(2) the firm meets the requirements of Paragraph (1) of Subsection H of this section; and

(3) the firm meets the requirements of Subsection L of this section.

D. A firm not subject to the requirements of Subsection B or C of this section may perform other nonattest professional services while using the title "CPA" or "CPA firm" in New Mexico without a permit issued pursuant to this section only if:

(1) the firm performs services through a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978; and

(2) the firm can lawfully perform services in the state that is the firm's principal place of business.

E. Permits shall be issued and renewed for periods of not more than two years, expiring on June 30 of the year of expiration. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a permit without prior hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration of the permit, the permit shall be subject to cancellation. A firm whose permit has been canceled for failure to pay the annual renewal fee may secure reinstatement of the permit upon application and payment of the renewal fee and upon approval by the board.

F. The board shall grant or deny an application for a permit no later than ninety days after the complete application is filed.



G. If an applicant appeals the decision of the board to deny a permit, the board may issue a provisional permit for no longer than ninety days while the board reconsiders its decision.

H. An applicant for initial issuance or renewal of a permit shall demonstrate that:

(1) a simple majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state. A partner, officer, shareholder, member or manager, whose principal place of business is in New Mexico, and who performs professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 who performs services for which a permit is required pursuant to this section shall not be required to obtain a certificate from New Mexico pursuant to Section 61-28B-9 NMSA 1978. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder, or in the case of a firm that must have a permit, a licensee of another state who meets the requirements of Subsection A of Section 61-28B-26 NMSA 1978, who is responsible for the proper registration of the firm and identifies that person to the board;

(b) all owners who are not certificate holders are active participants in the certified public accountant firm or registered public accountant firm or affiliated entities; and

(c) the firm complies with the 1999 Public Accountancy Act; and

(2) a certificate holder, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for such services.

I. An applicant for initial issuance or renewal of a permit shall be required to register each office of the firm within New Mexico with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate issued pursuant to the 1999 Public Accountancy Act or the corresponding provision of prior law or by some other state.

J. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence of a change in the identities of partners, officers, shareholders, members or managers whose principal place of business is in this state, a change in the

number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

K. A firm that falls out of compliance with the provisions of the 1999 Public Accountancy Act due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a six-month period for a firm to take the corrective action. Failure to bring the firm back into compliance within six months shall result in the suspension or revocation of the firm permit.

L. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

M. If a partner, shareholder or member is a legal business entity, that legal business entity must be a firm.

N. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section and Sections 61-28B-8 and 61-28B-13 NMSA 1978. Attest services may not be performed by a certificate holder who is a member of a firm that does not meet the certificate holder's ownership requirements set forth in this section.

**History:** Laws 1999, ch. 179, § 13; 2000, ch. 42, § 1; 2005, ch. 84, § 2; 2008, ch. 30, § 4; 2017, ch. 12, § 3.

#### **61-28B-14. Appointment of secretary of state as agent. (Repealed effective July 1, 2030.)**

Application for a certificate or permit by a person or firm that is domiciled outside of New Mexico shall constitute appointment of the secretary of state as the applicant's agent, upon whom process may be served in an action or proceeding against the applicant or certificate holder arising out of a transaction or operation connected with or incidental to services performed within New Mexico.

**History:** Laws 1999, ch. 179, § 14.

#### **61-28B-15. Enforcement procedures; investigations. (Repealed effective July 1, 2030.)**

A. Upon receipt of a complaint or other information suggesting a violation of the 1999 Public Accountancy Act, the board may conduct an investigation to determine whether there is probable cause to institute a proceeding against a person or firm. An investigation is not required when a determination of probable cause can be made without investigation. To aid the investigation, the board or the board's chairman may issue a subpoena to compel a witness to testify or to produce evidence.

B. The board may designate a person to serve as investigating officer to conduct an investigation. The investigating officer shall file a report with the board upon completion of an investigation. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation.

C. Upon a finding of probable cause, if the subject of the investigation is a certificate or permit holder, the board shall direct that a notice of contemplated action be issued in accordance with the 1999 Public Accountancy Act. If the subject of the investigation is not a certificate or permit holder, the board shall take appropriate action as provided in that act. Upon a finding of no probable cause, the board shall close the matter.

D. The board may review the publicly available professional work of a certificate or permit holder without any requirement of a formal complaint or suspicion of impropriety on the part of a particular certificate or permit holder. In the event that such review reveals reasonable grounds for a more specific investigation, the board may proceed pursuant to the 1999 Public Accountancy Act.

**History:** Laws 1999, ch. 179, § 15.

### **61-28B-16. Enforcement procedures; hearings by the board. (Repealed effective July 1, 2030.)**

A. Hearings by the board shall be conducted in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

B. In a case when the board renders a decision imposing discipline against a certificate or permit holder pursuant to the 1999 Public Accountancy Act, the board shall examine its records to determine whether the certificate or permit holder holds a certificate or permit in any other state; and, if so, the board shall notify the board of accountancy of the other state of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to a proceeding resulting in disciplinary action to another public authority and to private professional organizations having a disciplinary interest in the certificate or permit holder. When an appeal pursuant to New Mexico law is in progress, the notification and furnishing of information to a disciplinary authority shall await the resolution of such appeal. If resolution is in favor of the certificate or permit holder, no automatic notification or furnishing of information shall be made.

**History:** Laws 1999, ch. 179, § 16.

**61-28B-17. Enforcement; unlawful acts. (Repealed effective July 1, 2030.)**

A. Except as otherwise provided in the 1999 Public Accountancy Act, it is unlawful for a person to engage in practice in New Mexico unless the person is a licensee.

B. Except as otherwise provided in the 1999 Public Accountancy Act, no person shall issue a report or financial statement for a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless the person holds a current license or permit. The state auditor and the state auditor's auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section 61-28B-18 NMSA 1978, a person who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.".

D. No person shall indicate by title, designation, abbreviation, sign, card or device that the person is a certified public accountant or a registered public accountant unless the person is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted by the board pursuant to that act. Unless the person is a holder of a current certificate or permit, no person shall use any title, initials or designation intended to or substantially likely to indicate to the public that the person is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

- (1) the person holds a valid certificate or current permit; or
- (2) the person is an employee supervised by a licensee pursuant to Section 61-28B-18 NMSA 1978 and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit 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 nor shall the person fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee or the licensee's firm shall not receive a commission to recommend or refer a product or service to a client or to recommend to anyone else a product or service to be supplied by a client during the period the licensee or the licensee's firm is engaged to perform the following services for that client and during the period covered by any historical financial statements involved in the services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or might reasonably expect that a third party will use the financial statement, and the compilation report does not disclose the lack of independence by the licensee; or
- (3) an examination of prospective financial information.

I. A licensee or the licensee's firm that is not prohibited from receiving a commission by Subsection H of this section and that is paid or expects to be paid a commission shall disclose that fact in writing to the person for whom the licensee or the licensee's firm performs a service or refers or recommends a product or service. A licensee or firm that accepts or pays a referral fee for a service or to obtain a client shall disclose such acceptance or payment to the client in writing.

J. A licensee or the licensee's firm shall not charge or receive a contingent fee for a client for whom the licensee or the licensee's firm performs the following services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence;
- (3) an examination of prospective financial information; or
- (4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

K. No licensee shall sign or certify any financial statements if the licensee knows the same to be materially false or fraudulent.

L. For the purposes of this section, a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 shall be substantially equivalent to a certificate holder pursuant to Section 61-28B-9 NMSA 1978. Terms or references that refer to a certificate holder pursuant to Section 61-28B-9 NMSA 1978 shall include a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978.

M. For the purposes of this section, a firm practicing under Subsection C or D of Section 61-28B-13 NMSA 1978 may perform the services specified by the applicable provisions of the 1999 Public Accountancy Act and may use the terms "CPA" or "CPA firm" without obtaining a permit. Terms or references that refer to a firm holding a permit pursuant to Subsection B of Section 61-28B-13 NMSA 1978 shall include a firm practicing pursuant to Subsection C or D of Section 61-28B-13 NMSA 1978.

**History:** Laws 1999, ch. 179, § 17; 2000, ch. 91, § 2; 2001, ch. 97, § 1; 2008, ch. 30, § 5.

### **61-28B-18. Exemptions; unlawful acts. (Repealed effective July 1, 2030.)**

A. Subsection B of Section 17 [61-28B-17 NMSA 1978] of the 1999 Public Accountancy Act does not prohibit:

(1) an officer, partner, shareholder, member or employee of a firm from affixing his own signature to a statement or report in reference to the financial affairs of his firm with any wording designating the position, title or office that he holds within the firm;

(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 on them.

B. Nothing contained in the 1999 Public Accountancy Act shall prevent a person from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm; provided that the employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a certificate issued pursuant to that act.

**History:** Laws 1999, ch. 179, § 18.

### **61-28B-19. Business names; prohibitions. (Repealed effective July 1, 2030.)**

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 firm pursuant to the 1999 Public Accountancy Act 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 1999 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 1999, ch. 179, § 19.

### **61-28B-20. Enforcement; administrative violations and remedies. (Repealed effective July 1, 2030.)**

A. The board may take, after providing a 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 or licensee:

- (1) committed fraud or deceit in obtaining a certificate or permit;
- (2) lost a certificate or permit 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 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit 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 the applicant's or licensee's own income or other federal, state or local tax returns;
- (6) violated a provision of the 1999 Public Accountancy Act or a rule promulgated by the board pursuant to that act;
- (7) violated a rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of a crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;

(9) performed a fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or

(10) participated in any conduct reflecting adversely upon the applicant's or licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee 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 a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;

(2) suspend a certificate or permit for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of a licensee;

(4) impose an administrative fine not exceeding ten thousand dollars (\$10,000); or

(5) place the licensee on probation.

C. In lieu of or in addition to a remedy specifically provided in Subsection B of this section, the board may require of a licensee:

(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 a 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.

E. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in public accountancy without a license. In addition, the board



may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

**History:** Laws 1999, ch. 179, § 20; 2007, ch. 219, § 3; 2017, ch. 52, § 12.

### **61-28B-21. Reinstatement. (Repealed effective July 1, 2030.)**

A. In any case in which the board has suspended or revoked a certificate or permit 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 or permit.

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 certificate or permit pursuant to 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 1999, ch. 179, § 21.

### **61-28B-22. Criminal penalties. (Repealed effective July 1, 2030.)**

A. When the board has reason to believe that a person or firm has knowingly engaged in an act or practice that violates the provisions of the 1999 Public Accountancy Act, the board may bring its information to the attention of the district attorney or other appropriate law enforcement officer of any jurisdiction who may bring a criminal proceeding.

B. A person or firm that knowingly violates a provision of the 1999 Public Accountancy Act is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars (\$1,000) or by a definite term of imprisonment not to exceed six months or both.

**History:** Laws 1999, ch. 179, § 22.

### **61-28B-23. Single act evidence of practice. (Repealed effective July 1, 2030.)**

In an action brought pursuant to the provisions of the 1999 Public Accountancy Act, evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

**History:** Laws 1999, ch. 179, § 23.

**61-28B-24. Confidential communications. (Repealed effective July 1, 2030.)**

Except by permission of the client for whom a certificate or permit holder performs a service or the heir, successor or personal representative of the client, a certificate holder shall not voluntarily disclose information communicated to him by the client relating to and in connection with a service rendered to the client by him. Such information shall be deemed confidential; provided that nothing in this section shall prohibit the disclosure of information required to be disclosed by a standard of the public accounting profession in reporting on the examination of a financial statement or prohibit disclosure in a court proceeding, in an investigation or proceeding pursuant to the 1999 Public Accountancy Act, in an ethical investigation conducted by a private professional organization or in the course of a peer review, or to another person active in the organization performing a service for that client on a need-to-know basis or to a person in the entity who needs this information for the sole purpose of assuring quality control.

**History:** Laws 1999, ch. 179, § 24.

**61-28B-25. Working papers; client records. (Repealed effective July 1, 2030.)**

A. A statement, record, schedule, working paper or memorandum made by a certificate or permit holder incident to rendering a service to a client shall be the property of the certificate or permit holder in the absence of an express agreement between him and the client to the contrary, except the report submitted by him to the client and except for a record that is part of the client's records. No such item shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative, except to a partner, stockholder or member of the firm or any combined or merged firm or successor in interest to the certificate or permit holder. Nothing in this section shall prohibit any temporary transfer of a work paper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information pursuant to the 1999 Public Accountancy Act.

B. A certificate or permit holder shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of his working paper, to the extent that such working paper includes a record that would ordinarily constitute part of the client's record and is not otherwise available to the client; and

(2) an accounting or other record belonging to, or obtained from or on behalf of, the client that he removed from the client's premises or received for the client's

account; he may make and retain a copy of a document of the client when they form the basis for work done by him.

**History:** Laws 1999, ch. 179, § 25.

**61-28B-26. Practice privilege and discipline for a certificate holder from a state whose accountancy statute is substantially equivalent. (Repealed effective July 1, 2030.)**

A. Except as provided in Subsection D of this section, a person whose principal place of business is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico's requirements and may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to Section 61-28B-9 NMSA 1978 if the person:

(1) holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that a person:

(a) have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the board;

(b) achieve a passing grade on the uniform certified public accountant examination; and

(c) possess at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice, all of which can be verified by a licensee; or

(2) holds a valid license as a certified public accountant from any state that does not meet the requirements of Paragraph (1) of Subsection A of this section, but the person's certified public accountant qualifications are substantially equivalent to those requirements. A person who passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt from the education requirement in Subparagraph (a) of Paragraph (1) of this subsection.

B. Notwithstanding any other provision of law, a person who qualifies for the practice privilege pursuant to this section may offer or render professional services whether in person or by mail, telephone or electronic means, and no notice, fee or other submission shall be required of the person.

C. A person licensed in another state exercising the practice privilege afforded pursuant to this section shall consent, as a condition of exercising the practice privilege:

(1) to submit to the personal and subject-matter jurisdiction and disciplinary authority of the board;

(2) to comply with the 1999 Public Accountancy Act and the rules adopted by the board;

(3) to cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid; and

(4) to the appointment of the state board that issued the license as agent upon whom process may be served in any action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person who qualifies for the practice privileges pursuant to this section and who performs an attest service shall meet the requirements of Section 61-28B-11 NMSA 1978.

E. A certificate or permit holder of New Mexico that offers or renders an attest service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy in another state in accordance with the provisions of the 1999 Public Accountancy Act.

**History:** Laws 1999, ch. 179, § 26; 2008, ch. 30, § 6; 2017, ch. 12, § 4.

### **61-28B-27. Fees. (Repealed effective July 1, 2030.)**

Except as provided in Section 61-1-34 NMSA 1978, the board may collect from certificate holders, permit holders, applicants and others the following fees:

A. for examination, a fee not to exceed four hundred dollars (\$400) per examination section;

B. for certificate issuance or renewal, a fee not to exceed one hundred seventy-five dollars (\$175) per year; provided, however, that the board may charge a biennial fee of not more than twice the annual fee;

C. for firm permits, a fee not to exceed one hundred dollars (\$100) per year; provided, however, that the board may charge a biennial fee of not more than twice the annual fee;

D. for incomplete or delinquent continuing education reports, certificate or permit renewals, a fee not to exceed one hundred dollars (\$100) each;

E. for preparing and providing licensure and examination information to others, a fee not to exceed seventy-five dollars (\$75.00) per report;

F. reasonable administrative fees for such services as research, record copies, duplicate or replacement certificates or permits;

G. a fee for fingerprinting and background check for an applicant for certification not to exceed one hundred dollars (\$100);

H. for certificate reinstatement, a fee not to exceed one hundred seventy-five dollars (\$175), plus past due fees and penalties;

I. for waiver to comply with continuing professional education requirements, a fee not to exceed seventy-five dollars (\$75.00) per application; and

J. for reentry into active certificate status and to comply with continuing education, a fee not to exceed seventy-five dollars (\$75.00) per application.

**History:** Laws 1999, ch. 179, § 27; 2002, ch. 85, § 1; 2004, ch. 34, § 3; 2007, ch. 219, § 4 2021, ch. 92, § 15.

### **61-28B-28. Criminal offender eligibility. (Repealed effective July 1, 2030.)**

Except as otherwise provided in the 1999 Public Accountancy Act, the provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration or criminal records required or permitted by the 1999 Public Accountancy Act.

**History:** Laws 1999, ch. 179, § 28.

### **61-28B-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The New Mexico public accountancy board is terminated on July 1, 2029 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 1999 Public Accountancy Act until July 1, 2030. Effective July 1, 2030, the 1999 Public Accountancy Act is repealed.

**History:** Laws 1999, ch. 179, § 29; 2005, ch. 208, § 20; 2011, ch. 30, § 7; 2017, ch. 52, § 13; 2023, ch. 15, § 5.

## **ARTICLE 29**

### **Real Estate Brokers and Salesmen**

## **61-29-1. Prohibition.**

It is unlawful for a person to engage in the business or act in the capacity of real estate associate broker or qualifying broker within New Mexico without a license issued by the commission. A person who engages in the business or acts in the capacity of an associate broker or a qualifying broker in New Mexico, except as otherwise provided in Section 61-29-2 NMSA 1978, with or without a New Mexico real estate broker's license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the commission and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 29 NMSA 1978.

**History:** 1953 Comp., § 67-24-19, enacted by Laws 1959, ch. 226, § 1; 1965, ch. 304, § 1; 2001, ch. 163, § 1; 2005, ch. 35, § 1; 2013, ch. 167, § 1.

### **61-29-1.1. Recompiled.**

### **61-29-2. Definitions and exceptions.**

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to carry on the qualifying broker's business as a whole or partial vocation, and:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(4) "auctioneer" means a person who auctions or offers to auction real property;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) "client" means a person who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commercial real estate" means real estate that is zoned:

(a) for business or commercial use by a city or county; or

(b) by a city or county to allow five or more multifamily units; provided that all units are located on a single parcel of land with a single legal description;

(9) "commission" means the New Mexico real estate commission;

(10) "customer" means a person who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(11) "foreign broker" means a real estate broker who does not hold a real estate license issued by the commission, but who holds a current and valid real estate broker's license issued by another state in the United States, a province of Canada or any other sovereign nation;

(12) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(13) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

(14) "nonresident licensee" means an associate or qualifying broker holding a real estate license issued by the commission and whose license application address is not within the state of New Mexico;

(15) "property management" means real estate services as specified by a management agreement that include marketing, showing, renting and leasing of real property; collection and disbursement of funds on behalf of the owner; supervision of employees and vendors; coordination of maintenance and repairs; management of tenant relations; and preparation of leases or rental agreements, financial reports and other documents. "Property management" does not mean inspections of property, repairs and maintenance incidental to the sale and marketing of property as authorized by the owner or the management of a condominium or homeowner association or advertising or taking reservations for vacation rental properties;

(16) "qualifying broker" means a licensed real estate broker who has qualified a proprietorship, corporation, partnership or association to do business as a real estate brokerage in the state of New Mexico, who discharges the responsibilities specific to a qualifying broker as defined by the commission and who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to other qualifying brokers or associate brokers;

(17) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible; and

(18) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.



B. A single act of a person in performing or attempting to perform an activity described in Paragraph (16) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner performs any of the activities included in this section with reference to property owned by the person, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(2) the employees of the owner or the employees of a qualifying broker acting on behalf of the owner, with respect to the property owned, if the acts are performed in the regular course of or incident to the management of the property and the investments;

(3) isolated or sporadic transactions not exceeding two transactions annually in which 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 has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(4) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, 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;

(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(6) 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;

(7) the activities of a salaried employee of a governmental agency acting within the scope of employment;

(8) 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; or

(9) an auctioneer; provided that payments to an auctioneer for services rendered in connection with an auction shall be made to the auctioneer by a qualifying broker, and prior to performing an auction of real estate, the auctioneer shall enter into a transaction-specific written agreement with a qualifying broker that includes:

(a) a description of the parties, the real estate and any additional information necessary to identify the specific transaction governed by the agreement;

(b) the terms of compensation between the auctioneer and the qualifying broker;

(c) the effective date and definitive termination date of the agreement; and

(d) a statement that the auctioneer agrees to: 1) cooperate fully with the qualifying broker and all associate brokers designated by the qualifying broker; 2) conduct all contact with parties, including the general public and other brokers, in association with the qualifying broker or associate brokers designated by the qualifying broker; and 3) conduct all marketing and solicitations for business in the name of the qualifying broker.

**History:** 1978 Comp., § 61-29-2, enacted by Laws 1999, ch. 127, § 1; 2003, ch. 36, § 1; 2005, ch. 35, § 2; 2011, ch. 85, § 1; 2013, ch. 167, § 2; 2014, ch. 27, § 1; 2019, ch. 90, § 1; 2021, ch. 106, § 1.

### **61-29-3. Criminal offender's character evaluation.**

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.

### **61-29-4. Creation of commission; powers and duties.**

A. The "New Mexico real estate commission" is created. 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 associate brokers or qualifying brokers licensed in New Mexico and one of whom shall be a member of the public who has never been licensed as an associate broker or a qualifying broker; provided that 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. The governor may remove a member for cause. In the event of vacancies, the governor shall appoint members to complete unexpired terms.

B. 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 promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] and enforce those rules to carry out the provisions of that article.

**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; 2003, ch. 22, § 1; 2003, ch. 408, § 30; 2005, ch. 35, § 3; 2022, ch. 39, § 96.

#### **61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.**

The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to July 1, 2011, as a condition of license renewal, successfully complete a minimum of thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the 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; 2005, ch. 35, § 4; 2011, ch. 85, § 2; 2013, ch. 167, § 3.

#### **61-29-4.2. Additional powers of the commission; professional liability insurance; minimum coverage.**

A. In addition to the powers and duties granted to the commission pursuant to the provisions of Sections 61-29-4 and 61-29-4.1 NMSA 1978, the commission may adopt rules that require professional liability insurance coverage and may establish the minimum terms and conditions of coverage, including limits of coverage and permitted exceptions. If adopted by the commission, the rules shall require every applicant for an active license and licensee who applies for renewal of an active license to provide the commission with satisfactory evidence that the applicant or licensee has professional liability insurance coverage that meets the minimum terms and conditions required by commission rule.

B. The commission is authorized to solicit sealed, competitive proposals from insurance carriers to provide a group professional liability insurance policy that complies with the terms and conditions established by commission rule. The commission may approve one or more policies that comply with the commission rules; provided that the maximum annual premium shall not exceed five hundred dollars (\$500) for a licensee, that the minimum coverage shall not be less than one hundred thousand dollars

(\$100,000) for an individual claim and not less than a five-hundred-thousand-dollar (\$500,000) aggregate limit per policy and that the deductible shall not be greater than one thousand dollars (\$1,000).

C. Rules adopted by the commission shall permit an active licensee to satisfy any requirement for professional liability insurance coverage by purchasing an individual policy.

D. Rules adopted by the commission shall provide that there shall not be a requirement for a licensee to have professional liability insurance coverage during a period when a group policy, as provided in Subsection B of this section, is not in effect.

**History:** 1978 Comp., § 61-29-4.2, enacted by Laws 2001, ch. 216, § 1; 2005, ch. 35, § 5; 2008, ch. 18, § 1; 2013, ch. 167, § 4.

### **61-29-4.3. Regulation and licensing department; administratively attached.**

The commission is administratively attached to the regulation and licensing department.

**History:** Laws 2001, ch. 163, § 12.

### **61-29-4.4. Additional powers of commission; fingerprinting and criminal history background checks.**

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints only upon initial licensure on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions 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 2005, ch. 35, § 6; 2011, ch. 85, § 3; 2019, ch. 209, § 7.

### **61-29-5. Organization of commission.**

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 Chapter 61, Article 29 NMSA 1978. The secretary of the commission shall keep a record of its proceedings; a register of persons licensed as associate brokers and qualifying brokers, showing the name and place of business of each and the date and number of each person's license; and a record of all licenses issued, denied, 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; 2001, ch. 163, § 2; 2005, ch. 35, § 7.

#### **61-29-5.1. Recompiled.**

### **61-29-6. Meeting of the commission.**

The commission shall meet at least once each quarter-year at such time and place as may be designated by the commission president, and special meetings may be held upon five days' written notice to each of the commission members by the commission president.

**History:** 1953 Comp., § 67-24-23, enacted by Laws 1959, ch. 226, § 5; 2005, ch. 35, § 8.

## **61-29-7. Reimbursement and expenses.**

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.

**History:** 1953 Comp., § 67-24-24, enacted by Laws 1959, ch. 226, § 6; 1963, ch. 43, § 28; 1965, ch. 304, § 3; 2003, ch. 22, § 2; 2003, ch. 408, § 31.

## **61-29-8. License fees; disposition.**

A. Except as provided in Section 61-1-34 NMSA 1978, the following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars (\$95.00);

(2) for each qualifying broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars (\$50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars (\$500) and for each renewal thereof, a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act [Chapter 14, Article 4 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 to the commission for the purpose of carrying out the provisions of Section 61-29-4 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 executive secretary of the commission or the executive secretary's designee; 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; 1995, ch. 143, § 1; 2001, ch. 163, § 3; 2003, ch. 22, § 3; 2005, ch. 35, § 9; 2011, ch. 85, § 4; 2020, ch. 6, § 56.

## **61-29-9. Qualifications for license.**

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall have reached the age of majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate broker's examination approved by the commission and shall:

(1) furnish the commission with certificates of completion of ninety hours of classroom instruction consisting of commission-approved thirty-hour courses in real estate principles and practice, real estate law and broker basics; or

(2) in the case of an out-of-state applicant, furnish the commission with a certified license history from the real estate licensing jurisdiction in the state or states in which the applicant is currently or has been previously licensed as a real estate broker, or certificates of completion of those courses issued by the course sponsor or provider, certifying that the applicant has or had a license in that state and has completed the equivalent of sixty classroom hours of prelicensing education approved by that licensing jurisdiction in real estate principles and practice and real estate law. Upon receipt of such documentation, the commission may waive sixty hours of the ninety hours of prelicensing education required to take the New Mexico real estate broker's examination and may waive the national portion of the examination. The applicant shall complete the commission-approved thirty-hour broker basics class to be eligible to take the state portion of the New Mexico real estate broker's examination.

C. An applicant for a qualifying broker's license shall have passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license for at least two of the last five years immediately preceding application for a qualifying broker's license and shall furnish the commission with a certificate of completion of the commission-approved thirty-hour brokerage office administration course and any additional educational courses required by the commission by rule.

D. Notwithstanding Subsection C of this section, a qualifying broker shall not supervise associate brokers until the qualifying broker has had an active associate broker's or qualifying broker's license or equivalent real estate license for at least four years. Licensees who hold an active or inactive qualifying broker's license on January 1, 2018 are exempt from this subsection.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency.

**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; 1999, ch.



272, § 35; 2001, ch. 163, § 4; 2003, ch. 22, § 4; 2003, ch. 329, § 1; 2005, ch. 35, § 10; 2011, ch. 85, § 5; 2013, ch. 167, § 5; 2017, ch. 131, § 1; 2021, ch. 70, § 12.

### **61-29-10. Application for license and examination.**

A. All applications for licenses to act as qualifying brokers and associate brokers shall be made in writing to the commission and shall contain such data and information as may be required upon a form to be prescribed and furnished by the commission. The application shall be accompanied by:

(1) the recommendation of two reputable citizens who own real estate in the county in which the applicant resides, which recommendation shall certify that the applicant is of good moral character, honest and trustworthy; and

(2) the triennial license fee prescribed by the commission.

B. In addition to proof of honesty, trustworthiness and good reputation, an applicant shall pass a written examination approved by the commission. The examination shall be given at the time and places within the state as the commission shall prescribe; however, the examination shall be given not less than two times during each calendar year. The examination 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 Chapter 61, Article 29 NMSA 1978.

C. An applicant is not permitted to engage in the real estate business until the applicant has passed the approved examination, complied with the other requirements of Chapter 61, Article 29 NMSA 1978, and until a license has been issued to the applicant.

D. Notice of passing or failing to pass the examination shall be given to an 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 qualifying brokers or associate brokers or desiring to improve their proficiency as qualifying brokers or associate brokers. 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 authorized pursuant to 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; 2001, ch. 163, § 5; 2005, ch. 35, § 11.

#### **61-29-10.1. Brokerage relationships; creation.**

A. For all regulated real estate transactions first executed on or after January 1, 2000, no agency relationship between a buyer, seller, landlord or tenant and a brokerage shall exist unless the buyer, seller, landlord or tenant and the brokerage agree, in writing, to the agency relationship. No type of agency relationship may be assumed by a buyer, seller, landlord, tenant or licensee, or created orally or by implication.

B. A brokerage may provide real estate services to a client pursuant to an express written agreement that does not create an agency relationship and no agency duties will be imposed on the brokerage.

C. A brokerage may provide real estate services to a customer without entering into an express written agreement and without creating an agency relationship and no agency duties will be imposed on the brokerage.

D. The commission shall promulgate rules governing the rights of clients or customers and the rights, responsibilities and duties of a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission.

**History:** Laws 1999, ch. 127, § 2; 2003, ch. 36, § 2.

### **61-29-10.2. Licensee's duties; disclosure.**

A. Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall give to a prospective buyer, seller, landlord or tenant a list of the licensee's duties that are in accordance with requirements established by the commission.

B. Licensees shall perform all duties that are established for licensees by the commission.

**History:** Laws 1999, ch. 127, § 3; 2003, ch. 36, § 3; 2005, ch. 35, § 12.

### **61-29-10.3. Repealed.**

### **61-29-11. Issuance, renewal and surrender of licenses.**

A. The commission shall issue to each qualified applicant a license in the form and size prescribed by the commission.

B. The license shall show the name and address of the licensee. An associate broker's license shall show the name of the qualifying broker by whom the associate broker is engaged. The commission shall deliver or mail the license of the associate broker to the qualifying broker by whom the associate broker is engaged, and the qualifying broker shall display the license at the brokerage from which the associate broker will be conducting real estate business on behalf of the brokerage. The license of

the associate broker shall remain in the custody and control of the qualifying broker as long as the associate broker is engaged by that qualifying broker.

C. Any qualifying broker's or associate broker's license suspended or revoked by an order, stipulated agreement or settlement agreement approved by the commission shall be surrendered to the commission by the broker upon the delivery of the order to the broker by the commission, or on the effective date of the order. All real-estate-related activity conducted under such license shall cease for the duration of the license suspension or revocation, and any associate broker licenses hanging with a qualifying broker whose license is suspended or revoked shall be automatically placed on inactive status until a new qualifying broker or a qualifying broker in charge is designated.

D. Every license shall be renewed every three years on or before the last day of the month following the licensee's month of birth. Upon written request for renewal by the licensee, the commission shall certify renewal of a license if there is no reason or condition that might warrant the refusal of the renewal of a license. The licensee shall provide proof of compliance with continuing education requirements and pay the renewal fee. If a licensee has not made application for renewal of license, furnished proof of compliance with continuing education requirements and paid the renewal fee by the license renewal date, the license shall expire. The commission may require a person whose license has expired to apply for a license as if the person had not been previously licensed under Chapter 61, Article 29 NMSA 1978 and further require that the person be reexamined. The commission shall require a person whose license has expired to pay when the person applies for a license, in addition to any other fee, a late fee. If during a period of one year from the date the license expires the person or the person's 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 reexamination 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's or that person's spouse's military orders or a certificate from the applicant's physician shall accompany the application. A 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 qualifying broker's license automatically suspends every associate broker's license granted to any person by virtue of association with the qualifying broker whose license has been revoked, pending a change of qualifying broker. Upon the naming of a new qualifying broker, the suspended license shall be reactivated without charge if granted during the three-year renewal cycle.

E. A qualifying broker shall conduct brokerage business under the trade name and from the brokerage address registered with the commission. Every brokerage shall have a qualifying broker in charge. The license of the qualifying broker and each associate

broker associated with that qualifying broker shall be prominently displayed in each brokerage office. The address of the office shall be designated in the qualifying broker's license, and a license issued shall not authorize the licensee to transact real estate business at any other address. In case of removal from the designated address, the licensee shall make application to the commission before the removal or within ten days thereafter, designating the new location of the licensee's 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. A qualifying broker shall maintain a sign at the brokerage office of such size and content as the commission prescribes.

F. When an associate broker is discharged or terminates association or employment with the qualifying broker with whom the associate broker is associated, the qualifying broker shall deliver or mail the associate broker's license to the commission within forty-eight hours. The commission shall hold the license on inactive status. It is unlawful for an associate broker to perform any of the acts authorized by Chapter 61, Article 29 NMSA 1978 either directly or indirectly under authority of an inactive license after the associate broker's association with a qualifying broker has been terminated and the associate broker's license has been returned to the commission until the appropriate fee has been paid and the license has been reissued and reactivated 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; 1995, ch. 143, § 2; 2001, ch. 163, § 7; 2003, ch. 22, § 5; 2005, ch. 35, § 13; 2013, ch. 167, § 6.

## **61-29-12. Refusal, suspension or revocation of license for causes enumerated.**

A. In accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978], the commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has, by false or fraudulent representations, obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

- (1) made a substantial misrepresentation;
- (2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;
- (3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;

(4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;

(8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker 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 qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying 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. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying 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; 2001, ch. 163, § 8; 2005, ch. 35, § 14; 2011, ch. 85, § 6; 2022, ch. 39, § 97.

### **61-29-13. Provision for hearing before suspension or revocation of license.**

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.

### **61-29-14. Repealed.**

### **61-29-15. Maintenance of list of licensees.**

The commission shall maintain a list of the names and addresses of all licensees licensed by it under the provisions of Chapter 61, Article 29 NMSA 1978, 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 Chapter 61, Article 29 NMSA 1978 as it may deem of interest to the public. The commission shall also maintain a statement of all funds received and a statement of all disbursements, and copies of the 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; 2001, ch. 163, § 10.

## **61-29-16. Suit by qualifying or associate broker.**

No action for the collection of a commission or compensation earned by any person as a qualifying broker or an associate broker required to be licensed under the provisions of Chapter 61, Article 29 NMSA 1978 shall be maintained in the courts of the state unless such person was a duly licensed qualifying broker or associate broker 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 Chapter 61, Article 29 NMSA 1978 shall be maintained only in the name of the qualifying broker.

**History:** 1953 Comp., § 67-24-33, enacted by Laws 1959, ch. 226, § 15. 2005, ch. 35, § 16.

### **61-29-16.1. Foreign brokers; consent to service; referral fees.**

A. A foreign broker may act in the capacity of a qualifying or associate broker with respect to commercial real estate located in New Mexico; provided that prior to performing any of the real estate activities of a qualifying or associate broker, the foreign broker enters into a transaction-specific written agreement with a New Mexico qualifying broker that includes, at a minimum:

(1) a description of the parties, the commercial real estate and any additional information necessary to identify the specific transaction governed by the agreement;

(2) the terms of compensation between the foreign broker and the New Mexico qualifying broker;

(3) the effective date and definitive termination date of the agreement; and

(4) a statement that the foreign broker agrees to:

(a) cooperate fully with the New Mexico qualifying broker and all associate brokers designated by the New Mexico qualifying broker;

(b) except for the foreign broker's interaction with the foreign broker's client, conduct all contact with parties, including the general public and other brokers, in association with the New Mexico qualifying broker or associate broker designated by the New Mexico qualifying broker;

(c) conduct all marketing and solicitations for business in the name of the New Mexico qualifying broker;

(d) timely furnish to the New Mexico qualifying broker copies of all documents related to the transaction that are required by the laws of New Mexico to be retained by its licensees, including without limitation, agency disclosure, offers, counteroffers, purchase and sale contracts, leases and closing statements;

(e) comply with and be bound by and subject to New Mexico law and the regulations of the commission; and

(f) submit to the jurisdiction of the courts of New Mexico with respect to the transaction and any and all claims related thereto by service of process upon the secretary of state of New Mexico and upon the appropriate official of the state, province or nation of the foreign broker's real estate licensure.

B. When a New Mexico associate broker or qualifying broker makes a referral to or receives a referral from a foreign broker for the purpose of receiving a fee, commission or any other consideration, the qualifying broker of the New Mexico brokerage and the foreign broker shall execute a written, transaction-specific referral agreement at the time of the referral.

**History:** Laws 2005, ch. 35, § 15; 2011, ch. 85, § 7; 2013, ch. 167, § 7; 2014, ch. 27, § 2.

### **61-29-16.2. Nonresident licensees; consent to service.**

A. A nonresident licensee shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of New Mexico in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of New Mexico, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the associate broker or qualifying broker in New Mexico.

B. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed.

**History:** Laws 2014, ch. 27, § 4.

### **61-29-17. Penalty; injunctive relief.**

A. Any person who engages in the business or acts in the capacity of an associate broker or a qualifying broker within New Mexico without a license issued by the commission or pursuant to Section 61-29-16.1 NMSA 1978 is guilty of a fourth degree felony. Any person who violates any other 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 imprisonment for not more than six months, or both.

B. In the event any person 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 may, 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 may, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorney fees and costs.

**History:** 1953 Comp., § 67-24-34, enacted by Laws 1965, ch. 304, § 8; 1993, ch. 192, § 2; 2011, ch. 85, § 8; 2013, ch. 167, § 8; 2014, ch. 27, § 3.

### **61-29-17.1. Recompiled.**

### **61-29-17.2. Unlicensed activity; civil penalty; administrative costs.**

The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars (\$1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund.

**History:** Laws 2001, ch. 163, § 11; 2011, ch. 85, § 9.

### **61-29-18. Interpretation of act.**

Nothing contained in Chapter 61, Article 29 NMSA 1978 shall affect the power of cities and villages to tax, license and regulate qualifying brokers or associate 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 qualifying brokers or associate brokers.

**History:** 1953 Comp., § 67-24-35, enacted by Laws 1959, ch. 226, § 18; 2005, ch. 35, § 17.

### **61-29-19. 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; 2000, ch. 4, § 17; 2005, ch. 208, § 21; 2011, ch. 30, § 8; repealed by Laws 2011, ch. 85, § 11.

### **61-29-19.1. Real estate education and training fund created; purpose; appropriation.**

A. The "real estate education and training fund" is created in the state treasury. The fund shall consist of an initial transfer of the balance in the real estate recovery fund as provided in Subsection C of this section; legislative appropriations to the fund; fees charged by the commission for approval of real estate education sponsors, courses and instructors; gifts, grants, donations and bequests to the fund; and income from investment of the fund. Money in the fund shall not revert to any other fund at the end of a fiscal year.

B. The fund shall be administered by the commission, and money in the fund is subject to appropriation by the legislature to the commission to improve real estate education and to train real estate instructors. The commission shall promulgate rules specifying the manner in which the fund shall be administered.

C. Notwithstanding the provisions of Sections 61-29-21 and 61-29-22 NMSA 1978, on July 1, 2005, the balance in excess of two hundred fifty thousand dollars (\$250,000) in the real estate recovery fund shall be transferred to the real estate education and training fund.

**History:** Laws 2005, ch. 35, § 20.

### **61-29-20. Short title.**

Sections 61-29-20 through 61-29-29 NMSA 1978 may be cited as the "Real Estate Recovery Fund Act".

**History:** Laws 1980, ch. 82, § 1; 2022, ch. 39, § 98.

### **61-29-21. Fund created.**

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.

### **61-29-22. Additional fees.**

A. 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. The commission shall collect from each successful applicant for an original real estate license, in addition to the 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 one hundred fifty thousand dollars (\$150,000). 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. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars (\$400,000), the amount over four hundred thousand dollars (\$400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978.

**History:** Laws 1980, ch. 82, § 3; 1987, ch. 90, § 6; 1993, ch. 253, § 4; 2003, ch. 22, § 6; 2011, ch. 85, § 10.

### **61-29-23. Judgment against qualifying or associate broker; petition; requirements; recovery limitations.**

A. When an aggrieved person claims a pecuniary loss caused by a state-licensed qualifying broker or associate broker based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker, involving a transaction for which a qualifying broker's or an associate broker's license is required and which arose out of or during the course of a transaction involving the sale, lease, exchange or other disposition of real estate or property management, where the cause of action arose on or after July 1, 1980, that person may, within two years after obtaining a final judgment based upon fraud, knowing or willful misrepresentation or wrongful conversion of funds entrusted to the qualifying broker or associate broker from a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act. The real estate recovery fund reimburses the claimant for unpaid actual damages included in the judgment, but not more than fifty thousand dollars (\$50,000) 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 against any

one licensee during one calendar year shall not exceed one hundred thousand dollars (\$100,000).

B. A copy of the verified petition with the judgment attached shall be served upon the commission by United States postal service certified return receipt or in the manner provided by law for service of a civil summons.

C. The commission shall serve the petition and notice of hearing on the licensee in substantially the same manner as required pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

D. The commission shall conduct a hearing on the petition after service of the petition upon the commission and the licensee. At the hearing, the petitioner shall be required to show that the petitioner:

(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; and

(3) has a judgment that is not covered by a bond, insurance, surety agreement or indemnity agreement.

E. At the hearing, the licensee shall be permitted to raise all affirmative defenses.

**History:** Laws 1980, ch. 82, § 4; 1987, ch. 90, § 7; 2005, ch. 35, § 18; 2021, ch. 106, § 2.

#### **61-29-24. Commission; compromise.**

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 and with the same authority as set forth in the Uniform Licensing Act [Chapter 61, Article 1 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; 2021, ch. 106, § 3.

#### **61-29-25. Commission finding.**

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.

### **61-29-26. Insufficient funds.**

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.

### **61-29-27. Subrogation.**

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 NMSA 1978], revoke, suspend or refuse to renew the license of any qualifying broker or associate broker 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 may refuse to issue or renew the license of any person for whom payment from the real estate recovery fund has been made, until that person reimburses the fund for all payments made on that person's behalf.

**History:** Laws 1980, ch. 82, § 8; 1987, ch. 90, § 10; 2005, ch. 35, § 19.

### **61-29-28. Waiver.**

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.

### **61-29-29. Disciplinary action not limited.**

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.

## **ARTICLE 29A**

### **Thanatopractice (Recompiled.)**

**61-29A-1 to 61-29A-25. Recompiled.**

## **ARTICLE 30**

### **Real Estate Appraisers**

**61-30-1. Short title. (Repealed effective July 1, 2030.)**

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.

**61-30-2. Purpose and legislative intent. (Repealed effective July 1, 2030.)**

A. The purpose of the Real Estate Appraisers Act [Chapter 61, Article 30 NMSA 1978] 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.

**61-30-3. Definitions. (Repealed effective July 1, 2030.)**

As used in the Real Estate Appraisers Act:

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;

(2) an analysis or study of real estate or real property other than estimating value; and

(3) written or oral appraisals that are subject to appropriate review for compliance with the uniform standards of professional appraisal practice. The work file for an oral appraisal report shall be subject to appropriate review for compliance with the uniform standards of professional appraisal practice;

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;

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 management company" means any external third party that oversees a network or panel of certified or licensed appraisers to:

(1) recruit, select and retain appraisers;

(2) contract with appraisers to perform appraisal assignments;

(3) manage the process of having an appraisal performed; or

(4) review and verify the work of appraisers;

E. "appraisal report" means any communication, written or oral, of an appraisal regardless of title or designation and all other reports communicating an appraisal;

F. "appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work;

G. "appraisal subcommittee" means the entity within the federal financial institutions examination council that monitors the requirements established by the states for appraisers and appraisal management companies;

H. "board" means the real estate appraisers board;

I. "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;

J. "federal real estate appraisal reform amendments" means the Federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments;

K. "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;

L. "real estate" or "real property" means a 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;

M. "real estate appraiser" means any person who engages in real estate appraisal activity in expectation of compensation;

N. "real estate appraiser trainee" means a registered real estate appraiser who meets or exceeds the minimum qualification requirements of the appraiser qualifications board of the appraisal foundation for real estate appraisal trainees and as defined by board rule and who are subject to direct supervision by a supervisory appraiser;

O. "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;

P. "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;

Q. "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;



R. "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;

S. "state certified real estate appraiser" means a person who has satisfied the requirements for state licensing in New Mexico pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation for licensing of real estate appraisers;

T. "state licensed residential real estate appraiser" means a person who has satisfied the requirements for state licensing in New Mexico pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation and the New Mexico real estate appraisers board for licensing of real estate appraisers;

U. "supervisory appraiser" means a state certified real estate appraiser responsible for the direct supervision of real estate appraiser trainees who have satisfied the requirements for supervisory appraiser pursuant to the minimum criteria established by the appraiser qualifications board of the appraisal foundation; and

V. "uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

**History:** Laws 1990, ch. 75, § 3; 1992, ch. 54, § 2; 1993, ch. 269, § 1; 2003, ch. 328, § 1; 2014, ch. 33, § 1.

#### **61-30-4. Administration; enforcement. (Repealed effective July 1, 2030.)**

A. The board shall administer and enforce the Real Estate Appraisers Act.

B. It is unlawful for a person 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 appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser without a license issued by the board. A person who engages in the business or acts in the capacity of a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser has submitted to the jurisdiction of the state and to the administrative jurisdiction of the board, notwithstanding any other provisions or statutes governing all professional and occupational licenses.

**History:** Laws 1990, ch. 75, § 4; 1993, ch. 269, § 2; 2003, ch. 328, § 2; 2014, ch. 33, § 2.

## **61-30-5. Real estate appraisers board created. (Repealed effective July 1, 2030.)**

A. There is created a "real estate appraisers board" consisting of seven members appointed by the governor. The board is administratively attached to the regulation and licensing department.

B. There shall be four 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 more than two real estate appraiser members shall be from any one licensed or certified category.

C. Board members shall be appointed to five-year terms and shall serve until a successor is appointed and qualified. Real estate appraiser members may be appointed for no more than two consecutive five-year terms.

D. No more than two members shall be from any one county within New Mexico, and at least one real estate appraiser member shall be from each congressional district.

E. One member of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages or in the business of appraisal management. 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.

F. Vacancies on the board shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

G. The board is administratively attached to the regulation and licensing department, and, pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the appraisal subcommittee may monitor the board for the purposes of determining whether the board:

(1) has policies, practices, funding, staffing and procedures that are consistent with the requirements of the appraisal subcommittee and pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(2) processes complaints and completes investigations in a reasonable time period;

(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

(4) maintains an effective regulatory program; and

(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the appraisal subcommittee.

H. The appraisal subcommittee may impose sanctions against the board if it fails to have an effective appraiser regulatory program.

**History:** Laws 1990, ch. 75, § 5; 1992, ch. 54, § 3; 1993, ch. 269, § 3; 1999, ch. 283, § 1; 2003, ch. 328, § 3; 2003, ch. 408, § 32; 2011, ch. 19, § 1; 2014, ch. 33, § 3.

### **61-30-5.1. Temporary provision. (Repealed effective July 1, 2030.)**

As the terms of current members of the real estate appraisers board expire, the governor shall appoint or reappoint members in a way that provides for future terms to be staggered.

**History:** Laws 1999, ch. 283, § 8.

### **61-30-6. Repealed.**

### **61-30-7. Board; powers; duties. (Repealed effective July 1, 2030.)**

The board shall:

A. promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] to implement the provisions of the Real Estate Appraisers Act;

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 real estate appraiser trainees, state licensed residential real estate appraisers or state certified real estate appraisers;

D. receive, review and approve applications for real estate appraiser trainees, state licensed residential real estate appraisers and each category of state certified real estate appraisers;

E. define the extent and type of educational experience, appraisal experience and equivalent experience that will meet the requirements for registration, licensing and certification pursuant to the Real Estate Appraisers Act after considering generally recognized appraisal practices and set minimum requirements for education and experience;

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 and set minimum requirements;

G. adopt standards to define the education programs that will meet the requirements of the Real Estate Appraisers Act and that 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 rules explaining and interpreting the standards after considering generally recognized appraisal practices;

I. adopt a code of professional responsibility for real estate appraiser trainees, state licensed residential real estate appraisers and state certified real estate appraisers;

J. comply with annual reporting requirements and other requirements set forth in the federal real estate appraisal reform amendments;

K. collect and transmit annual registry fees from persons who perform or seek to perform appraisals in federally related transactions and from an appraisal management company that either has registered with the board or operates as a subsidiary of a federally regulated financial institution;

L. maintain a registry of the names and addresses of the persons who hold current registrations, licenses and certificates issued under the Real Estate Appraisers Act;

M. establish procedures for disciplinary action in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978] against any applicant or holder of a registration, license or certificate for violations of the Real Estate Appraisers Act and any rules adopted pursuant to provisions of that act;

N. register and supervise appraisal management companies and submit additional information about the appraisal management company to the appraisal subcommittee's national registry;

O. recognize appraiser certifications and licenses from states whose appraisal program is found to be consistent with Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as determined by the appraisal subcommittee; and

P. 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; 1999, ch. 283, § 2; 2003, ch. 328, § 4; 2014, ch. 33, § 4; 2022, ch. 39, § 99.

### **61-30-8. Board; organization; meetings. (Repealed effective July 1, 2030.)**

A. The board shall organize by electing a chair and vice chair from among its members annually. 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.

B. The board shall keep a record of its proceedings, a register of persons registered, licensed or certified as real estate appraiser trainees, state licensed residential real estate appraisers or state certified real estate appraisers, showing the name and places of business of each, and shall 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 chair. 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; 2003, ch. 328, § 5; 2014, ch. 33, § 5.

### **61-30-9. Reimbursement and expenses. (Repealed effective July 1, 2030.)**

The board may appoint such committees of the board as may be necessary. A member of the board or a 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 investigative contractors or consultants [and] any necessary supplies and equipment shall be paid from the appraiser fund.

**History:** Laws 1990, ch. 75, § 9; 1993, ch. 269, § 6; 2003, ch. 328, § 6; 2003, ch. 408, § 33.

### **61-30-10. Registration, license or certification required; exceptions. (Repealed effective July 1, 2030.)**

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 as a real estate appraiser trainee or obtaining a license or certificate from the board under the provisions of the Real Estate Appraisers Act.

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 the person;

(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 real estate appraiser trainee is only authorized to prepare appraisals of all types of real estate or real property under direct supervision of the supervisory appraiser holding a residential or general certificate; provided that 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 residential real estate appraiser.

D. The scope of practice for:

(1) a real estate appraiser trainee is appraisal of those properties that the supervisory appraiser is permitted by the supervisory appraiser's current credential and that the supervisory appraiser is qualified to appraise. All real estate appraiser trainees must comply with the competency rule of the uniform standards of professional appraisal practice;

(2) a state licensed residential real estate appraiser is appraisal of non-complex, one-to-four residential units having a transaction value of less than one million dollars (\$1,000,000) and complex one-to-four residential units having a transaction value less than two hundred fifty thousand dollars (\$250,000). "Complex one-to-four family residential property appraisal" means one in which the property to be appraised, the form of ownership or the market conditions are typical. The state licensed residential real estate appraiser must comply with the competency rule of the uniform standards of professional appraisal practice;

(3) a state certified residential real estate appraiser is appraisal of one-to-four residential units without regard to value or complexity. This classification includes the appraisal of vacant or unimproved land that is utilized for one-to-four family purposes or for which the highest and best use is for one-to-four family purposes, and the classification does not include the appraisal of subdivisions for which a development analysis or appraisal is necessary. All state certified residential real estate appraisers

must comply with the competency rule of the uniform standards of professional appraisal practice; and

(4) a state certified general real estate appraiser is appraisal of all types of property. All state certified general real estate appraisers must comply with the competency rule of the uniform standards of professional appraisal practice.

E. The requirement of registration, licensing or certification shall not apply to a qualifying or associate broker, as defined under the provisions of Chapter 61, Article 29 NMSA 1978, who gives an opinion of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging such real estate or any interest therein or for the purpose of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest. The opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination.

F. The requirement of registration, licensing or certification shall not apply to real estate 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.

G. 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 the person's state of residence to practice and is actually engaged in the practice of the profession of engineering or geology.

H. The process of analyzing, without altering, an appraisal report, except appraisal reviews as defined by the uniform standards of professional appraisal practice, that is part of a request for mortgage credit is considered a specialized service as defined in Subsection S of Section 61-30-3 NMSA 1978 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; 2003, ch. 328, § 7; 2013, ch. 111, § 1; 2014, ch. 33, § 6.

### **61-30-10.1. Qualification for real estate appraiser trainee. (Repealed effective July 1, 2030.)**

A. Registration as a real estate appraiser trainee 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 registration as a real estate appraiser trainee shall have reached the age of majority.

C. Each applicant for registration as a real estate appraiser trainee shall meet the education requirements as established for the real estate appraiser trainee classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

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; 1999, ch. 283, § 3; 2003, ch. 328, § 8; 2014, ch. 33, § 7; 2021, ch. 70, § 13.

### **61-30-11. Qualifications for license. (Repealed effective July 1, 2030.)**

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 as a state licensed residential real estate appraiser shall have reached the age of majority.

C. Each applicant for a license as a state licensed residential real estate appraiser shall have additional experience and education requirements as established for the licensed classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. The board shall require such information as it deems necessary from every applicant to determine the applicant's honesty, trustworthiness and competency.

E. Persons 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; 1999, ch. 283, § 4; 2003, ch. 328, § 9; 2014, ch. 33, § 8; 2021, ch. 70, § 14.

### **61-30-12. Qualifications for certified residential and general real estate appraisers. (Repealed effective July 1, 2030.)**

A. Certified classification 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 state certified residential or general real estate appraiser classification shall have reached the age of majority.



C. 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 additional experience and education requirements as established for the residential certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

D. Each applicant for a general certificate as a state certified real estate appraiser shall have performed actively as a real estate appraiser and have additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted 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.

**History:** Laws 1990, ch. 75, § 12; 1992, ch. 54, § 10; 1993, ch. 269, § 10; 1999, ch. 283, § 5; 2003, ch. 328, § 10; 2014, ch. 33, § 9; 2021, ch. 70, § 15.

### **61-30-13. Application for registration, license or certificate; examination. (Repealed effective July 1, 2030.)**

A. All applications for registrations, licenses or certificates shall be made to the board in writing, either in person or electronically, shall 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;

(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 a 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 real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser as set forth in the Real Estate Appraisers Act.

C. 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 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; 2003, ch. 328, § 11; 2014, ch. 33, § 10.

#### **61-30-14. Issuance and renewal of registration, licenses and certificates. (Repealed effective July 1, 2030.)**

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. The board in its discretion may renew registrations, licenses or certificates for periods of one, two or three years for the purpose of coordinating continuing education requirements with registration, license or certificate renewal requirements.

C. Each registration, license or certificate holder shall submit proof of compliance with continuing education requirements and the renewal fee.

D. Each application for renewal shall include payment of a 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.

E. The board shall certify renewal of each registration, license or certificate in the absence of any reason or condition that might warrant the refusal of the renewal of a registration, license or certificate.

F. In the event that a registration, license or certificate holder fails to properly apply for renewal of the registration, license or certificate within the thirty days immediately following the registration, license or certificate renewal date of any given year, the registration, license or certificate shall expire thirty days following the renewal date.

G. 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 not to exceed two hundred dollars (\$200), in addition to any other fee permitted under the Real Estate Appraisers Act.

H. 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 the reinstatement fee, 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.

I. 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.

J. The board may adopt additional requirements by rule for the issuance or renewal of registrations, licenses or certificates to maintain or upgrade real estate appraiser qualifications at a level no less than the recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee.

**History:** Laws 1990, ch. 75, § 14; 1992, ch. 54, § 12; 1993, ch. 269, § 12; 1999, ch. 283, § 6; 2003, ch. 328, § 12; 2014, ch. 33, § 11.

### **61-30-15. Refusal, suspension or revocation of registration, license or certificate. (Repealed effective July 1, 2030.)**

A. The board, consistent with Section 61-30-7 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, real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act, is determined by the board to have:

(1) procured or attempted to procure a registration, 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, a license or 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, a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of the 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 rules of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the real estate 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 real estate appraiser trainee, state licensed residential real estate appraiser or state 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 real estate appraiser trainee, a state licensed residential real estate appraiser or a state 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 61-30-7 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 real estate appraiser trainee, state licensed residential real estate appraiser or state 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 rules 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 real estate appraiser trainee, state licensed residential real estate appraiser or state 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]; provided that the time limitations set forth in the Uniform Licensing Act shall not apply to the processing of administrative complaints filed with the board, which shall be governed by federal statute, regulation or policy. 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; 2003, ch. 328, § 13; 2011, ch. 77, § 1; 2014, ch. 33, § 12.

### **61-30-15.1. Criminal history background checks. (Repealed effective July 1, 2030.)**

A. The board may adopt rules that provide for criminal history background checks for all registrants, certified licensees and licensees to include:

(1) requiring criminal history background checks of applicants for registration, certified licensure or licensure pursuant to the Real Estate Appraisers Act;

(2) requiring applicants for registration, or certified licensure or licensure to be fingerprinted only upon initial licensure or registration;

(3) providing for an applicant who has been denied registration or certified licensure or licensure to inspect or challenge the validity of the criminal history background check record;

(4) establishing a fingerprint and criminal history background check fee not to exceed fees as determined by the department of public safety to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history background check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

**History:** Laws 2014, ch. 33, § 20; 2019, ch. 209, § 8.

### **61-30-16. Standards of professional appraisal practice; certificate of good standing. (Repealed effective July 1, 2030.)**

A. Each real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser shall comply with the generally accepted standards of professional appraisal practice and the generally accepted ethical rules to be observed by a real estate appraiser. The generally accepted standards of professional appraisal practice and professional ethics are currently evidenced by the uniform standards of professional appraisal practice. Real estate appraisals shall be written or oral appraisals and subject to appropriate review for compliance with the uniform standards of professional appraisal practice. The work file for an oral appraisal report shall be subject to appropriate review for compliance with the uniform standards of professional appraisal practice.

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; 2003, ch. 328, § 14; 2014, ch. 33, § 13.

### **61-30-17. Fees. (Repealed effective July 1, 2030.)**

A. Except as provided in Section 61-1-34 NMSA 1978, the board shall charge and collect the following fees not to exceed:

- (1) an application fee for real estate appraiser trainee registration, two hundred dollars (\$200);
- (2) an application fee for a license or residential certification, four hundred dollars (\$400);
- (3) an application fee for general certification, five hundred dollars (\$500);
- (4) an examination fee for general and residential certification or license, two hundred dollars (\$200);
- (5) a registration renewal fee for a real estate appraiser trainee, two hundred fifty dollars (\$250);
- (6) a certificate renewal fee for residential certification, or license renewal, four hundred fifty dollars (\$450);
- (7) a certificate renewal fee for general certification, five hundred dollars (\$500);
- (8) the registry fee as required by the federal real estate appraisal reform amendments;
- (9) for registration for temporary practice, two hundred dollars (\$200), and an additional extension fee may be applied;
- (10) 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, fifty dollars (\$50.00); and
- (11) fees to cover reasonable and necessary administrative expenses.

B. The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of the Appraisal Management Company Registration Act [Chapter 47, Article 14 NMSA 1978], but in no case shall the fee be more than two thousand dollars (\$2,000). Registration fees shall be credited to the appraiser fund pursuant to Section 61-30-18 NMSA 1978.

**History:** Laws 1990, ch. 75, § 17; 1992, ch. 54, § 15; 1993, ch. 269, § 15; 1999, ch. 283, § 7; 2003, ch. 328, § 15; 2014, ch. 33, § 14; 2020, ch. 6, § 57.

**61-30-18. Appraiser fund created; disposition; method of payment.  
(Repealed effective July 1, 2030.)**

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

and the Appraisal Management Company Registration Act [Chapter 47, Article 14 NMSA 1978] 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 and the Appraisal Management Company Registration Act, in carrying out the duties imposed by the Real Estate Appraisers Act and the Appraisal Management Company Registration 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.

C. 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 and the Appraisal Management Company Registration Act. Money in the fund shall be used by the board to support efforts to comply with the rules of the appraisal subcommittee, including the complaint process, complaint investigations and appraiser enforcement activities.

**History:** Laws 1990, ch. 75, § 18; 1993, ch. 269, § 16; 2009, ch. 214, § 24; 2014, ch. 33, § 15.

### **61-30-19. Continuing education. (Repealed effective July 1, 2030.)**

A. The board shall adopt rules providing for continuing education programs that offer courses in real property appraisal, practices and techniques, including basic real estate law and practice. The rules shall require that every real estate appraiser trainee, state licensed residential real estate appraiser or state certified real estate appraiser, as a condition to renewal, shall successfully complete the continuing education requirements approved by the board.

B. The rules 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 continuing education be devoted to courses in the area of the real estate appraiser trainee's, state licensed residential real estate appraiser's or state certified real estate appraiser's specialty or expertise. The rules shall also permit real estate appraiser trainees, state licensed residential real estate appraisers or state 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; 2003, ch. 328, § 16; 2014, ch. 33, § 16.



## **61-30-20. Nonresident applicants; reciprocity. (Repealed effective July 1, 2030.)**

A. Pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the board shall issue a registration, license or certificate to a nonresident if the applicant's home state complies with Title 11 as determined by the appraisal subcommittee.

B. The registration, license or certificate shall be issued upon payment of the application fee, verification that the applicant has complied with the applicant's 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.

C. The applicant shall file an irrevocable consent that suits and actions may be commenced against the applicant in the proper court of any county of this state in which a cause of action may arise from the applicant's actions as a real estate appraiser trainee, state licensed residential real estate appraiser or state 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 real estate appraiser trainee, state licensed residential real estate appraiser or state 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; 2003, ch. 328, § 17; 2014, ch. 33, § 17.

## **61-30-21. Temporary practice. (Repealed effective July 1, 2030.)**

A. Pursuant to Title 11 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act, 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, with no more than one extension allowed; 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 the

applicant in the proper court of any county of this state in which a cause of action may arise from the applicant's actions as a real estate appraiser trainee, a state licensed residential real estate appraiser or a state 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. If a 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 real estate appraiser trainee, state licensed residential real estate appraiser or state 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; 2003, ch. 328, § 18; 2014, ch. 33, § 18.

### **61-30-22. Civil and criminal penalties; injunctive relief. (Repealed effective July 1, 2030.)**

A. Any person who violates any provision of the Real Estate Appraisers Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) 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.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Real Estate Appraisers Act and assess administrative costs for any investigation and administrative or other proceedings against a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty not to exceed two thousand dollars (\$2,000) against any person who is found, through an administrative proceeding, to have acted without a license. Appeals from decisions of the board shall be taken as provided in Section 39-3-1.1 NMSA 1978.

**History:** Laws 1990, ch. 75, § 22; 1993, ch. 269, § 20; 2003, ch. 328, § 19; 2014, ch. 33, § 19; 2017, ch. 52, § 14.

### **61-30-23. Repealed.**

## **61-30-24. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The real estate appraisers board is terminated effective July 1, 2029. The Real Estate Appraisers Act shall continue in effect until July 1, 2030. Chapter 61, Article 30 NMSA 1978 is repealed effective July 1, 2030.

**History:** 1978 Comp., § 61-30-24, enacted by Laws 1993, ch. 269, § 21; 2000, ch. 4, § 18; 2005, ch. 208, § 22; 2011, ch. 30, § 9; 2017, ch. 52, § 15; 2023, ch. 15, § 6.

## **ARTICLE 31 Social Work Practice**

### **61-31-1. Short title. (Repealed effective July 1, 2032.)**

Chapter 61, Article 31 NMSA 1978 may be cited as the "Social Work Practice Act".

**History:** Laws 1989, ch. 51, § 1; 2006, ch. 4, § 1.

### **61-31-2. Repealed.**

**History:** Laws 1989, ch. 51, § 2; repealed by Laws 2019, ch.143, 16.

### **61-31-3. Definitions. (Repealed effective July 1, 2032.)**

As used in the Social Work Practice Act:

A. "advisory committee" means an evaluation advisory committee;

B. "appropriate supervision" means supervision by a licensed clinical social worker or licensed independent social worker with two years of supervised social work practice experience or other supervision that is deemed by the board to be equivalent to supervision by a licensed clinical social worker or licensed independent social worker;

C. "board" means the board of social work examiners;

D. "client" means an individual, couple, family, group, organization or community that seeks or receives social work services from an individual social worker or an organization;

E. "consultation" means a problem-solving process in which expertise is offered to an individual, group organization or community;

F. "continuing education" means approved education and training that are oriented to maintain, improve or enhance social work practice;

G. "department" means the regulation and licensing department;

H. "executive agency" means any agency within the executive branch of government;

I. "licensed bachelor of social work" means a person who engages in the practice of social work under appropriate supervision and meets the qualification of a licensed bachelor of social work pursuant to the Social Work Practice Act;

J. "licensed clinical social worker" means a person who is licensed in the state to engage in clinical social work practice and meets the qualifications for a licensed clinical social worker pursuant to the Social Work Practice Act;

K. "licensed independent social worker" means a person who is licensed in the state to engage in social work practice other than clinical social work and meets the qualifications for a licensed independent social worker pursuant to the Social Work Practice Act;

L. "licensed master of social work" means a person who engages in the practice of social work under appropriate supervision and meets the qualification of a licensed master of social work pursuant to the Social Work Practice Act;

M. "professional code of ethics" means a code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers;

N. "recognized association" means a nonprofit national association of educational and professional institutions, social welfare agencies and private citizens recognized as an accrediting agency for social work education in the United States by a self-regulating organization of degree-granting colleges and universities;

O. "supervision" means an interactional professional relationship between a social worker and a supervisor who:

(1) provides evaluation of and direction to a licensed bachelor of social work or a licensed master of social work; and

(2) promotes continued development of a licensed bachelor of social work's or a licensed master of social work's knowledge, skill and ability to practice social work; and

P. "supervisor" means an individual who provides appropriate supervision.

**History:** Laws 1989, ch. 51, § 3; 2006, ch. 4 § 2; 2019, ch. 143, § 1.

#### **61-31-4. License required. (Repealed effective July 1, 2032.)**

A. Effective January 1, 1990, unless licensed to practice social work under the Social Work Practice Act, no person shall:

(1) practice as an independent social worker, clinical social worker, master of social work or bachelor of social work as defined in the Social Work Practice Act; or

(2) use the title or make any representation as being a licensed social worker of any type or level 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, an individual who is employed in an executive agency on or after July 1, 1989 under the title of social worker or other title that 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 an 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; 2019, ch. 143, § 2.

#### **61-31-4.1. Licensed independent social worker; licensure; qualifications. (Repealed effective July 1, 2032.)**

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed independent social worker to an individual who:

A. is at least eighteen years of age;

B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;

C. completed post-graduate social work hours and experience as an employee or independent worker under appropriate supervision;

D. is trained in New Mexico cultures;

E. passed a jurisprudence examination; and

F. passed an examination approved by the board, including an advanced generalist examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

**History:** Laws 2019, ch. 143, § 11.

**61-31-4.2. Licensed clinical social worker; licensure; qualifications.  
(Repealed effective July 1, 2032.)**

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed clinical social worker to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;
- C. completed post-graduate social work hours and experience as an employee or independent worker under appropriate supervision;
- D. is trained in New Mexico cultures;
- E. passed a jurisprudence examination; and
- F. passed an examination approved by the board, including a clinical examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

**History:** Laws 2019, ch. 143, § 12.

**61-31-4.3. Licensed master of social work; licensure; qualifications.  
(Repealed effective July 1, 2032.)**

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed master of social work to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a master's degree in social work from a graduate program of social work accredited by a recognized association;
- C. is trained in New Mexico cultures;
- D. passed a jurisprudence examination; and

E. passed an examination approved by the board, including a master's examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

**History:** Laws 2019, ch. 143, § 13.

#### **61-31-4.4. Licensed bachelor of social work; licensure; qualifications. (Repealed effective July 1, 2032.)**

After receipt of an application, requisite fees and documentation in accordance with board rules, the board shall issue in a timely manner a license to practice as a licensed bachelor of social work to an individual who:

- A. is at least eighteen years of age;
- B. possesses at least a bachelor's degree in social work from a graduate program of social work accredited by a recognized association;
- C. is trained in New Mexico cultures;
- D. passed a jurisprudence examination; and
- E. passed an examination approved by the board, including a bachelor's examination administered by a nonprofit association composed of and owned by social work regulatory boards and colleges in all states.

**History:** Laws 2019, ch. 143, § 14.

#### **61-31-4.5. Appropriate supervision; guidelines. (Repealed effective July 1, 2032.)**

An individual providing appropriate supervision as defined in Section 61-31-3 NMSA 1978 shall conform to supervision guidelines that the board establishes by rule.

**History:** Laws 2019, ch. 143, § 15.

#### **61-31-5. Use of title; other professions. (Repealed effective July 1, 2032.)**

A. Except as otherwise provided in the Social Work Practice Act, it is unlawful for an individual not licensed as a social worker to:

- (1) engage in the practice of social work;

(2) hold the individual out as a social worker or claim to be a social worker or use the title of social worker; or

(3) use any abbreviation or title that implies or would lead the public to believe that the individual is a social worker or is licensed to practice social work.

B. Nothing in the Social Work Practice Act 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 that they do not represent themselves as licensed social workers.

**History:** Laws 1989, ch. 51, § 5; 2019, ch. 143, § 3.

### **61-31-6. Scope of practice. (Repealed effective July 1, 2032.)**

A. For the purposes of the Social Work Practice Act, 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 that 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) university social work faculty, 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; 1996, ch. 51, § 14.

### **61-31-7. Board created. (Repealed effective July 1, 2032.)**

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 seven members who are representative of the geographic and ethnic groups within New Mexico, who have been New Mexico residents prior to their appointment and maintain New Mexico residency during their appointment. Of the seven members:

(1) four members shall have been engaged in social work practice for at least five years; at least two of the four shall hold a master's degree in social work; and at least two shall hold a bachelor's degree in social work from schools of social work that are accredited by the council on social work education. At least one of these members 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 at least one member shall be engaged primarily in community organization, planning and development. These members may join professional organizations and associations organized exclusively to promote the improvement of the practice of social work for the protection of the health

and welfare of the public or whose activities assist and facilitate the work of the board;  
and

(2) three 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. Each member shall hold office until a 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 or from a pool of resumes submitted to the governor by individuals applying for membership.

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 chair 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 chair upon the written request of a quorum of the board. The board may permit electronic participation in board meetings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and board rules.

J. The governor may remove any member from the board for:

- (1) the neglect of any duty required by law;
- (2) incompetence;
- (3) improper or unprofessional conduct as defined by board rule;
- (4) violation of the current professional code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers; or
- (5) any reason that would justify the suspension or revocation of that member's license to practice social work.

K. A board member shall not 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 rules.

L. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor and the board of the vacancy and the reason for its occurrence to expedite the appointment of a new board member within a six-month period.

**History:** Laws 1989, ch. 51, § 7; 1996, ch. 51, § 15; 2006, ch. 4, § 3; 2019, ch. 143, § 4; 2021, ch. 93, § 16.

### **61-31-8. Board's authority. (Repealed effective July 1, 2032.)**

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 [Chapter 14, Article 4 NMSA 1978], rules necessary to carry out the provisions of the Social Work Practice Act, 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, examinations for licensure;

C. adopt a current professional code of ethics or professional standards promulgated by a national organization of social work professionals that provides guidance, research, advocacy and other services to social workers;

D. appoint advisory committees pursuant to Section 61-31-19 NMSA 1978;

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. request that an individual who is violating the Social Work Practice Act:

(1) voluntarily stop violating the Social Work Practice Act; and

(2) meet with the board. If the board's requests to an individual pursuant to this subsection are unsuccessful or in a situation that the board deems to be an

emergency, the board may apply for an injunction in district court to enjoin any person from committing any act prohibited by the Social Work Practice Act;

I. develop criteria to approve appropriate supervision for a person seeking licensure as a licensed independent social worker or a licensed clinical social worker based upon the prospective supervisor's:

- (1) education;
- (2) experience; and
- (3) level of training;

J. issue provisional licenses, temporary licenses and licenses based on credentials to persons meeting the requirements set forth in the Social Work Practice Act;

K. determine qualifications for licensure, including the requirement to demonstrate an awareness and knowledge of New Mexico cultures;

L. 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;

M. keep a record and provide notice of all proceedings in accordance with the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] and shall make an annual report to the governor; and

N. determine the appropriate application of technology to social work practice, including video teleconferencing, for appropriate supervision and client contact.

**History:** Laws 1989, ch. 51, § 8; 2003, ch. 408, § 34; 2006, ch. 4, § 4; 2019, ch. 143, § 5.

### **61-31-9. Repealed.**

**History:** Laws 1989, ch. 51, § 9; 2006, ch. 4, § 5; repealed by Laws 2019, ch. 143, § 16.

### **61-31-10. Examination. (Repealed effective July 1, 2032.)**

The date and location of the social work licensure 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; 2019, ch. 143, § 6.

### **61-31-11. Provisional licensure. (Repealed effective July 1, 2032.)**

Prior to examination, an applicant for licensure who holds a bachelor's degree or master's degree in social work may obtain a provisional license to engage in social work practice as long as the applicant meets all the requirements, except examination, pursuant to the Social Work Practice Act for the level of license sought. The provisional license is valid for a period not to exceed one year, unless a federal or state public health emergency is declared pursuant to the Public Health Emergency Response Act [Chapter 12, Article 10A NMSA 1978] and directly impacts the applicant; in which case, an applicant's provisional license shall be automatically extended for the duration of the public health emergency and for an additional six months, beginning on the day that the public health emergency ends.

**History:** Laws 1989, ch. 51, § 11; 2007, ch. 191, § 1; 2019, ch. 143, § 7; 2021, ch. 93, § 17.

### **61-31-12. Repealed.**

**History:** Laws 1989, ch. 51, § 12; 1991, ch. 222, § 2; repealed by Laws 2019, ch. 143, § 16.

### **61-31-13. Expedited licensure. (Repealed effective July 1, 2032.)**

A. Upon application of an out-of-state licensed social worker, the board shall license a qualified applicant for the licensure level sought as provided in Section 61-1-31.1 NMSA 1978.

B. The board shall process the application as soon as practicable but no later than thirty days after the out-of-state social worker submits a complete application for expedited licensure accompanied by any required fee.

C. If the board issues an expedited license to a person whose prior licensing jurisdiction did not require examination, the board may require the person to pass an examination before applying for license renewal.

D. The board by rule shall determine those states and territories of the United States and the District of Columbia from which it will not accept an applicant for expedited licensure and shall determine any foreign countries from which it will accept an applicant for expedited licensure. The board shall post the lists of disapproved and approved licensing jurisdictions on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed annually to determine if amendments to the rule are warranted.

**History:** Laws 1989, ch. 51, § 13; 2006, ch. 4, § 6; 2021, ch. 93, § 18; 2023, ch. 190, § 51.

### **61-31-13.1. Repealed.**

**History:** Laws 2006, ch. 4, § 8; repealed by Laws 2019, ch. 143, § 16.

### **61-31-14. License renewal. (Repealed effective July 1, 2032.)**

A. Each licensee shall renew the licensee's license biennially 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. The board may establish a method to provide for staggered biennial terms of licensure. The board may authorize license renewal for one year to establish the renewal cycle.

B. A thirty-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 prescribed by the board.

C. Any licensee who allows the licensee's license to lapse for longer than three months shall have the license automatically revoked and may be required to take an examination.

D. A late penalty fee shall be assessed after the thirty-day grace period has expired for anyone attempting to renew a license to practice social work.

**History:** Laws 1989, ch. 51, § 14; 1996, ch. 51, § 16; 2006, ch. 4, § 7; 2019, ch. 143, § 8.

### **61-31-15. License fees. (Repealed effective July 1, 2032.)**

Except as provided in Section 61-1-34 NMSA 1978, applicants for licensure shall pay fees set by the board, not to exceed:

A. for examination for any level of licensure other than initial licensure, two hundred dollars (\$200);

B. for initial licensure following an examination as a licensed bachelor of social work, two hundred dollars (\$200);

C. for initial licensure following an examination as a licensed master of social work, three hundred dollars (\$300);

D. for initial licensure following an examination as a licensed independent social worker, three hundred dollars (\$300);

E. for licensure by credentials at any level, three hundred dollars (\$300);

F. for licensure without examination, including a provisional license, as a licensed bachelor of social work, one hundred fifty dollars (\$150);

G. for licensure without examination, including a provisional license, as a licensed master of social work, two hundred fifty dollars (\$250);

H. for licensure without examination, including a provisional license, as a licensed independent social worker, three hundred dollars (\$300);

I. for renewal of a license as a licensed bachelor of social work, one hundred dollars (\$100);

J. for renewal of a license as a licensed master of social work, two hundred dollars (\$200);

K. for renewal of a license as a licensed 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; 2019, ch. 143, § 9; 2020, ch. 6, § 58.

### **61-31-16. Fund established. (Repealed effective July 1, 2032.)**

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 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.

### **61-31-17. License denial, suspension or revocation. (Repealed effective July 1, 2032.)**

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, 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;
- (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; or
- (10) uses conversion therapy on a minor.

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 the copy.

C. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or



(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

**History:** Laws 1989, ch. 51, § 17; 2017, ch. 132, § 7.

### **61-31-18. Impaired social workers. (Repealed effective July 1, 2032.)**

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 [Chapter 30, Article 31 NMSA 1978], or alcohol.

**History:** Laws 1989, ch. 51, § 18.

### **61-31-19. Impaired social workers' program. (Repealed effective July 1, 2032.)**

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.

### **61-31-20. Provision for hearing. (Repealed effective July 1, 2032.)**

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.

### **61-31-21. Criminal offender's character evaluation. (Repealed effective July 1, 2032.)**

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.

**History:** Laws 1989, ch. 51, § 21.

### **61-31-22. Penalties. (Repealed effective July 1, 2032.)**

Any person who violates any provision of the Social Work Practice Act is guilty of a misdemeanor.

**History:** Laws 1989, ch. 51, § 22.

### **61-31-23. Repealed.**

**History:** Laws 1989, ch. 51, § 23; repealed by Laws 2019, ch. 143, § 16.

### **61-31-24. Privileged communications. (Repealed effective July 1, 2032.)**

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 27-7-31 NMSA 1978].

**History:** Laws 1989, ch. 51, § 24.

### **61-31-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2032.)**

The board of social work examiners is terminated on July 1, 2031 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 until July 1, 2032. Effective July 1, 2032, the Social Work Practice Act is repealed.

**History:** Laws 1989, ch. 51, § 27; 1996, ch. 51, § 17; 1997, ch. 46, § 19; 2005, ch. 208, § 23; 2015, ch. 119, § 17; 2019, ch. 143, § 10.

## **ARTICLE 32**

### **Funeral Services**

### **61-32-1. Short title. (Repealed effective July 1, 2030.)**

Chapter 61, Article 32 NMSA 1978 may be cited as the "Funeral Services Act".

**History:** 1978 Comp., § 61-32-1, enacted by Laws 1993, ch. 204, § 1; 1999, ch. 284, § 1; 2012, ch. 48, § 3.

### **61-32-2. Purpose. (Repealed effective July 1, 2030.)**

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 funeral services is to protect the public.

**History:** 1978 Comp., § 61-32-2, enacted by Laws 1993, ch. 204, § 2; 2012, ch. 48, § 4.

### **61-32-3. Definitions. (Repealed effective July 1, 2030.)**

As used in the Funeral Services Act:

- A. "board" means the board of funeral services;
- B. "committal service" means a service at a place of interment or entombment that follows a funeral conducted at another location;
- C. "cremains" means cremated remains;
- D. "cremation" means the reduction of a dead human body by direct flame to a residue that includes bone fragments;
- E. "crematory" means every place or premises that is devoted to or used for cremation and pulverization of the cremains;
- F. "crematory authority" means the individual who is ultimately responsible for the operation of a crematory;
- G. "department" means the regulation and licensing department;
- H. "direct disposer" means a person licensed to engage solely in providing direct disposition at a direct disposition establishment, licensed pursuant to the Funeral Services Act, as provided in that act;
- I. "direct disposition" means only the disposition of a dead human body as quickly as possible, without a direct disposer performing or arranging 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;

J. "direct supervision" means that the supervising funeral service practitioner is physically present with and in direct control of the person being trained;

K. "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;

L. "embalmer" means a person licensed to engage in embalming and preparing a dead human body for funeral service at a funeral establishment that is licensed pursuant to the Funeral Services Act;

M. "embalming" means the disinfection, preservation and restoration, when possible, of a dead human body by a licensed funeral service practitioner, licensed embalmer or a licensed funeral service intern under the supervision of a licensed funeral service practitioner;

N. "ennichement" means interment of cremains in a niche in a columbarium, whether in an urn or not;

O. "entombment" means interment of a casketed body or cremains in a crypt in a mausoleum;

P. "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;

Q. "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;

R. "funeral arranger" means a person licensed to engage in arrangements and directing of funeral services at a funeral establishment that is licensed pursuant to the Funeral Services Act;

S. "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 or cremains are directly placed, and excluding mausoleum crypts, interment enclosures preset in a cemetery and columbarium niches;

T. "funeral service intern" means a person licensed to be in training for the practice of funeral service under the supervision and instruction of a funeral service practitioner at a funeral establishment or commercial establishment, licensed pursuant to the Funeral Services Act;

U. "funeral service practitioner" means a person licensed to engage in the practice of funeral service at a funeral establishment or commercial establishment that is licensed pursuant to the Funeral Services Act;

V. "funeral services" means those immediate post-death activities related to a dead human body and its care and disposition, whether with or without rites or ceremonies; but "funeral services" does not include disposition of the body by a school of medicine following medical study;

W. "general supervision" means that the supervising funeral service practitioner is not necessarily physically present in the establishment with the person being trained but is available for advice and assistance;

X. "graveside service" means a funeral held at the graveside only, excluding a committal service that follows a funeral conducted at another location;

Y. "jurisprudence examination" means an examination prescribed by the board on the statutes, rules and regulations pertaining to the practice of funeral service or direct disposition, including the Funeral Services Act, the rules of the board, state health regulations governing human remains and the Vital Statistics Act [Chapter 24, Article 14 NMSA 1978];

Z. "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;

AA. "make arrangements" means advising or counseling about specific details for a funeral, graveside service, committal service, memorial service, disposition or direct disposition;

BB. "memorial service" means a gathering of persons for recognition of a death without the presence of the body of the deceased;

CC. "practice of funeral service" means those activities allowed under the Funeral Services Act by a funeral service practitioner, funeral arranger, embalmer or funeral service intern; and

DD. "pulverization" means the process that reduces cremains to a granular substance.

**History:** 1978 Comp., § 61-32-3, enacted by Laws 1993, ch. 204, § 3; 1995, ch. 158, § 1; 1999, ch. 284, § 2; 2012, ch. 48, § 5; 2019, ch. 164, § 1.

#### **61-32-4. License required. (Repealed effective July 1, 2030.)**

A. Unless licensed to practice under the Funeral Services Act, a person shall not:

(1) practice as a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer;

(2) use the title or make any representation as being a funeral service practitioner, funeral arranger, embalmer, 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, funeral arranger, embalmer, funeral service intern or direct disposer; or

(3) maintain, manage or operate a funeral establishment, a commercial establishment, a direct disposition establishment or a crematory.

B. A person who engages in the practice or acts in the capacity of a funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer in this state, with or without a New Mexico license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

C. A person who maintains, manages or operates a funeral establishment, commercial establishment, direct disposition establishment or crematory in this state, with or without a New Mexico establishment or crematory license, is subject to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of a provision of the Funeral Services Act.

**History:** 1978 Comp., § 61-32-4, enacted by Laws 1993, ch. 204, § 4; 2003, ch. 420, § 1; 2012, ch. 48, § 6; 2019, ch. 164, § 2.

#### **61-32-5. Board created. (Repealed effective July 1, 2030.)**

A. There is created the "board of funeral services".

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 this 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 from the office of the state medical investigator who has been licensed in this state for at least five years.

D. Members of the board shall be appointed by the governor for terms of four years. Each member shall hold office until the member's successor is duly qualified and appointed. Vacancies shall be filled for an unexpired term in the same manner as original appointments.

E. Members of the board shall be reimbursed 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.

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. The board shall recommend removal of any board member who has three unexcused absences from properly noticed meetings within a twelve-month period and may recommend removal of a board member for any other just cause.

I. The board shall elect a chair and other officers as deemed necessary to administer its duties.

**History:** 1978 Comp., § 61-32-5, enacted by Laws 1993, ch. 204, § 5; 1999, ch. 284, § 3; 2012, ch. 48, § 7.

### **61-32-6. Board powers. (Repealed effective July 1, 2030.)**

A. In addition to any other authority provided by law, the board has the power to:

(1) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] that are necessary to carry out the provisions of the Funeral Services Act;

(2) promulgate rules implementing continuing education requirements;

(3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978];

(4) except as provided in Section 61-1-34 NMSA 1978, establish reasonable fees to carry out the provisions of the Funeral Services Act;

(5) provide for investigations necessary to determine violations of the Funeral Services Act;

(6) establish committees as the board deems necessary for carrying out the provisions of the Funeral Services Act;

(7) apply for injunctive relief to enforce the provisions of the Funeral Services Act or to restrain any violation of that act; and

(8) conduct criminal background checks on applicants for licensure.

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 Funeral Services 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; 1999, ch. 284, § 4; 2012, ch. 48, § 8; 2017, ch. 52, § 16; 2021, ch. 92, § 16; 2022, ch. 39, § 100.

### **61-32-7. Board duties. (Repealed effective July 1, 2030.)**

The board shall:

A. administer the provisions of the Funeral Services Act;

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; 2012, ch. 48, § 9.

### **61-32-8. Inspection; access; counsel. (Repealed effective July 1, 2030.)**

A. Inspection of establishments and crematories, including all records, financial or otherwise, is authorized during regular business hours. Acceptance of a license shall include permission for the board or its designee to enter the premises without legal process.

B. An establishment or crematory shall maintain business records required by law or rule at the establishment or crematory.

C. The board shall be represented by the attorney general. The board may employ special counsel, upon approval of the attorney general, to review and prosecute cases

of consumer complaints against any person, establishment or crematory licensed pursuant to the Funeral Services Act. Payment for the services shall be by the board.

**History:** 1978 Comp., § 61-32-8, enacted by Laws 1993, ch. 204, § 8; 1999, ch. 284, § 5; 2003, ch. 420, § 2; 2012, ch. 48, § 10.

**61-32-9. Requirements for licensure; funeral service practitioner; funeral arranger; embalmer; funeral service intern; direct disposer; conversion of certain licenses; temporary licenses. (Repealed effective July 1, 2030.)**

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 the person:

- (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, making of at least fifty funeral arrangements and the directing of at least fifty funerals;
- (3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;
- (4) has successfully completed both the arts and science sections of the national board examination administered by the international conference of funeral service examining boards;
- (5) has not been convicted of unprofessional conduct or incompetency; and
- (6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

B. A license to practice as a funeral arranger shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

- (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 making of at least fifty funeral arrangements and the directing of at least fifty funerals;

(3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;

(4) has successfully completed the arts section of the national board examination administered by the international conference of funeral service examining boards;

(5) has not been convicted of unprofessional conduct or incompetency; and

(6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

C. A license to practice as an embalmer shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence that the person:

(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;

(3) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules;

(4) has successfully completed the science section of the national board examination administered by the international conference of funeral service examining boards;

(5) has not been convicted of unprofessional conduct or incompetency; and

(6) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education recognized by the United States government.

D. 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 the person:

- (1) is at least eighteen years of age;
- (2) has graduated from high school or the equivalent;
- (3) has submitted proof of employment and supervision as required by board rules. Except as may be allowed by board rule, a license as a funeral service intern is issued only for a specific funeral establishment or an establishment that is part of a multi-establishment enterprise;
- (4) has successfully completed an examination, including a jurisprudence examination, prescribed by board rules; and
- (5) has not been convicted of unprofessional conduct or incompetency.

E. 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 the person:

- (1) is at least eighteen years of age;
- (2) has obtained an associate's degree in funeral science requiring the completion of at least sixty semester hours from an institution whose funeral program is accredited by the American board of funeral service education or any other successor institution offering funeral service education and recognized by the United States government;
- (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.

F. On and after July 1, 2012, the board shall not issue a new license that was formerly designated an "assistant funeral services practitioner" or "associate funeral services practitioner" license under a version of the Funeral Services Act in effect on June 30, 2012. A person holding one of these licenses that is valid as of June 30, 2012 shall be considered as holding a valid, renewable funeral services intern license subject to the general supervision of a licensed funeral services practitioner pursuant to the Funeral Services Act.

G. The board may adopt by rule requirements for issuing a temporary license that will be valid until the next scheduled board meeting.

**History:** 1978 Comp., § 61-32-9, enacted by Laws 1993, ch. 204, § 9; 1999, ch. 284, § 6; 2003, ch. 420, § 3; 2012, ch. 48, § 11; 2019, ch. 164, § 3.

**61-32-10. Licensure by credentials. (Repealed effective July 1, 2030.)**

After successful completion of a jurisprudence examination, the board may license an applicant as a funeral service practitioner, funeral arranger or embalmer; 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 presents proof that the applicant is currently licensed in good standing in a jurisdiction that has standards for licensure that are at least equal to those for licensure in New Mexico as required by the Funeral Services Act.

**History:** 1978 Comp., § 61-32-10, enacted by Laws 1993, ch. 204, § 10; 1999, ch. 284, § 7; 2003, ch. 420, § 4; 2019, ch. 164, 4.

**61-32-11. Licensure of establishments; funeral establishments; commercial establishments; direct disposition establishments; crematories. (Repealed effective July 1, 2030.)**

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 necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition or transportation; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

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 comply with the following minimum requirements:

(a) a preparation room shall be present with the necessary drainage and ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial or other disposition and transportation; and

(b) an office shall be present for conducting business; and

(3) a license shall not be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

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 allowed for a direct disposer and shall comply with the following minimum requirements:

(a) a room shall be present with necessary drainage and ventilation for housing a refrigeration unit;

(b) a refrigeration unit, thermodynamically controlled with a minimum storage area of twelve and one-half cubic feet per body, shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation;

(c) an office shall be present for conducting business;

(d) necessary supplies for safely handling unembalmed dead human bodies;  
and

(e) if funeral merchandise is made available, a display room shall be present for displaying caskets and other funeral merchandise; and

(3) no license shall be issued or renewed by the board unless the establishment is in compliance with the Funeral Services Act and board rules.

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, primarily devoted to the practice allowed for a crematory and shall comply with the following minimum requirements:

(a) a room shall be present with necessary ventilation for housing a cremation retort;

(b) a cremation retort shall be present for cremating dead human bodies; and

(c) a unit to pulverize cremated dead human bodies shall be present; and

(3) no license shall be issued or renewed by the board unless the crematory is in compliance with the Funeral Services Act and board rules.

E. The board may adopt by rule additional requirements in the interest of public health, safety and welfare.

**History:** 1978 Comp., § 61-32-11, enacted by Laws 1993, ch. 204, § 11; 1999, ch. 284, § 8; 2003, ch. 420, § 5; 2012, ch. 48, § 12.

### **61-32-12. License; display of license. (Repealed effective July 1, 2030.)**

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.

### **61-32-13. Establishments; requirements; temporary licenses. (Repealed effective July 1, 2030.)**

A. Each establishment shall have a full-time funeral service practitioner; provided 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. Whenever an establishment no longer employs or otherwise has a full-time licensee in charge, the establishment shall immediately cease the practice of



funeral service or direct disposition and the person to whom the establishment license is granted shall immediately return the establishment license to the board by certified mail, return receipt requested, or by another delivery service that provides a means of tracking an item in its delivery system.

B. The board may adopt by rule special requirements for multi-establishment enterprises where the establishments are located within fifty miles of each other and wish to share a licensee in charge.

C. The board may adopt by rule the requirements for reapplication or reinspection.

D. The board may adopt by rule requirements for issuing a temporary establishment or crematory license that will be valid until the next scheduled board meeting.

**History:** 1978 Comp., § 61-32-13, enacted by Laws 1993, ch. 204, § 13; 1999, ch. 284, § 9; 2012, ch. 48, § 13.

#### **61-32-14. Funeral service intern; scope of practice; limitations. (Repealed effective July 1, 2030.)**

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 a funeral service intern:

(1) 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) 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) 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) 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 shall 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. The board may adopt rules specifying the maximum number of persons that may be supervised by a funeral service practitioner.

E. 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.

F. 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; 1999, ch. 284, § 10.

### **61-32-14.1. Repealed.**

### **61-32-15. Repealed.**

**History:** 1978 Comp., § 61-32-15, enacted by Laws 1993, ch. 204, § 15; repealed by Laws 2012, ch. 48, § 26.

### **61-32-16. Repealed.**

**History:** 1978 Comp., § 61-32-16, enacted by Laws 1993, ch. 204, § 16; repealed by Laws 2012, ch. 48, § 26.

### **61-32-17. Direct disposer; scope of practice; limitations. (Repealed effective July 1, 2030.)**

A. Except as otherwise provided in the Funeral Services Act, a direct disposer may transport and dispose of a dead human body and participate in any rites or ceremonies after final disposition of the body.

B. Prior to interment, entombment or other final disposition of the body, a direct disposer shall not:

- (1) participate in any rites or ceremonies in connection with the final disposition of the body;
- (2) provide facilities for any such rites or ceremonies; and
- (3) have the body embalmed unless embalming is required by the place of disposition.

**History:** 1978 Comp., § 61-32-17, enacted by Laws 1993, ch. 204, § 17; 1995, ch. 158, § 2; 1999, ch. 284, § 11; 2012, ch. 48, § 14.

### **61-32-17.1. Repealed.**

### **61-32-18. Commercial establishments; scope of practice; limitations. (Repealed effective July 1, 2030.)**

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 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 act 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; 2003, ch. 420, § 6.

**61-32-19. Cremation; requirements; right to authorize cremation; disposition of cremains. (Repealed effective July 1, 2030.)**

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. An adult person may authorize the person's own cremation and the lawful disposition of the person's cremains by:

(1) stating the person's desire to be cremated in a written statement that is signed by the person and notarized or witnessed by two other persons; or

(2) including an express statement in the person's will indicating that the testator desired that the testator's remains be cremated upon the testator's death.

C. A personal representative acting pursuant to the Uniform 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, and the permission of next of kin or any other person shall not be

required for such authorization. Statements dated prior to June 18, 1993 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 a person against any other person acting in accordance with that authorization.

F. Except as provided in Subsection G of this section, if a decedent has left no written instructions regarding the disposition of the decedent's 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 adult children of the decedent;
- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;
- (5) an adult person who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of the decedent's 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. If a decedent left no written instructions regarding the disposition of the decedent's remains, died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard and completed a United States department of defense record of emergency data form or its successor form, the person authorized by the decedent to determine the means of disposition on a United States department of defense record of emergency data form shall determine the means of disposition, not to be limited to cremation.

H. A licensed establishment or crematory shall keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.

I. 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.

J. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment.

**History:** 1978 Comp., § 61-32-19, enacted by Laws 1993, ch. 204, § 19; 1995, ch. 17, § 2; 1999, ch. 284, § 12; 2011, ch. 22, § 3.

### **61-32-19.1. Crematory; scope of practice; limitations. (Repealed effective July 1, 2030.)**

A. The scope of practice of a crematory and its crematory authority is limited to cremation of dead human bodies and pulverization of cremains. A crematory and its crematory authority shall act as an agent of licensed funeral, commercial or direct disposition establishments and schools of medicine. A crematory and its crematory authority may:

- (1) engage in transportation of dead human bodies to the crematory; and
- (2) cremate dead human bodies and pulverize cremains.

B. After completion of the cremation process, if a crematory and its crematory authority have not been instructed by its agent to return the cremains to the person that initiated the cremation services contract or to arrange for the interment, entombment or enrichment of the cremains, the crematory authority shall return, or cause to be returned, the cremains to the establishment no later than thirty days after the date of cremation.

C. A crematory and its crematory authority shall maintain a system or process that ensures that any dead human body in the crematory's possession can be specifically identified throughout all phases of the cremation process.

D. A crematory shall keep an accurate record of all cremations performed for a period of not less than seven years.

E. The crematory and its crematory authority shall certify to the board that the crematory will not exceed the scope of practice allowed by law.

F. A licensed crematory shall not engage in any activity not specifically permitted in this section.

**History:** 1978 Comp., § 61-32-19.1, enacted by Laws 1999, ch. 284, § 13; 2003, ch. 420, § 7.

### **61-32-20. Embalming. (Repealed effective July 1, 2030.)**

A. All dead human bodies not disposed of within twenty-four hours after death or release or receipt by the establishment or crematory shall be embalmed in accordance with the Funeral Services Act or stored under refrigeration as determined by board rule, unless otherwise required by regulation of the office of the state medical investigator or the secretary of health or by orders of an authorized official of the office of the state medical investigator, a court of competent jurisdiction or other authorized official.

B. A dead human body shall not be embalmed except by a funeral service practitioner, embalmer 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, a dead human body shall not 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 embalmer who embalms the body or the funeral service intern who embalms the body and the funeral service practitioner who supervises the embalming shall, within twenty-four hours after the embalming procedure, complete and sign an embalming case report describing the elapsed time since death, the condition of the remains before and after embalming and the embalming procedures used. The embalming case report shall be kept on file at the establishment for a period of not less than seven years following the embalming.

F. Except as provided in Subsection A of this section, embalming is not required.

**History:** 1978 Comp., § 61-32-20, enacted by Laws 1993, ch. 204, § 20; 1999, ch. 284, § 14; 2003, ch. 420, § 8; 2012, ch. 48, § 15; 2019, ch. 164, § 5.

### **61-32-21. License renewal. (Repealed effective July 1, 2030.)**

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; provided that a licensee who is age sixty-five or above and who has been licensed by the board for at least twenty consecutive years shall not be required to meet continuing education requirements.

C. A sixty-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 expired and invalid. A holder of an expired license shall be required to apply as a new applicant.

**History:** 1978 Comp., § 61-32-21, enacted by Laws 1993, ch. 204, § 21; 1999, ch. 284, § 15; 2001, ch. 84, § 1.

### **61-32-22. Inactive status. (Repealed effective July 1, 2030.)**

A. A funeral service practitioner, funeral arranger, embalmer, funeral service intern or direct disposer who has a current license may request that the license be placed on inactive status. Except as provided in Subsection E of this section, the board shall approve each request for inactive status.

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 and compliance with the following requirements:

(1) certification by the licensee that the licensee has not engaged in the practice of funeral service or direct disposition 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 or continued against a licensee who has been granted inactive status.



E. A license shall not be placed on inactive status if the licensee is under investigation or if disciplinary proceedings have been initiated.

**History:** 1978 Comp., § 61-32-22, enacted by Laws 1993, ch. 204, § 22; 1999, ch. 284, § 16; 2003, ch. 420, § 9; 2012, ch. 48, § 16; 2019, ch. 164, § 6.

### **61-32-23. Fees and fines. (Repealed effective July 1, 2030.)**

Except as provided in Section 61-1-34 NMSA 1978, the board shall establish by rule a schedule of reasonable fees and fines for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978. All fines collected shall be deposited in the current school fund.

**History:** 1978 Comp., § 61-32-23, enacted by Laws 1993, ch. 204, § 23; 1999, ch. 284, § 17; 2017, ch. 52, § 17; 2020, ch. 6, § 59.

### **61-32-24. Disciplinary proceedings; judicial review. (Repealed effective July 1, 2030.)**

A. The board, in accordance with the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], may take disciplinary action against any licensee, temporary licensee or applicant.

B. The board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 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 that 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 or the licensee's 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 a commission, bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in a 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 the provisions of the Funeral Services Act or a rule 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, whether or not the authorized cost has been paid. If an establishment receives a dead human body for funeral services but the body is subsequently transferred to another establishment that completes or performs funeral services, the subsequent establishment shall be responsible for all reasonable nonprofessional service charges incurred by the next previous establishment prior to and including transfer of the body and the subsequent establishment shall reimburse the next previous establishment for those charges;

(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 a false statement on a certificate of death;

(11) failure to give full cooperation to the board or one of its committees, staff, inspectors or agents or an attorney for the board in the performance of official duties;

(12) having 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;

(14) conduct unbecoming a licensee or detrimental to the safety or welfare of the public;

(15) employing fraudulent billing practices; or

(16) practicing funeral service or cremation without a current license.

C. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a person who is licensed as or is an applicant for a license as a funeral service practitioner, embalmer, funeral arranger or funeral service intern is 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 a funeral service intern to exceed the limitations set forth in the provisions of the Funeral Services Act or the rules of the board.

D. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a direct disposer licensee or a direct disposition establishment licensee is 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) prior to interment, entombment or other final disposition of a dead human body, participating in any rites or ceremonies in connection with such final disposition of the body, or providing facilities for any such rites or ceremonies;

(4) reclaiming, transporting or causing to be transported a dead human 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.

E. In addition to the offenses listed in Subsection B of this section, the board has the authority to take any action set forth in Section 61-1-3 NMSA 1978 upon a finding by the board that a crematory licensee or applicant or a crematory authority is guilty of any of the following acts of commission or omission:

(1) engaging or making any representation 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.

F. 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.

G. All fees, fines and costs imposed on an applicant, 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; 1995, ch. 158, § 3; 1999, ch. 284, § 18; 2003, ch. 420, § 10; 2012, ch. 48, § 17; 2019, ch. 164, § 7.

### **61-32-25. Additional prohibitions. (Repealed effective July 1, 2030.)**

A. No person licensed pursuant to the provisions of the Funeral Services Act 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 pursuant to the provisions of the Funeral Services Act shall transport or cause to be transported by common carrier any dead human body out of this state when the licensee knows or has 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 Funeral Services 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 pursuant to the provisions of the Funeral Services 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; 2012, ch. 48, § 18.

### **61-32-26. Fund established. (Repealed effective July 1, 2030.)**

A. There is created in the state treasury the "funeral services fund".

B. All fees and costs received or collected by the board or the department pursuant to provisions of the Funeral Services Act shall be deposited with the state treasurer for credit to the funeral services fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the funeral services fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Funeral Services Act.

**History:** Laws 1993, ch. 204, § 26; 1999, ch. 284, § 19; 2012, ch. 48, § 19; 2017, ch. 52, § 18.

### **61-32-27. Criminal offender employment act. (Repealed effective July 1, 2030.)**

The provisions of the Criminal Offender Employment Act [Chapter 28, Article 2 NMSA 1978] shall govern any consideration of criminal records required or permitted pursuant to the provisions of the Funeral Services Act.

**History:** Laws 1993, ch. 204, § 27; 2012, ch. 48, § 20.

## **61-32-28. Communications; confidentiality. (Repealed effective July 1, 2030.)**

All written and oral communications made to the board relating to potential disciplinary action shall be subject to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

**History:** Laws 1993, ch. 204, § 28; 1999, ch. 284, § 20.

## **61-32-29. Construction. (Repealed effective July 1, 2030.)**

Nothing in the Funeral Services Act shall be construed to:

A. prohibit a 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; 2012, ch. 48, § 21.

## **61-32-30. Criminal penalties. (Repealed effective July 1, 2030.)**

A person who commits any of the following acts is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment of less than one year, or both:

A. violation of any provision of the Funeral Services Act;

B. rendering or offering to render funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act; or

C. advertising or using any designation, diploma or certificate tending to imply that the person is a practitioner of funeral services, direct disposition services or cremation services without a current valid license issued pursuant to the Funeral Services Act.

**History:** Laws 1993, ch. 204, § 30; 1999, ch. 284, § 21; 2012, ch. 48, § 22.

### **61-32-30.1. Unlicensed activity; civil penalty. (Repealed effective July 1, 2030.)**

The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a fine in an amount not to exceed two thousand dollars (\$2,000) and costs on a person who is found to have acted without a license in violation of the Funeral Services Act by a court or an administrative proceeding as provided for in the Funeral Services Act.

**History:** Laws 2003, ch. 420, § 11; 2012, ch. 48, § 23; 2017, ch. 52, § 19.

**61-32-30.2. Cease and desist orders; fines; finality; hearings.  
(Repealed effective July 1, 2030.)**

A. Notwithstanding the provisions of Sections 61-1-3 and 61-32-24 NMSA 1978, if the board has reasonable cause to believe a person is committing a violation of a provision of the Funeral Services Act, or a rule adopted pursuant to that act, that creates a health risk for the community or a risk to the orderly or prompt disposition of dead human bodies and immediate enforcement is deemed necessary, the board may serve, in the manner prescribed by Section 61-1-5 NMSA 1978, a cease and desist order on a person to require that person to cease the violation. The order shall:

(1) indicate the violation and the general nature of the evidence of the violation;

(2) include a notice that if the person fails to comply with the order within twenty-four hours, the person may be subject to fines or costs, as provided in Sections 61-32-6 and 61-32-30.1 NMSA 1978, for noncompliance with the order as a violation of the Funeral Services Act, in addition to fines and costs imposed for a violation indicated in the order; and

(3) include a notice that a hearing has been scheduled to occur within five working days after service of the cease and desist order and the hearing will proceed unless waived by the person.

B. If the person waives a hearing as provided in Subsection A of this section, the order shall be final and not subject to review or appeal. The board may apply for injunctive relief to enforce the cease and desist order.

C. If a hearing is held, it shall be conducted pursuant to the hearing procedures of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] that are consistent with this section and the consequences of the hearing, including a right to review, shall occur pursuant to that act.

D. An order of the board pursuant to this section or an order of a court to enforce it shall not relieve or absolve a person affected by the order from another liability, penalty or sanction applicable under law.

**History:** Laws 2012, ch. 48, § 25.

## **61-32-31. Termination of agency life; delayed repeal. (Repealed effective July 1, 2030.)**

The board of funeral services is terminated on July 1, 2029 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 Section 12-9-18 NMSA 1978 until July 1, 2030. Effective July 1, 2030, the Funeral Services Act is repealed.

**History:** Laws 1993, ch. 204, § 31; 1999, ch. 284, § 22; 2005, ch. 208, § 24; 2011, ch. 4, § 1; 2012, ch. 48, § 24; 2017, ch. 52, § 20; 2023, ch. 15, § 7.

## **ARTICLE 33 Utility Operators**

### **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.

### **61-33-2. Definitions.**

As used in the Utility Operators Certification Act [Chapter 61, Article 33 NMSA 1978]:

A. "certified operator" means a person who is certified by the department as being qualified to operate one of the classifications of public water supply systems or public wastewater facilities;

B. "commission" means the water quality control commission;

C. "department" means the department of environment;

D. "domestic liquid waste" means human excreta and water-carried waste from typical residential plumbing fixtures and activities, including waste from toilets, sinks, bath fixtures, clothes or dishwashing machines and floor drains;

E. "domestic liquid waste treatment unit" means any system that is designed to discharge less than two thousand gallons per day and that is subject to rules promulgated by the environmental improvement board pursuant to Paragraph (3) of Subsection A of Section 74-1-8 NMSA 1978 or a watertight unit designed, constructed



and installed to stabilize only domestic liquid waste and to retain solids contained in such domestic liquid waste, including septic tanks;

F. "operate" means performing any activity, function, process control decision or system integrity decision regarding water quality or water quantity that has the potential to affect the proper functioning of a public water supply system or public wastewater facility or to affect human health, public welfare or the environment;

G. "person" means any agency, department or instrumentality of the United States and any of its 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 through pipes or other constructed conveyances to the public of 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; 2001, ch. 181, § 1; 2005, ch. 285, § 1.

### **61-33-3. Administration; enforcement.**

A. The administration and enforcement of the Utility Operators Certification Act is vested in the department.

B. The department shall:

(1) 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 operators or public wastewater facility operators;

(2) 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 pursuant to Subsection A of Section 61-33-4 NMSA 1978;

(3) enter into agreements, contracts or cooperative arrangements with persons;

(4) receive and accept financial and technical assistance;

(5) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978]; and

(6) issue, renew, suspend or revoke licenses or discipline a licensee in accordance with the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** 1953 Comp., § 67-40-3, enacted by Laws 1973, ch. 394, § 3; recompiled § 61-33-3; Laws 1992, ch. 44, § 3; 2005, ch. 285, § 2; 2022, ch. 39, § 101.

#### **61-33-4. Powers and duties of commission.**

The commission may adopt rules relating to the administration and enforcement of the Utility Operators Certification Act. The commission shall:

A. adopt rules that classify public water supply systems and public wastewater facilities based on:

(1) size and type of system or facility;

(2) capacity of the system or facility based on the size of the serviced area and the number and size of the users to be served;

(3) type and character of the water or wastewater to be treated; and

(4) physical conditions affecting the treatment plants, collection systems and distribution systems;

B. adopt rules providing standards and criteria for the certification of operators based on their qualifications and their ability to operate public water supply systems or public wastewater facilities of the various classifications;

C. appoint a seven-member board from certified operators to function with the commission to establish qualifications of operators, classify public water supply systems and public wastewater facilities, adopt rules and advise the department on the administration of the Utility Operators Certification Act. Two board members selected by the board shall sit as commission members on matters to which that act is applicable;

D. adopt and file under the State Rules Act [Chapter 14, Article 4 NMSA 1978] rules necessary to carry out the provisions of the Utility Operators Certification Act; and

E. adopt rules providing criteria for identifying the minimum number of certified operators needed to operate the various classifications of public water supply systems or public wastewater facilities in order to protect human health, public welfare or the environment.

**History:** 1953 Comp., § 67-40-4, enacted by Laws 1973, ch. 394, § 4; 1979, ch. 147, § 1; recompiled § 61-33-4; Laws 1992, ch. 44, § 4; 2005, ch. 285, § 3.

### **61-33-5. Application requirements; fees; fund created; endorsement.**

A. An applicant for certification as a certified operator shall:

- (1) make application on forms furnished by the department;
- (2) submit evidence satisfactory to the department that the applicant has reached the age of majority; and
- (3) except as provided in Section 61-1-34 NMSA 1978, pay in advance to the department fees set by rule not to exceed:

(a)	for examination for certification in each classification	\$100;
(b)	for renewal of a certificate after a period set by rule	\$40.00; and
(c)	for issuance of a certificate by endorsement	\$100.

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. The fund shall be used solely for the purpose of administering and enforcing the Utility Operators Certification Act [Chapter 61, Article 33 NMSA 1978]. The fund shall be administered by the department. Money in the fund shall be retained by the department for use, subject to appropriation by the legislature. Balances in the fund at the end of any fiscal year shall not revert to the general fund, but shall accrue to the credit of the fund. Earnings on the fund shall be credited to the fund.

C. The department may, in its discretion, endorse for certification without examination an operator who submits evidence satisfactory to the department that the applicant has reached the age of majority and holds a valid license or certification in any

state, territory or foreign jurisdiction having standards equal to or exceeding those of New Mexico.

D. Fees shall not be increased more than once per calendar year. The first increase of the fees shall not result in any fee greater than thirty dollars (\$30.00). Any subsequent increase of the fees shall not be more than five percent of the existing fee.

**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; 2005, ch. 285, § 4; 2021, ch. 92, § 17.

### **61-33-6. Certification required; prohibition.**

It is unlawful to operate or allow the operation of a public water supply system or public wastewater facility unless the system or facility is operated by or under the supervision of a certified operator who meets or exceeds the appropriate certification level.

**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; 2005, ch. 285, § 5.

### **61-33-7. Suspension and revocation.**

The department, in accordance with the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] relating to notice and hearing, may suspend or revoke a certification upon the grounds that the certified operator:

- A. committed fraud or deceit in procuring the certification;
- B. committed gross incompetence in the operation of a public water supply system or public wastewater facility;
- C. was derelict in the performance of a duty as a certified operator;
- D. performed in the capacity of a higher classification of certified operator than that in which the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility; 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; 2005, ch. 285, § 6.

### **61-33-8. Prohibitions; penalty.**

A. It is unlawful for any person not certified as an operator to:

(1) use the title "certified operator" or words of similar import in connection with the person's employment;

(2) represent himself as a certified operator; or

(3) perform the duties of a certified operator, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of public water supply system or public wastewater facility.

B. 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; 2005, ch. 285, § 7.

### **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.

### **61-33-10. Enforcement; compliance orders.**

A. Whenever, on the basis of any information, the department determines that a person has violated, is violating or threatens to violate any requirement of the Utility Operators Certification Act, any rule adopted pursuant to that act or any condition of a certification issued under that act, the department 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 rule 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 department 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 department 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 department 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 department for a public hearing. Upon receiving a request, the department shall promptly conduct a public hearing. A complete record of the proceedings shall be made and preserved.

F. The department may appoint a hearing officer to preside over the public hearing held pursuant to this section. If a hearing officer is appointed, the hearing officer shall forward a recommendation based upon the record to the secretary of environment, who shall make the final decision.

G. In connection with any proceeding pursuant to the provisions of this section, the department 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. A person aggrieved by an adverse final decision of the secretary may appeal the decision to the commission. The appeal shall be on the record. The commission may, upon motion by a party, receive either oral or written arguments by the parties limited to the evidence contained in the record.

I. All penalties collected pursuant to this section shall be deposited in the general fund to the credit of the current school fund.

**History:** Laws 1992, ch. 44, § 10; 2005, ch. 285, § 8.

## **ARTICLE 34**

### **Signed Language Interpreting Practices**

### **61-34-1. Short title.**

Chapter 61, Article 34 NMSA 1978 may be cited as the "Signed Language Interpreting Practices Act".

**History:** Laws 2007, ch. 248, § 1; 2013, ch. 166, § 6.

### **61-34-2. Definitions.**

As used in the Signed Language Interpreting Practices Act:

- A. "board" means the signed language interpreting practices board;
- B. "consumer" means a person using the services of a signed language interpreter;
- C. "deaf, hard-of-hearing or deaf-blind person" means a person who has either no hearing or who has significant hearing loss;
- D. "department" means the regulation and licensing department;
- E. "interpreter" means a person who practices interpreting;
- F. "interpreter education program" or "interpreter preparation program" means:
  - (1) a post-secondary degree program of at least two year's duration accredited by the state or similar accreditation by another state, district or territory; or
  - (2) a substantially equivalent education program approved by the board; and
- G. "interpreting" means the process of providing accessible communication between deaf, hard-of-hearing or deaf-blind persons and hearing persons, including:
  - (1) communication between signed language and spoken language; or
  - (2) other modalities such as visual, gestural and tactile methods, not to include written communication.

**History:** Laws 2007, ch. 248, § 2.

### **61-34-3. Scope of practice.**

For the purposes of the Signed Language Practices Act, a person is interpreting if the person advertises, offers to practice, is employed in a position described as interpreting or holds out to the public or represents in any manner that the person is an interpreter in this state.

**History:** Laws 2007, ch. 248, § 3.

#### **61-34-4. License required.**

Unless licensed pursuant to the Signed Language Interpreting Practices Act, a person shall not:

A. practice as an interpreter or perform interpreting services:

(1) for compensation or where compensation could be reasonably expected;  
or

(2) where effective communication is mandated by state or federal law;

B. use the title of interpreter or make any representation as being an interpreter, or use any other title, abbreviation, letters, figures, signs or devices that indicate the person is licensed to practice interpreting; or

C. advertise or make any representation to the public or in any manner that the person is licensed to provide interpreting services.

**History:** Laws 2007, ch. 248, § 4.

#### **61-34-5. Exemptions.**

The Signed Language Interpreting Practices Act does not apply to:

A. nonresident interpreters working in New Mexico less than thirty calendar days per year;

B. interpreting in religious or spiritual settings;

C. interpreting in informal settings for friends, families or guests;

D. interpreting in emergency situations where the deaf, hard-of-hearing or deaf-blind person or that person's legal representative decides that the delay necessary to obtain a licensed interpreter is likely to cause injury or loss to the consumer;

E. the activities or services of a supervised interpreter intern or student in training who is enrolled in an interpreter education program, interpreter preparation program, or a program of study in signed language interpreting at an accredited institution of higher learning approved by the board; or

F. multilingual interpreting in order to accommodate the personal choice of the consumer.



**History:** Laws 2007, ch. 248, § 5.

### **61-34-6. Confidential communication.**

A. A communication is confidential when it is not intended to be disclosed to third persons other than those present to further the interest of the person requiring the interpreting.

B. A licensed signed language interpreter shall not disclose confidential information obtained in the course of professional services.

**History:** Laws 2007, ch. 248, § 6.

### **61-34-7. Board created.**

A. The "signed language interpreting practices board" is created.

B. The board is administratively attached to the department with administrative staff provided by the department.

C. The governor shall appoint the members to serve on the board.

D. The board shall consist of seven members, at least two of whom are from each congressional district, as follows:

(1) two licensed community interpreters and two licensed educational interpreters, at least one of whom is a deaf or hard-of-hearing person;

(2) two deaf, hard-of-hearing, deaf-blind persons who are regular consumers of signed language interpreting services; and

(3) one person representing the general public who has never been a licensed signed language interpreter and has no financial interest in the profession of signed language interpreting.

E. Members shall serve for staggered terms of three years each, except that the initial board shall be appointed so that the terms of three members expire June 30, 2009 and the terms of four members expire June 30, 2010.

F. Vacancies shall be filled by appointment by the governor for the unexpired term within ninety days of the vacancy. Board members shall serve until their successors have been appointed and qualified.

G. Members shall be paid 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.

H. No member shall serve more than two consecutive terms. A member failing to attend three meetings, after proper notice, shall be recommended for removal as a board member unless excused for reasons set forth in board rules.

I. The board shall elect a chair and other officers as it deems necessary to administer its duties.

J. The board shall hold at least two meetings annually and additional meetings as the board deems necessary. The additional meetings may be held upon call of the chair or upon written request of four members. Four members of the board, including the public member, constitutes a quorum to conduct business.

**History:** Laws 2007, ch. 248, § 7.

### **61-34-8. Board powers and duties.**

A. The board shall:

(1) administer and enforce provisions of the Signed Language Interpreting Practices Act;

(2) promulgate rules in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] setting forth the qualifications of applicants for licensure and the provisions for the administration of examinations and the issuance, renewal, suspension or revocation of licenses;

(3) evaluate the qualifications of applicants for licensure and issue licenses;

(4) promulgate rules to effectively carry out and enforce the provisions of the Signed Language Interpreting Practices Act;

(5) submit an annual budget for each fiscal year to the department;

(6) maintain a record of all proceedings; and

(7) provide an annual report to the governor.

B. The board may refuse, suspend or revoke a license of an interpreter, conduct investigations, issue subpoenas and hold hearings as provided in the Uniform Licensing Act [Chapter 61, Article 1 NMSA 1978].

**History:** Laws 2007, ch. 248, § 8; 2022, ch. 39, § 102.

### **61-34-9. Requirements for licensure.**

A. The board shall issue a license as a community signed language interpreter to a person who:

- (1) files a completed application that is accompanied by the required fees;
- and
- (2) submits satisfactory evidence that the person:
    - (a) has reached the age of majority;
    - (b) is of good moral character;
    - (c) has completed all educational requirements established by the board; and
    - (d) holds certification under a nationally recognized signed language interpreters organization or by an equivalent organization as defined by rule of the board.

B. The board shall issue a license as an educational signed language interpreter to a person who:

- (1) files a completed application that is accompanied by the required fees;
- and
- (2) submits satisfactory evidence that the person:
    - (a) has reached the age of majority;
    - (b) is of good moral character;
    - (c) has completed all educational requirements established by the board; and
    - (d) provides evidence of passing a skill assessment exam as established by rule.

C. The board shall issue a one-time, five-year provisional license to a person not meeting the community signed language interpreter or educational signed language interpreter requirements for licensure as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act [Chapter 61, Article 34 NMSA 1978] if the person:

- (1) has completed an interpreter education program or interpreter preparation program; or
- (2) is employed as a community signed language interpreter or an educational signed language interpreter at the time that act becomes effective.

**History:** Laws 2007, ch. 248, § 9.

### **61-34-10. License renewal.**

A. Notwithstanding Subsection B of Section 8 [61-34-8 NMSA 1978] of the Signed Language Interpreting Practices Act, a licensee may renew a license every two years by submitting a completed renewal application provided by the board.

B. The board may require continuing education for license renewal as established by rule.

C. If a license is not renewed by the expiration date, the license shall be considered expired, and the licensee shall refrain from practicing. The licensee may renew within a sixty-day grace period, which begins the first day the license expires, by submitting payment of the renewal fee and a late fee and complying with all renewal requirements. Upon renewal of the license, the licensee may resume practice.

D. The board may issue rules providing for the inactive status of licenses.

**History:** Laws 2007, ch. 248, § 10.

### **61-34-11. Fees.**

Except as provided in Section 61-1-34 NMSA 1978, the board may, by rule, establish a schedule of fees as follows:

A. an initial nonrefundable biennial licensure fee not to exceed two hundred fifty dollars (\$250);

B. a nonrefundable biennial license renewal fee not to exceed two hundred dollars (\$200);

C. an initial nonrefundable annual provisional licensure fee not to exceed two hundred dollars (\$200); and

D. an annual nonrefundable provisional licensure renewal fee not to exceed one hundred dollars (\$100) limited to five years that the licensee may renew.

**History:** Laws 2007, ch. 248, § 11; 2020, ch. 6, § 60.

### **61-34-12. Uniform licensing act.**

The Signed Language Interpreting Practices Act is enforceable according to the procedures set forth in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

**History:** Laws 2007, ch. 248, § 12.

### **61-34-13. Fund created.**

A. The "signed language interpreting practices fund" is created in the state treasury.

B. All money received by the board under the Signed Language Interpreting Practices Act shall be deposited with the state treasurer for credit to the signed language interpreting practices fund. The fund consists of fees as provided in the Signed Language Interpreting Practices Act and money received from the telecommunications access fund. The state treasurer shall invest the fund as other state funds are invested. Earnings from investment of the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

C. Money in the fund is subject to appropriation by the legislature to be used only for purposes of carrying out the provisions of the Signed Language Interpreting Practices Act.

D. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing.

**History:** Laws 2007, ch. 248, § 13.

### **61-34-14. License denial, suspension or revocation.**

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 a license held or applied for under the Signed Language Interpreting Practices Act, upon grounds that the licensee or applicant:

- (1) is guilty of fraud or deceit in procuring or attempting to procure a license;
- (2) is guilty of gross incompetence;
- (3) is guilty of unprofessional or unethical conduct as defined by rule of the board;
- (4) uses untruthful or misleading advertising;
- (5) is habitually or excessively using controlled substances or alcohol to such a degree the licensee or applicant is rendered unfit to practice as a signed language interpreter pursuant to the Signed Language Interpreting Practices Act;
- (6) has violated the Signed Language Interpreting Practices Act;

(7) is guilty of aiding and abetting a person not licensed to practice signed language interpreting pursuant to the Signed Language Interpreting Practices Act; or

(8) as evidenced by a certified copy of the record of jurisdiction, has had a license, certificate or registration to practice signed language interpreting revoked, suspended or denied in any state or territory of the United States for actions pursuant to this section.

B. Disciplinary proceedings may be initiated by a complaint of a person, including members of the board, and shall conform with the provisions of the Uniform Licensing Act.

C. A person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

**History:** Laws 2007, ch. 248, § 14.

### **61-34-15. Penalties.**

A person who violates a provision of the Signed Language Interpreting Practices Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

**History:** Laws 2007, ch. 248, § 15.

### **61-34-16. Criminal Offender Employment Act.**

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 Signed Language Interpreting Practices Act.

**History:** Laws 2007, ch. 248, § 16.

### **61-34-17. Repealed.**

**History:** Laws 2007, ch. 248, § 17; repealed by Laws 2013, ch. 166, § 10.

## **ARTICLE 35**

### **Unlicensed Health Care Practice**

#### **61-35-1. Short title.**

This act [61-35-1 to 61-35-8 NMSA 1978] may be cited as the "Unlicensed Health Care Practice Act".

**History:** Laws 2009, ch. 141, § 1.

## **61-35-2. Definitions.**

As used in the Unlicensed Health Care Practice Act:

A. "complementary and alternative health care practitioner" means an individual who provides complementary and alternative health care services;

B. "complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including the following practices and excluding the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act [61-12G-1 to 61-12G-13 NMSA 1978]:

- (1) anthroposophy;
- (2) aromatherapy;
- (3) ayurveda;
- (4) culturally traditional healing practices, including practices by a curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song;
- (5) detoxification practices and therapies;
- (6) energetic healing;
- (7) folk practices;
- (8) Gerson therapy and colostrum therapy;
- (9) healing practices utilizing food, dietary supplements, nutrients and the physical forces of heat, cold, water, touch and light;
- (10) healing touch;
- (11) herbology or herbalism;
- (12) homeopathy;
- (13) meditation;
- (14) mind-body healing practices;

(15) naturopathy; provided that "naturopathy" does not include the practice of naturopathic medicine by an individual licensed as a naturopathic doctor pursuant to the Naturopathic Doctors' Practice Act;

(16) nondiagnostic iridology;

(17) noninvasive instrumentalities;

(18) polarity therapy; and

(19) holistic kinesiology and other muscle testing techniques;

C. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978] or rules adopted pursuant to that act;

D. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

E. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "Rx only";

F. "department" means the regulation and licensing department;

G. "health care practitioner" means an individual who provides health care services;

H. "health care service" means any service relating to the physical and mental health and wellness of an individual; and

I. "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 and includes 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.

**History:** Laws 2009, ch. 141, § 2; 2019, ch. 244, § 18.



### **61-35-3. Licensing exemption.**

A complementary and alternative health care practitioner who is not licensed, certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services pursuant to Chapter 61 NMSA 1978 unless that individual:

A. engages in any activity prohibited in Section 4 [61-35-4 NMSA 1978] of the Unlicensed Health Care Practice Act; or

B. fails to fulfill the duties set forth in Section 5 [61-35-5 NMSA 1978] of the Unlicensed Health Care Practice Act.

**History:** Laws 2009, ch. 141, § 3.

### **61-35-4. Prohibited acts.**

A complementary and alternative health care practitioner shall not:

A. perform surgery on an individual;

B. set fractures on an individual;

C. administer x-ray radiation to an individual;

D. prescribe or dispense dangerous drugs or controlled substances to an individual;

E. directly manipulate the joints or spine of an individual;

F. physically invade the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;

G. make a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;

H. make a specific conventional medical diagnosis;

I. have sexual contact with a current patient or former patient within one year of rendering service;

J. falsely advertise or provide false information in documents described in Subsection A of Section 5 [61-35-5 NMSA 1978] of the Unlicensed Health Care Practice Act;

K. illegally use dangerous drugs or controlled substances;

L. reveal confidential information of a patient without the patient's written consent;

M. engage in fee splitting or kickbacks for referrals;

N. refer to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978; or

O. perform massage therapy on an individual pursuant to the Massage Therapy Practice Act [Chapter 61, Article 12C NMSA 1978].

**History:** Laws 2009, ch. 141, § 4.

### **61-35-5. Complementary and alternative health care practitioner; duties.**

Except for persons providing health care services pursuant to Section 61-6-17 NMSA 1978 or to employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction, a complementary and alternative health care practitioner shall:

A. provide to a patient prior to rendering services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following:

(1) the complementary and alternative health care practitioner's name, title and business address and telephone number;

(2) a statement that the complementary and alternative health care practitioner is not a health care practitioner licensed by the state of New Mexico;

(3) a statement that the treatment to be provided by the complementary and alternative health care practitioner is complementary or alternative to health care services provided by health care practitioners licensed by the state of New Mexico;

(4) the nature and expected results of the complementary and alternative health care services to be provided;

(5) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications regarding the complementary and alternative health care services to be provided;

(6) the complementary and alternative health care practitioner's fees per unit of service and method of billing for such fees and a statement that the patient has a right to reasonable notice of changes in complementary and alternative health care services or charges for complementary and alternative health care services;

(7) a notice that the patient has a right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care services that are to be provided, including the expected duration of the complementary and alternative health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records;

(8) a statement that patient records and transactions with the complementary and alternative health care practitioner are confidential unless the release of these records is authorized in writing by the patient or otherwise provided by law;

(9) a statement that the patient has a right to coordinated transfer when there will be a change in the provider of complementary and alternative health care services; and

(10) the name, address and telephone number of the department and notice that a patient may file complaints with the department; and

B. obtain a written acknowledgment from a patient, or if the patient cannot write an oral acknowledgment witnessed by a third party, stating that the patient has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgment, which shall be maintained for three years by the complementary and alternative health care practitioner providing the complementary and alternative health care service.

**History:** Laws 2009, ch. 141, § 5.

### **61-35-6. Applicability.**

The following individuals shall not provide complementary and alternative health care services pursuant to the Unlicensed Health Care Practice Act:

A. former health care practitioners whose license, certification or registration has been revoked or suspended by any health care board and not reinstated;

B. individuals convicted of a felony for a crime against a person who have not satisfied the terms of the person's sentence as provided by law;

C. individuals convicted of a felony related to health care who have not satisfied the terms of the person's sentence as provided by law; and

D. individuals who have been deemed mentally incompetent by a court of law.

**History:** Laws 2009, ch. 141, § 6.

### **61-35-7. Disciplinary actions.**

If the department determines that a complementary and alternative health care practitioner practicing pursuant to the Unlicensed Health Care Practice Act may have violated a provision of that act, it may take one or more of the following actions pursuant to the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] against the complementary and alternative health care practitioner if that practitioner is found to have violated a provision of the Unlicensed Health Care Practice Act:

A. provide written notice to the complementary and alternative health care practitioner requesting the practitioner to correct the activity that is a violation of the Unlicensed Health Care Practice Act; this action shall be the first option if the offense is a violation of the disclosure requirements of the Unlicensed Health Care Practice Act;

B. issue a cease and desist order against the complementary and alternative health care practitioner pertaining to the provision of complementary and alternative health care services that are not in compliance with the provisions of the Unlicensed Health Care Practitioner [Practice] Act; or

C. impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

**History:** Laws 2009, ch. 141, § 7.

### **61-35-8. Duties of the superintendent.**

The superintendent of regulation and licensing is expressly authorized to promulgate rules as necessary to implement the provisions of the Unlicensed Health Care Practice Act.

**History:** Laws 2009, ch. 141, § 8.

## **ARTICLE 36**

### **Lactation Consultant Practice**

#### **61-36-1. Recompiled.**

**History:** Laws 2017, ch. 136, § 1; 1978 Comp., § 61-36-1, recompiled and amended as § 61-3B-1 by Laws 2022, ch. 39, § 20.

#### **61-36-2. Recompiled.**

**History:** Laws 2017, ch. 136, § 2; 1978 Comp., § 61-36-2, recompiled as § 61-3B-2 by Laws 2022, ch. 39, § 105.

#### **61-36-3. Recompiled.**

**History:** Laws 2017, ch. 136, § 3; 1978 Comp., § 61-36-3, recompiled and amended as § 61-3B-3 by Laws 2022, ch. 39, § 21.

#### **61-36-4. Recompiled.**

**History:** Laws 2017, ch. 136, § 4; 1978 Comp., § 61-36-4, recompiled as § 61-3B-4 by Laws 2022, ch. 39, § 105.

#### **61-36-5. Recompiled.**

**History:** Laws 2017, ch. 136, § 5; 2020, ch. 6, § 61; 1978 Comp., § 61-36-5, recompiled as § 61-3B-5 by Laws 2022, ch. 39, § 105.

#### **61-36-6. Recompiled.**

**History:** Laws 2017, ch. 136, § 6; 1978 Comp., § 61-36-6, recompiled and amended as § 61-3B-6 by Laws 2022, ch. 39, § 22.

## **ARTICLE 37**

### **Tobacco Products**

#### **61-37-1. Short title.**

This act [61-37-1 to 61-37-25 NMSA 1978] may be cited as the "Tobacco Products Act".

**History:** Laws 2020, ch. 46, § 1.

#### **61-37-2. Definitions.**

As used in the Tobacco Products Act:

A. "child-resistant packaging" means packaging or a container that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for a normal adult to use properly, but does not mean packaging or a container that all such children cannot open or obtain a toxic or harmful amount within a reasonable time;

B. "contraband tobacco products" means any tobacco products possessed, sold, bartered or given in violation of the Tobacco Products Act;

C. "delivery sale" means a sale of tobacco products to a consumer in New Mexico in which:

(1) the consumer submits an order for the sale by telephone, over the internet or through the mail or another delivery system; and

(2) the tobacco product is shipped through a delivery service;

D. "delivery service" means a person, including the United States postal service, that is engaged in the delivery of letters, packages or containers;

E. "director" means the director of the alcoholic beverage control division of the regulation and licensing department;

F. "distribute" means to purchase and store a product and to offer the product for resale to retailers or consumers;

G. "distributor" means a person that distributes tobacco products in New Mexico, but does not include:

(1) a retailer;

(2) a manufacturer; or

(3) a common or contract carrier;

H. "division" means the alcoholic beverage control division of the regulation and licensing department;

I. "e-cigarette":

(1) means any electronic oral device, whether composed of a heating element and battery or an electronic circuit, that provides a vapor of nicotine or any other substances the use or inhalation of which simulates smoking; and

(2) includes any such device, or any part thereof, whether manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or any other product, name or descriptor; but

(3) does not include any product regulated as a drug or device by the United States food and drug administration under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 301 et seq.;

J. "electronic nicotine delivery system" means an electronic device, including e-cigarettes, whether composed of a heating element and battery or an electronic circuit, that provides a vapor or aerosol of nicotine, the use or inhalation of which simulates smoking;

K. "knowingly attractive to minors" means packaging or labeling that contains:

(1) a cartoon-like character that mimics characters primarily aimed at entertaining minors;

(2) an imitation or mimicry of trademarks or trade dress of products that are or have been primarily marketed toward minors; or

(3) a symbol or celebrity image that is primarily used to market products to minors;

L. "licensee" means a holder of a license issued by the division pursuant to the Tobacco Products Act;

M. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels tobacco products or imports from outside the United States, directly or indirectly, a tobacco product for sale or distribution in the United States;

N. "minor" means an individual who is younger than twenty-one years of age;

O. "nicotine liquid" means a liquid or other substance containing nicotine where the liquid or substance is sold, marketed or intended for use in an electronic nicotine delivery system;

P. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

Q. "retailer" means a person, whether located within or outside of New Mexico, that sells tobacco products at retail to a consumer in New Mexico; provided that the sale is not for resale;

R. "self-service display" means a display to which the public has access without the assistance of a retailer or the retailer's employee; and

S. "tobacco product" means a product made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including cigars, cigarettes, chewing tobacco, pipe tobacco, snuff, e-cigarettes or electronic nicotine delivery systems.

**History:** Laws 2020, ch. 46, § 2.

### **61-37-3. Prohibited sales; manufacturing; labeling; marketing; safety requirements.**

A. A person shall not knowingly, intentionally or negligently sell, offer to sell, barter or give a tobacco product to a minor.

B. A licensee shall not sell, offer to sell or deliver a tobacco product in a form other than an original manufacturer-sealed package, except for individually sold cigars or loose leaf pipe tobacco.

C. A licensee shall not sell, offer to sell or deliver nicotine liquid in this state unless such liquid is in child-resistant packaging, except that for the purpose of this subsection, "nicotine liquid" does not include nicotine liquid in a cartridge that is pre-filled and sealed by the manufacturer and that is not intended to be opened by the consumer.

D. A manufacturer shall not produce and a distributor or retailer shall not sell tobacco products that are knowingly attractive to minors.

**History:** Laws 2020, ch. 46, § 3.

#### **61-37-4. Division; license issuance; manufacture, distribution or sale of tobacco products.**

A. Except as provided in Subsection C of this section, the division shall issue licenses for the manufacture, distribution or sale of tobacco products in New Mexico to applicants who meet the requirements of the Tobacco Products Act.

B. The division shall issue or renew a license for the:

- (1) manufacture of tobacco products for a term of one year;
- (2) distribution of tobacco products for a term of one year; and
- (3) retail sale of tobacco products for a term of one year.

C. A license shall not be issued, retained, transferred or renewed pursuant to the Tobacco Products Act if any of the following conditions apply:

- (1) the applicant has had a manufacturer, distributor or retailer license revoked by the division or by another state;
- (2) the applicant is not in compliance with Subsection G of Section 7-12-9.1 NMSA 1978;
- (3) the location for the license or license transfer is within three hundred feet of a school; provided that this restriction does not apply to a location at which tobacco products have been lawfully manufactured, distributed or sold prior to July 1, 2020; or
- (4) the location for the license would result in a violation of a zoning or other ordinance of a governing body in which the proposed location would exist.

**History:** Laws 2020, ch. 46, § 4.



## **61-37-5. Manufacturer license requirements; application and renewal requirements; fees.**

A. A person shall not manufacture tobacco products at any location in the state without first obtaining a manufacturer license issued by the division to that person for that location.

B. An application for a manufacturer license or manufacturer license renewal shall be submitted on a form prescribed by the division and shall include:

(1) the name, telephone number, mailing address and email address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

(2) the address of the applicant's principal place of business and every location where the applicant manufactures tobacco products;

(3) documentation as required by the division affirming that the applicant will comply with applicable and proper tobacco products manufacturing practices as required pursuant to 21 USCA Section 387d(a) and will comply with any applicable health directives issued by the department of health pursuant to the Public Health Act [Chapter 24, Article 1 NMSA 1978];

(4) documentation as required by the division affirming that the applicant will submit the applicable ingredient listing to the federal secretary of health and human services as required pursuant to 21 USCA Section 387d(a)(1); and

(5) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

**History:** Laws 2020, ch. 46, § 5.

## **61-37-6. Distributor license requirements; application and renewal requirements; fees.**

A. A person shall not distribute tobacco products from any location in the state without first obtaining a distributor license issued by the division to that person for that location.

B. An application for a distributor license or distributor license renewal shall be submitted on a form prescribed by the division and shall include:

(1) the name, telephone number, mailing address and email address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

(2) the address of the applicant's principal place of business and every location from which the applicant distributes tobacco products; and

(3) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

**History:** Laws 2020, ch. 46, § 6.

### **61-37-7. Retailer license requirements; application and renewal requirements; fees.**

A. A person shall not sell tobacco products at any location in the state without first obtaining a retailer license issued by the division to that person or that person's employer for that location.

B. An application for a retailer license or for a retailer license renewal shall be submitted on a form prescribed by the division and shall include:

(1) the name, telephone number, mailing address and email address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members contributing ten percent or more of the total value of contributions made to the firm, partnership or association and each member entitled to ten percent or more of the profits earned by the firm, partnership or association; or

(b) if the applicant is a corporation, the name and address of its registered agent, the names and addresses of all officers and directors and those stockholders owning ten percent or more of the voting stock of the corporation;

(2) the address of the applicant's principal place of business and every location where the applicant sells tobacco products; and

(3) a nonrefundable application fee not to exceed seven hundred fifty dollars (\$750) per location or a renewal fee not to exceed four hundred dollars (\$400) per location.

**History:** Laws 2020, ch. 46, § 7.

### **61-37-8. License application information changes.**

If the information submitted in an application pursuant to the Tobacco Products Act for a license or for a license renewal changes, the licensee shall notify the division within ten business days of the change. If a change in the information required for an application results in a violation of the Tobacco Products Act, the director may impose an administrative penalty as provided in that act.

**History:** Laws 2020, ch. 46, § 8.

### **61-37-9. Issuance of licenses; reasons for denial.**

A. Beginning January 1, 2021, the division shall begin issuing licenses.

B. The division shall grant or deny an application for a license or for a license renewal made pursuant to the Tobacco Products Act after the complete application is submitted to the division. The division shall approve the application for issuance of a license or for a license renewal if the division determines that the applicant meets the requirements of the Tobacco Products Act and the rules promulgated pursuant to that act.

C. If a complete application for a license or for a license renewal is denied, the division shall state the reasons for the denial. The applicant may reapply within thirty days after the date of the denial. The division shall not charge a fee for a reapplication made within that period.

**History:** Laws 2020, ch. 46, § 9.

### **61-37-10. License transfer; notice of changes.**

A. A license issued pursuant to the Tobacco Products Act shall not be transferred from the licensee to another person.

B. The transfer of a license from one location to another may be approved by the division, provided that the licensee shall submit an application for license location transfer to the division for review. The division shall allow the transfer unless any of the conditions provided in Sections 4 [61-37-4 NMSA 1978] and 9 [61-37-9 NMSA 1978] of the Tobacco Products Act apply.

**History:** Laws 2020, ch. 46, § 10.

### **61-37-11. Tobacco products administration fund; created; purpose.**

The "tobacco products administration fund" is created as a nonreverting fund in the state treasury. The fund consists of fees and administrative penalties collected by the division pursuant to the Tobacco Products Act, appropriations by the legislature, gifts, grants and donations. Money in the fund at the end of a fiscal year shall not revert to any other fund. The division shall administer the fund, and money in the fund is subject to appropriation by the legislature to the division for the administration of the Tobacco Products Act. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing or the superintendent's authorized representative.

**History:** Laws 2020, ch. 46, § 11.

### **61-37-12. Fees retained by the division.**

All fees collected by the division pursuant to the Tobacco Products Act shall be deposited into the tobacco products administration fund.

**History:** Laws 2020, ch. 46, § 12; 2022, ch. 39, § 103.

### **61-37-13. Hearing procedure.**

If the division suspends or revokes a license or imposes an administrative penalty against a licensee, the licensee shall be entitled to a hearing pursuant to the rules promulgated by the division. The hearing shall be conducted by the director or a hearing officer appointed by the director and shall be held in the county in which the licensee is located. Hearings shall be open to the public. Subpoenas shall be issued and enforced in accordance with the provisions of Section 23 [61-37-23 NMSA 1978] of the Tobacco Products Act.

**History:** Laws 2020, ch. 46, § 13.

### **61-37-14. Documentary evidence of age and identity.**

A. A retailer or an employee of a retailer shall not knowingly, intentionally or negligently fail to verify the age of a consumer purchasing tobacco products.

B. Except as provided in Subsection C of this section, evidence of the age and identity of a person attempting to procure tobacco products in person shall be shown by a valid document that contains a picture of that person and is issued by a federal, state, county, municipal, tribal or foreign government, including a motor vehicle driver's license or an identification card.

C. For each sale made through a delivery sales method, age verification shall be completed through an independent, third-party age verification service that establishes that a consumer is of legal age by comparing information available from public records to personal information entered by the consumer during the ordering process.

D. A retailer may ship tobacco products only to a consumer whose age has been verified pursuant to Subsection C of this section.

**History:** Laws 2020, ch. 46, § 14.

### **61-37-15. Vending machines; restrictions on sales of tobacco products.**

A. Except as provided in Subsections B and C of this section, a retailer selling goods at a retail location in New Mexico shall not use a self-service display for tobacco products.

B. Tobacco products may be sold by vending machines only in age-controlled locations where minors are not permitted.

C. The sales and display of cigars may be allowed only in age-controlled locations where minors are not permitted.

**History:** Laws 2020, ch. 46, § 15.

### **61-37-16. Distribution of tobacco products as free samples prohibited.**

A. A person shall not provide free samples of tobacco products without the express written approval of the director.

B. The provisions of Subsection A of this section shall not apply to an individual who provides free samples of tobacco products, e-cigarettes or nicotine liquid containers in connection with the practice of cultural or ceremonial activities in accordance with the federal American Indian Religious Freedom Act or its successor act.

**History:** Laws 2020, ch. 46, § 16.

### **61-37-17. Signs; point of sale.**

A retailer shall prominently display in the place where tobacco products are sold and where a tobacco product vending machine is located a printed sign or decal that reads as follows:

"IT IS ILLEGAL FOR A PERSON UNDER 21 YEARS OF AGE TO PURCHASE TOBACCO PRODUCTS."

**History:** Laws 2020, ch. 46, § 17.

### **61-37-18. Criminal penalties; unlicensed activities.**

A person who manufactures, distributes or sells tobacco products without a license required pursuant to the Tobacco Products Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978. Contraband tobacco products seized by the division or by a law enforcement agency as evidence of unlicensed activities shall be retained and disposed of pursuant to the Forfeiture Act [Chapter 31, Article 27 NMSA 1978]. The provisions of this section shall not apply to the sale of tobacco products between a minor and another minor.

**History:** Laws 2020, ch. 46, § 18.

### **61-37-19. Manufacturers, distributors and retailers; violations; license suspension or revocation; administrative penalties.**

The division may suspend or revoke a license of a licensee, require the use of identification verification software for a designated period of time or impose an administrative penalty against a licensee in an amount not to exceed ten thousand dollars (\$10,000), or any combination thereof, if the division finds that the licensee, an employee of the licensee or a contractor acting on behalf of the licensee has violated a provision of the Tobacco Products Act; provided, however, that upon a fourth violation for the sale of a tobacco product to a minor occurring at the same location within three years of the first such violation, the retailer's license issued for that location shall be permanently revoked.

**History:** Laws 2020, ch. 46, § 19.

### **61-37-20. Monitored compliance; inspections.**

The alcoholic beverage control division of the regulation and licensing department, the department of public safety and the appropriate law enforcement authorities in each county and municipality may conduct random, unannounced inspections of facilities where tobacco products are sold, manufactured or distributed to ensure compliance with the provisions of the Tobacco Products Act.

**History:** Laws 2020, ch. 46, § 20.

### **61-37-21. Authority of department of public safety.**

A. The department of public safety has authority over all investigations and enforcement activities required under the Tobacco Products Act, except for those provisions relating to the issuance, denial, suspension or revocation and administrative sanctions of licenses unless its assistance is requested by the director.

B. Following the issuance of a citation pursuant to the provisions of the Tobacco Products Act, the department of public safety or the law enforcement agency of a municipality or county shall report alleged violations of that act to the division.

C. The director may request the investigators from the department of public safety to investigate licensees or activities that the director has reasonable cause to believe are in violation of the Tobacco Products Act.

**History:** Laws 2020, ch. 46, § 21.

### **61-37-22. Authority of the division.**

A. The division has the authority over all matters relating to the issuance, denial, suspension, revocation and other administrative penalties or transfer of licenses under the Tobacco Products Act. The director may request the department of public safety to provide investigatory and enforcement support as deemed necessary.

B. The director has rulemaking authority pursuant to the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History:** Laws 2020, ch. 46, § 22.

### **61-37-23. Administrative authority and powers.**

A. For the purpose of administering the licensing provisions of the Tobacco Products Act, the director is authorized to examine and to require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. The director, through the legal counsel for the division, is vested with the power to issue subpoenas. In no case shall a subpoena be made returnable less than five days from the date of service.

C. A subpoena issued by the division shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena and shall bear the seal of the division and be attested to by the director.

D. After service of a subpoena upon a person, if a person neglects or refuses to appear or produce records or other evidence in response to the subpoena or neglects or refuses to give testimony, as required, the director may invoke the aid of the district courts in the enforcement of the subpoena. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce the books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

**History:** Laws 2020, ch. 46, § 23.

### **61-37-24. Preemption.**

When a municipality or county, including a home rule municipality or an urban county, adopts an ordinance, charter amendment or regulation pertaining to the sales of tobacco products, the ordinance, charter amendment or regulation shall be consistent with the provisions of the Tobacco Products Act.

**History:** Laws 2020, ch. 46, § 24.

### **61-37-25. Applicability.**

The provisions of the Tobacco Products Act do not apply to the lawful purchase or use by a minor of a tobacco-cessation product approved by the federal food and drug administration.

**History:** Laws 2020, ch. 46, § 25.

## **ARTICLE 38 Elevator Safety (Recompiled)**

### **61-38-1. Recompiled.**

**History:** Laws 2023, ch. 197, § 1; recompiled as § 60-13B-1 NMSA 1978.

### **61-38-2. Recompiled.**

**History:** Laws 2023, ch. 197, § 2; recompiled as § 60-13B-2 NMSA 1978.

### **61-38-3. Recompiled.**

**History:** Laws 2023, ch. 197, § 3; recompiled as § 60-13B-3 NMSA 1978.

### **61-38-4. Recompiled.**



**History:** Laws 2023, ch. 197, § 4; recompiled as § 60-13B-4 NMSA 1978.

**61-38-5. Recompiled.**

**History:** Laws 2023, ch. 197, § 5; recompiled as § 60-13B-5 NMSA 1978.

**61-38-6. Recompiled.**

**History:** Laws 2023, ch. 197, § 6; recompiled as § 60-13B-6 NMSA 1978.

**61-38-7. Recompiled.**

**History:** Laws 2023, ch. 197, § 7; recompiled as § 60-13B-7 NMSA 1978.

**61-38-8. Recompiled.**

**History:** Laws 2023, ch. 197, § 8; recompiled as § 60-13B-8 NMSA 1978.

**61-38-9. Recompiled.**

**History:** Laws 2023, ch. 197, § 9; recompiled as § 60-13B-9 NMSA 1978.

**61-38-10. Recompiled.**

**History:** Laws 2023, ch. 197, § 10; recompiled as § 60-13B-10 NMSA 1978.

**61-38-11. Recompiled.**

**History:** Laws 2023, ch. 197, § 11; recompiled as § 60-13B-11 NMSA 1978.

**61-38-12. Recompiled.**

**History:** Laws 2023, ch. 197, § 12; recompiled as § 60-13B-12 NMSA 1978.

**61-38-13. Recompiled.**

**History:** Laws 2023, ch. 197, § 13; recompiled as § 60-13B-13 NMSA 1978.

**61-38-14. Recompiled.**

**History:** Laws 2023, ch. 197, § 14; recompiled as § 60-13B-14 NMSA 1978.

**61-38-15. Recompiled.**

**History:** Laws 2023, ch. 197, § 15; recompiled as § 60-13B-15 NMSA 1978.