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.

ANNOTATIONS

Compiler's notes. — Laws 2002, ch. 83, §§ 2 to 4 purported to enact new sections under the Uniform Licensing Act, but those sections were relocated to appear following the State Civil Emergency Preparedness Act, which is compiled as 12-10-1 to 12-10-10 NMSA 1978.

Cross references. — For State Rules Act, *see* 14-4-1 NMSA 1978 et seq.

For criminal offender employment, *see* 28-2-1 NMSA 1978.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2021 (1st S.S.) amendment, effective June 29, 2021, changed "Sections 67-26-1 through 67-26-31 NMSA 1953" to "Chapter 61, Article 1 NMSA 1978".

Due process. — A regulation of the New Mexico board of psychologist examiners requiring an oral examination for reinstatement of a retiree's license was rationally related to a legitimate governmental purpose; however, the examination might not comply with due process, and, thus, an applicant for reinstatement was entitled to a hearing on the rational justification for the oral examination requirement. *Mills v. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

Appeals. — Because the Uniform Licensing Act did not provide a retired psychologist with a basis for appealing a decision of the New Mexico board of psychologist examiners to require an oral examination for reinstatement of her license, she could request a writ of certiorari to obtain review of the board's alleged due process violations. *Mills v. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

Revocation must be based on substantial evidence. — In administrative adjudications where a person's livelihood (a property right) is at stake, any action depriving a person of that property must be based upon such substantial evidence as would support a verdict in a court of law. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Naked hearsay insufficient. — In proceedings to revoke a license to conduct a business or profession, where, by law, the licensee is entitled to a hearing before the licensing authority, revocation based solely upon hearsay evidence is unwarranted. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

License not revocable on grounds for original denial. — An administrative agency, having once issued a license to an applicant who has made full disclosure of all pertinent facts, may not revoke that same license for reasons that would not have permitted issuance of the license in the first instance. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

Barring fraud and misrepresentation and the existence of statutory authority, state may not revoke the license issued previously to party for the reason that party did not have two years of college training required by the statute when, in fact, at the time appellant granted the license to party, state knew that appellee did not have said college work but, nevertheless, proceeded to grant the license under a policy which, in effect, eliminated the college requirement. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

Specification of "unprofessional conduct" not required. — A board may suspend or revoke a license to practice a profession for "unprofessional conduct" without its being required to first specify by regulation or rule exactly what acts may be so considered. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Preexisting account not required to receive funds. — No law or regulation of the New Mexico real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

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

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

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

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

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

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

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

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

61-1-2. Definitions.

As used in the Uniform Licensing Act:

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; and

(5) 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "party," "probationer," "revocation" and "suspension"; added new Subsections G and H and redesignated former Subsections G through I as Subsections I through K, respectively; in Subsection J, deleted "revoke a license" and added "revocation", and after "by the license", added "for an indefinite period of time"; and in Subsection K, deleted "suspend a license" and added "suspension", and deleted "'Suspend a license' also means to allow, for a stated period of time, the conduct authorized by the license, subject to conditions that are reasonably related to the grounds for suspension.".

The 2022 amendment, effective May 18, 2022, included "the crane operators licensure examining council" within the definition of "board", revised the definition of "license", removed the definition of "emergency", and defined "expedited license", "initial license", "licensing jurisdiction" and "regular license", as used in the Uniform Licensing Act; in Subsection A, added a new Paragraph A(3) and redesignated former Paragraphs A(3)

and A(4) as Paragraphs A(4) and A(5), respectively; added new Subsections C and D and redesignated former Subsection C as Subsection E; in Subsection E, after "to engage in", deleted "each of the professions and occupations" and added "a profession or occupation", and after "regulated by", deleted "the boards enumerated in Subsection A of this section" and added "a board"; added new Subsections F and G and redesignated former Subsections D and E as Subsections H and I, respectively; and deleted former Subsection F, which defined "emergency".

The 2002 amendment, effective March 5, 2002, added Subsection F.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A.

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

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

The 1989 amendment, effective July 1, 1989, in Subsection A(20), substituted "regulation and licensing department" for "commerce and industry department"; in Subsection A(24), inserted "manufactured housing" preceding "division" and substituted "regulation and licensing department" for "commerce and industry department"; added Subsection A(27); and redesignated former Subsection A(27) as Subsection A(28).

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified certain provisions related to affording an applicant for licensure notice and an opportunity to be heard prior to any board action; in Subsections A and C, added "a complete" preceding "application", and in Subsection C, after "on the basis of", added "expedited licensure"; in Subsection D, after "renewal of a license", added "for which a complete application has been properly made"; in Subsection G, added "probation of a license, including"; in Subsection I,

added "excluding supervision required for initial licensure"; in Subsection J, added "including an action that constitutes formal discipline or is subject to reporting to a state or national organization"; and in Subsection L, deleted "for a violation not to exceed one thousand dollars ($1,000) for each violation, unless a greater amount is provided by law".

The 2020 amendment, effective July 1, 2020, in the introductory paragraph, after "take any action", deleted "which" and added "that".

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

Sufficiency of notice and hearing determined under due process standards. – Because there is no precise statutory guideline for a proceeding under this section and due process requires adequate notice and a hearing before the state can take action seeking remuneration against a licensee, the sufficiency of the notice and hearing must be determined under a constitutional due process analysis. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

A constitutional due process analysis under this section must consider and balance three factors: (1) the private interest affected, (2) the risk of an erroneous deprivation of the interest with the procedures used, and (3) the government's interest, including the fiscal and administrative burdens of providing additional procedures. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Due process requirements were satisfied where the notice of contemplated action cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence, and where the licensee had a full and fair opportunity to be heard on the issue of whether collateral estoppel applied on the issues of misrepresentation and loss by the consumers. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

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

Charging board not disqualified in hearing on charge. — The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the absence of a provision for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Authority of pharmacy board. — Subsection L grants the board of pharmacy authority to fine pharmacist licensees up to $1,000.00 for any violation of the Pharmacy Act, Section 61-11-1 NMSA 1978 et seq., or for a violation of provisions of the board's rules and regulations for which the Pharmacy Act authorizes disciplinary action. Additionally, Subsection L grants the board authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the board lacks such disciplinary powers under the Pharmacy Act, the Uniform Licensing Act does not grant the power to impose fines. 1995 Op. Att'y Gen. No. 95-01.

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

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

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

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

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

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

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

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

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

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

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

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

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

53 C.J.S. Licenses §§ 43, 55.

61-1-3.1. Limitations.

A. 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified when the statute of limitations begins to run in an action related to licensure or unlicensed activity; in Subsection A, after "provided in", deleted "Subsection C of", and after "this section", added "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."

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "or an action related to unlicensed activity", "by the board" and substituted "Subsection C" for "Subsections C and D"; in Subsection D, inserted "1999" preceding "Public Accountancy Act".

The 1993 amendment, effective June 18, 1993, substituted "Subsections D through N" for "Subsection D, E or F" in Subsection A and the first sentence of Subsection C; inserted "the discovery of" in Subsection A; substituted "result in any of the actions" for "have any of the effects" in the first sentence of Subsection C; and rewrote Subsection D. This section was also amended by Laws 1993, ch. 218, § 40. The section is set out as amended by Laws 1993, ch. 295, § 4. *See* 12-1-8 NMSA 1978.

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

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

When limitation period began to run under the 1993 version of the statute. — The 1993 version of the two-year limitations began to run when the licensing board discovered the conduct giving rise to a disciplinary action against a licensee, not when someone else, such as a complaining party, discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

Where a complaint was filed with the New Mexico real estate commission in October 2008 against the licensed real estate broker which alleged that the broker was guilty of ethical violations in connection with a real estate contract executed by a seller of real estate and the broker as buyer; the commission investigated the matter and, in May 2010, filed a notice of contemplated action against the broker threatening to revoke the broker’s license; the notice of contemplated action was filed more than two years after the complaining party discovered the broker’s alleged unethical conduct, but less than two years after the commission discovered the conduct; the 1993 version of the statute did not specify whose discovery of unethical conduct triggered the limitations period; and the 2003 amendment specified that discovery of the unethical conduct by the commission triggered the limitations period, the limitations period began to run under the 1993 version of the statute when the commission discovered the broker’s conduct, not when the complaining party discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

Disciplinary action may not be taken against a party later than two years after the improper conduct is discovered by the board. — Where the New Mexico real estate commission (NMREC) issued a notice of contemplated action indicating formal action against petitioners for the revocation of their real estate licenses two years and six days after NMREC received notice from the New Mexico attorney general's office regarding a complaint from a homeowner alleging that petitioners made false statements regarding their business relationship with the homeowner and acted in bad faith regarding negotiations for the short sale of the homeowner's home, the disciplinary action was time-barred by the statute of limitations. A licensing board, subject to the Uniform Licensing Act, §§ 61-1-1 through 61-1-37 NMSA 1978, cannot take disciplinary action against a party later than two years after the improper conduct is discovered by the board. *Trubow v. N.M. Real Est. Comm'n*, 2022-NMCA-044, cert. granted.

When limitation period begins to run. — The limitation period of this section begins to run from the date of the licensee's culpable conduct. Varoz v. N.M. Bd. of Podiatry, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Criminal prosecution tolls statute. — The criminal prosecution of culpable conduct serves only to toll the statute if litigation is commenced during the two-year period following the criminal act. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

If tolling applies, the limitation period is tolled from the time of indictment or information until the judgment of conviction has been entered, but no longer. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Conviction is not "conduct". — Although the fact of conviction may provide a separate and independent basis for revoking a professional license, a conviction is not "conduct" within the meaning of this section and, therefore, the two-year limitation period begins to run from the time of the conduct, transaction or occurrence that underlies the conviction rather than from the date of conviction. *Varoz v. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

Evidence outside of limitations period proper. — Where psychologist failed to object at the administrative hearing to evidence concerning events that occurred outside of the statute of limitations; as such, the evidence of the therapeutic relationship was properly presented in order to provide context and background. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 133 N.M. 362, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

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

61-1-3.2. 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, raised the maximum amount for civil penalties that may be imposed by the board, and struck language authorizing the board to assess administrative costs; and in Subsection B, after "not to exceed", deleted "one thousand dollars ($1,000)" and added "ten thousand dollars ($10,000) for each violation", added "an active" preceding "license", and deleted "In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.".

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.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 132 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "shall submit to a background investigation if required", added "by law or rule of the board".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified when an application for licensure is considered incomplete, specified the time period for notifying an applicant of an

incomplete application, and clarified that an incomplete application expires one year from the date the application was first received by the board; added "An application for licensure is considered incomplete if it is submitted on an application form missing required information or without providing required supporting documentation."; after "within thirty days", deleted "including the way in which" and added "from the date the application was received by the board or designee and include how"; after "application is incomplete", added "and what is needed to complete the application; and after "one year", added "from the date the application was first received by the board".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees, and struck language requiring licensees to bear the cost of disciplinary proceedings; in Subsection A, after "against licensees", added "applicants or unlicensed persons", added "civil" preceding "investigative subpoenas", and added "The authority to issue a specific civil investigative subpoena under this section may be delegated by the board to staff."; in Subsection D, in the introductory clause, after "Section 61-1-3 NMSA 1978", added "or Section 61-1-3.2 NMSA 1978", and after "serve upon the licensee", added "applicant or unlicensed person"; in Paragraph D(1), after "explained", deleted "will" and added "may"; in Paragraph D(2), added "and allegations, including specific laws or rules that are alleged to have been violated"; in Paragraph D(3), after "licensee", added "applicant or unlicensed person", and after "the board", deleted "shall" and added "may"; in Paragraph D(4), after "licensee’s", added "applicant’s or unlicensed person’s"; in

Subsection E, after "applicant", added "or unlicensed person", and after "judicial review", added "as a matter of right"; in Subsection F, after each occurrence of "applicant", added "or unlicensed person", and after "notice of hearing", added "is deposited in the mail, certified return receipt requested, or the date of personal service"; and deleted former Subsection G and redesignated former Subsection H as Subsection G.

The 2022 amendment, effective May 18, 2022, clarified that a licensee or applicant that has received notice of contemplated action and fails to request a hearing as required may apply to the board to reopen proceedings under certain circumstances, and provided that all fines collected by the board shall be deposited in the current school fund; in Subsection E, added "Except as provided in Section 61-1-15 NMSA 1978"; and added Subsection H.

The 2003 amendment, effective July 1, 2003, in Paragraph D(4), substituted "as provided in" for "under"; in Subsection F, added "of hearing" at the end.

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

Guide to assessment of costs. — Rule 1-054 NMRA and Section 61-32-24(F) NMSA 1978 provide guidance to the board when considering a cost assessment, but neither provision is an exhaustive list of the types of costs that are assessable to a disciplined licensee and any costs that are not included in either provision are to be reviewed to determine whether the board acted fraudulently, arbitrarily or capriciously; whether assessment of the cost is supported by substantial evidence; and whether the board acted in accordance with law. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Assessable costs. — Transcription costs, and if the board is the prevailing party, the costs of at least one expert witness, are assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Non-assessable costs. — The hearing officer’s costs, the cost of a hearing room and board member’s per diem and mileage costs are not assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

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

Charging board not disqualified in hearing on charge. — The board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Content of notice. — The "evidence" to be set out in the notice of contemplated action under this statute is the evidence of the ground or grounds to be relied upon in taking the contemplated action under former Section 61-5-14 NMSA 1978, not the evidence to be adduced by way of explanation and determination of rehabilitation under the Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 et seq. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Notice of contemplated action sufficient. — The notice of contemplated action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the merits. *Oden v. State Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

Psychologist was afforded adequate notice that she might be questioned regarding what means she had used to assess her former patient's needs and potential for exploitation; the relevant board rules, which were quoted in the notice of contemplated action, provided that personal relationships with former clients could only be entered with "caution and deliberateness", which should be reflected by the psychologist considering issues such as the need for future treatment and the potential for exploitation of the client. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 62 N.M. 1244, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

The notice of contemplated action was adequate where it cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

The manufacturer was not prejudiced by the omission of the right to subpoena witnesses in the notice of contemplated action because the hearing was based upon the judgment and findings of the district court in an Unfair Practices Act action, and the manufacturer did not have the right to relitigate them. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Rule 1-054 NMRA does not govern the award of costs in an administrative disciplinary action under the Uniform Licensing Act. N.M. Bd. of Veterinary Med. v. Riegger, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of cost of stenographic record to licensee in disciplinary hearing was not arbitrary or capricious because employing a stenographer, rather than tape recording the proceedings, was a permissible and logical choice. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of board members' per diem and mileage costs to licensee in disciplinary hearing was proper. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Requirement of actual notice to licensee. — The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

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

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

53 C.J.S. Licenses §§ 43, 55, 56.

61-1-5. Method of service.

Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978 may be served either personally or by certified mail, return receipt requested, directed to the licensee, 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.

ANNOTATIONS

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

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees, provided that unlicensed persons with no address on record with the board shall receive notice by personal service, and provided that service of electronic or other correspondence sent by a licensee, applicant or unlicensed person should be reasonably accepted by the board; after "applicant", added "or unlicensed person"; added "Unlicensed persons with no address on record with the board shall receive notice by personal service."; and added "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.".

Requirement of actual notice to licensee. — The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

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

53 C.J.S. Licenses §§ 37, 54.

61-1-6. Venue of hearing.

Board hearings held 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; after "in the county in which", deleted "the person whose license is involved" and added "the licensee, applicant or unlicensed person"; after "the person whose license", added "or application"; after "is involved", added "or the person who performed the unlicensed act"; and after "some other county", added "or by virtual remote means".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; in Subsection A, after "findings of fact", added "and recommendations"; in Subsections B and F, after each occurrence of "licensee", added "applicant or unlicensed person"; and in Subsection G, after "A", deleted "licensee" and added "party".

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

Charging board not disqualified in licensing on charge. — The board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and is therefore an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Due process violated where hearing conducted by prejudiced tribunal. — Any utilization of this section which has the effect of allowing an administrative hearing, punitive in nature, to be conducted by a patently prejudiced tribunal must necessarily violate the due process provisions of the fifth and fourteenth amendments of the United States constitution and N.M. Const., art. II, § 18. *Reid v. N.M. Bd. of Exam'rs in Optometry*, 1979-NMSC-005, 92 N.M. 414, 589 P.2d 198.

One peremptory disqualification allowed. — Interpretation of this section by the manufactured homes committee to allow only one peremptory disqualification of a committee member at a hearing was correct. *Rex, Inc. v. Manufactured Hous. Comm.*, 1995-NMSC-023, 119 N.M. 500, 892 P.2d 947.

Peremptory excusals must be exercised prior to the first of sequential hearings in a disciplinary action. — Where, following the receipt of five patient complaints regarding petitioner, the New Mexico medical board (board) initiated two disciplinary actions against petitioner, each based on the complaints filed against him, a notice of summary suspension and a notice of contemplated action, both of which were assigned the same case number, and where petitioner requested hearings as to each notice, and where, following the summary suspension hearing, the hearing officer issued proposed findings of fact and conclusions of law recommending suspension of petitioner's medical license, and where the board adopted the hearing officer's recommendation of suspension, and where a second hearing was scheduled on the notice of contemplated action before the same hearing officer who presided over the summary suspension hearing, and where petitioner filed a motion for change of hearing officer, in which he stated that he was electing to exercise his right to a peremptory excusal of the assigned hearing officer, and where the hearing officer filed an order denying petitioner's motion on the basis that the peremptory excusal was not timely, stating that a peremptory excusal was not available to petitioner because NMSA 1978, § 61-1-7(C), provides for peremptory excusal at least twenty days prior to the first hearing, and where the board affirmed the hearing officer's order denying petitioner's motion for change of hearing officer, and where the contemplated action hearing was held as scheduled, resulting in the hearing officer's report recommending that petitioner's license be revoked, and where the board adopted the hearing officer's findings and ultimately issued its decision and order revoking petitioner's license, the board did not err in affirming the hearing officer's order denying petitioner's motion for change of hearing officer, because in light of the facts of the case and the plain language of the statute, the board's interpretation of § 61-1-7(C), that peremptory excusals must be exercised prior to the first of a series of hearings since the notices and hearings, together, constituted the disciplinary action against petitioner, was reasonable and representative of the obvious spirit of the statute. *Rauth v. N.M. Medical Bd.*, 2023-NMCA-059, cert. denied.

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

53 C.J.S. Licenses §§ 43, 54, 55, 59.

61-1-8. Rights of 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section; and struck language allowing a party the right to be represented by a licensed member of the party's profession or occupation or both; substituted "person" with "party" throughout the section; in Subsection A, after "represented by counsel", deleted "or by a licensed member of his own profession or occupation or both"; and redesignated former Subsection C as Subsection D.

Section provides right to examine all opposing witnesses. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

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

53 C.J.S. Licenses §§ 43, 54, 58, 59.

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

A. In connection with any hearing held under the Uniform Licensing Act, 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; in Subsection A, after "consent of the", deleted "applicant or licensee" and added "party"; and in Subsection C, after "against a party", added "or other person".

Administrative body has only the authority given it by law. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Granting continuance to allow discovery. — This section allows the board to grant a prehearing continuance to assure that the licensee obtains full and complete discovery. *Molina v. McQuinn*, 1988-NMSC-060, 107 N.M. 384, 758 P.2d 798.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

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

53 C.J.S. Licenses §§ 43, 58, 59.

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

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

ANNOTATIONS

Effective dates. — Laws 2023, ch. 167 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Reliable evidence given probative effect. — Evidence of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs may be given probative effect under this section. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Necessity of expert testimony. — Expert testimony is not required to establish negligence or a failure to comply with the standards of professional conduct. A board is required to rely on substantial evidence in reaching its decision; while the court will defer to the board's expert interpretation of evidence, the court will not allow the board to take disciplinary action without substantial evidence in the record to justify the application of the board's expertise. *Gonzales v. N.M. Bd. of Chiropractic Exam'rs*, 1998-NMSC-021, 125 N.M. 418, 962 P.2d 1253.

Expert testimony was not required to support charges that a dentist submitted a false claim for reimbursement and that the dentist was guilty of unprofessional conduct and failed to practice dentistry in a professionally competent manner. Where the agency conducting the hearing is itself composed of experts qualified to make a judgment as to the licensee's adherence to standards of professional conduct, there is no need for the kind of assistance an expert provides in the form of an opinion. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Hearsay admissible. — This section clearly contemplates that a board may admit and consider hearsay evidence, if it is of a kind commonly relied upon by reasonably prudent men in the conduct of serious affairs. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Reference to indictment. — Because an agency has wide discretion in receiving and excluding evidence in proceedings under the Uniform Licensing Act, any error in allowing reference to an indictment against a dentist was harmless. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077110 N.M. 574, 798 P.2d 175.

Standard of proof applied in administrative proceedings, with few exceptions, is a preponderance of the evidence. *Foster v. Bd. of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Substantial evidence must support revocation. — The revocation or suspension of a license to conduct a business or profession must not be based solely upon hearsay evidence, as other legally competent evidence, together with the hearsay evidence, must substantially support the findings upon which the revocation or suspension is based. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Higher burden to prove fraud. — If fraud is charged in an administrative proceeding, the evidence in support of a finding of fraud is not deemed substantial "if it is not clear, strong and convincing." *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Special weight given to technical findings. — Courts may properly give special weight and credence to findings concerning technical or scientific matters by administrative bodies whose members, by education, training or experience, are especially qualified and are functioning within the perimeters of their expertise since legislative approval of the treatment of the findings of these boards is implicit in this section. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. J. 114 (1968).

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

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

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

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

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

53 C.J.S. Licenses §§ 43, 58, 59.

61-1-12. Record.

In all hearings conducted 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section; deleted "tape" and added "digital" preceding "recording", after "recording", added "technology", and deleted "tape" and added "digital" preceding "recordings".

Section provides for complete transcript. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified certain language in the section, and revised the deadline by which the board must submit a final decision and order following a hearing; and in Subsection B, after "A", added "final", after "decision", added "and order", after "signed", added "and executed", after "by the board within", deleted "sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within", and after "after the hearing", added "is closed by the board."

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

Standard of proof for a hearing under this section is by a preponderance of the evidence. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Section requires that decision be made by majority of the members of the board. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

The board is not required to give deference to a hearing officer's report. — Where the hearing officer was appointed to take evidence on a complaint that the dentist engaged in unprofessional conduct, the hearing officer found that the dentist had not engaged in unprofessional conduct and recommended that no disciplinary action be taken; the board reviewed the hearing officer's report and the evidence, and concluded that the dentist had engaged in unprofessional conduct; and the Uniform Licensing Act only permits the hearing officer to make findings, but not to make conclusions of law or recommendations regarding disciplinary action and requires the board to use its knowledge and expertise to make its own findings and conclusions, and to determine what disciplinary action is appropriate, the district court erred by concluding that the board acted arbitrarily and capriciously when it failed to defer to the hearing officer's report. *N.M. Bd. of Dental Health Care v. Jaime*, 2013-NMCA-040, 296 P.3d 1261.

Effect of failure to timely sign decision. — Failure of the board of dentistry to render and sign its decision suspending a dentist's license within 90 days after completion of the hearing made the decision null and void. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

The 90-day time limit imposed by this section is expressly jurisdictional. Where the board fails to take action within the required 90-day period, its decision is void and must be reversed. *Lopez v. N.M. Bd. of Med. Exam'rs*, 1988-NMSC-039, 107 N.M. 145, 754 P.2d 522.

Authority of secretary of public education to revoke teachers' licenses. — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Uniform Licensing Act is not a tax statute, and does not carry with it the presumption of correctness and burden of persuasion that favors the state in tax matters. *Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't*, 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *aff'd*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

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

61-1-14. Service of decision.

Within fifteen days after the decision is 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "decision is", deleted "rendered and", after "signed", added "and executed", and after "shall serve upon the", deleted "applicant or licensee" and added "parties".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "on the basis of the", added "weight of the", and added "extraordinary" preceding "cause".

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

53 C.J.S. Licenses §§ 43, 61.

61-1-16. Contents of decision.

The 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, added "final" preceding "decision", and after "decision", added "and order", deleted "his" and added "the applicant’s or licensee’s" preceding "right to judicial review", and after "such review", deleted "must" and added "shall".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, deleted "person" and added "party".

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

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

Section applies only to licensing decisions. — This section sets forth venue provisions governing the judicial review only of orders of the board which relate to the denial, suspension or revocation of licenses. It is inapplicable to judicial review of price agreement order of state board of barber examiners. *Tudesque v. N.M. State Bd. of Barber Exam'rs*, 1958-NMSC-128, 65 N.M. 42, 331 P.2d 1104.

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

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

53 C.J.S. Licenses §§ 43, 62.

61-1-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-18 NMSA 1978, as enacted by Laws 1957, ch. 247, § 18, relating to records filed by the board and contents of the records, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, *see* Rule 1-074 NMRA.

The 2023 amendment, effective July 1, 2023, deleted "person" and added "party".

The 1998 amendment, effective September 1, 1998, inserted "pursuant to Section 61-1-17 NMSA 1978" and deleted "such" following "No".

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

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

61-1-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-20 NMSA 1978, as enacted by Laws 1957, ch. 247, § 20, relating to scope of review, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, in Subsection A, deleted "person" and added "party"; and in Subsection B, added "within fifteen days after the board receives the request", and deleted "applicant or licensee within fifteen days after the board receives the request" and added "parties".

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

53 C.J.S. Licenses §§ 43, 61.

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

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-22 and 61-1-23 NMSA 1978, as enacted by Laws 1957, ch. 247, §§ 22 and 23, relating to remand for hearing newly discovered evidence; procedure before the board; appeal to supreme court, effective September 1, 1998. For provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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

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

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

ANNOTATIONS

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

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

53 C.J.S. Licenses § 85.

61-1-25. Declaratory judgment.

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

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

ANNOTATIONS

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

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

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

53 C.J.S. Licenses § 37.

61-1-25.1. 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.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 190, § 54 made Laws 2023, ch. 190, § 21 effective July 1, 2023.

61-1-26. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-26 NMSA 1978, as enacted by Laws 1957, ch. 247, § 26, providing a uniform method of judicial review of board actions of the kind, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-27 NMSA 1978, as enacted by Laws 1957, ch. 247, § 27, relating to amending and repealing, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Severability. — Laws 1957, ch. 247, § 29 provided for the severability of the act if any part or application thereof is held invalid.

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.

ANNOTATIONS

Cross references. — For legal newspaper, *see* 14-11-2 NMSA 1978.

The 2022 amendment, effective May 18, 2022, eliminated the rulemaking requirements in the Uniform Licensing Act and required all boards subject to the Uniform Licensing Act to be subject to the State Rules Act for all rulemaking, removed the requirement for publication of the notice of rulemaking, and eliminated the "thirty day after filing"

effective date for final rules; in the section heading, deleted "regulations" and added "rules"; added "Rulemaking" preceding, "procedures" and added "shall be as provided in the State Rules Act", and deleted the remainder of former Subsection A; and deleted former Subsection B through E.

Notice procedure of pharmacy board does not violate due process. *Montoya v. O'Toole*, 1980-NMSC-045, 94 N.M. 303, 610 P.2d 190.

Board must disclose reasoning behind regulation. — In propounding regulations the board of pharmacy need not make formal findings. The only requirements which it must meet are that the public and the reviewing courts are informed as to the reasoning behind the regulation. The comments of one board member suffice in this regard. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Subsection C is applicable to repeal of regulations by an administrative agency. *Rivas v. Board of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934.

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

53 C.J.S. Licenses § 37.

61-1-30. 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.

ANNOTATIONS

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-30 NMSA 1978, as enacted by Laws 1971, ch. 54, § 4, relating to emergency regulations, appeal, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified the procedure for appeal by a person affected by a final rule promulgated by a board; in the section heading, after “validity of”, deleted “regulation” and added “rule”; and replaced “regulation” with “rule” throughout the section.

Interpretations overturned only if clearly wrong. — Reviewing courts overturn the administrative interpretation of a statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpretation by the board of pharmacy of 54-6-41, 1953 Comp. (now Section 26-1-16 NMSA 1978) to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

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

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

53 C.J.S. Licenses § 37.

61-1-31.1. 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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section, and provided that the board may allow for an initial term of an expedited license to be greater than one year by board rule; in Subsection A, in the introductory clause, after "licensee files", deleted "an" and added "a complete"; in Paragraph A(1), added "completed" preceding "application"; in Subparagraph A(2)(b), after "has practiced", added "and held an active license"; and in Subsection B, added "allow for the initial term of an expedited license to be greater than one year by board rule or may".

The 2022 amendment, effective May 18, 2022, revised procedures for expedited licensure for professional and occupational license applicants that hold a license that is current and in good standing in another licensing jurisdiction, provided that a license issued under the expedited licensure process will effectively be a one-year provisional license that confers the same rights, privileges and responsibilities as a regular license, provided that a board may extend an expedited license upon a showing of extenuating circumstances, provided that a board shall issue a regular license, upon application, through its license renewal process before the end of the expedited license period, required a board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in Subsection A, after "license pursuant to", deleted Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "this 2022 act", after "as soon as practicable", added "but no later than thirty days", after the next occurrence of "after", deleted "a person" and added "an out-of-state licensee", and after "files an application for", deleted "a" and added "an expedited"; in Subparagraph A(2)(a), after "issued by another", added "licensing", and after "jurisdiction", deleted "in the United States that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 14E, 24, 24A and 31 NMSA 1978; and", added a new Subparagraph A(2)(b) and redesignated former Subparagraph A(2)(b) as Subparagraph A(2)(c); in Subsection B, added "An expedited", after "license is", deleted "not", added "one-year" preceding "provisional license", after "rights, privileges and responsibilities as", deleted "a license" and added "regular licenses", and after "issued", deleted "pursuant to Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "by a board; provided that a board may extend an expedited license upon a showing of extenuating circumstances"; and added Subsections C and D.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2020 amendment, effective July 1, 2020, in Subsection A, in the introductory paragraph, after "accompanied by", deleted "the" and added "any".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, deleted "license is" and added "may be" preceding "limited as to time", and after "practice or other", deleted "requirement" and added "condition".

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified a provision that allows members of the public to make a written request to a board to adopt, amend, or repeal a rule; in the section heading, deleted "regulations" and added "rules"; after "may request in writing that a board", added "subject to the Uniform Licensing Act", and after "proceedings in accordance with", deleted "Section 61-1-29 NMSA 1978 to adopt the regulation" and added "the State Rules Act".

61-1-33. Declaratory rulings.

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

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

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

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

ANNOTATIONS

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

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised the definition of "licensing fee"; in Subsection A, in the introductory clause, added "a complete" preceding "application"; in Subsection B, after "required examination", deleted "before making application for renewal" and added "prior to renewing the license"; in Subsection C, added "an initial or renewal"; and in Subsection E, Paragraph E(1), after "charged at the time an", added "initial or renewal", and after "examination of a licensee", added "a late fee".

The 2022 amendment, effective May 18, 2022, clarified expedited licensing provisions for military service members, their spouses and dependent children, and for veterans, provided that a license issued pursuant to this section is a provisional license but confers the same rights, privileges and responsibilities as a regular license, eliminated the requirement to evaluate whether a qualified applicant has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the license that the applicant is applying for, provided that the board may require a military service member or veteran who is licensed in a jurisdiction that did not require examination to take a board-required examination prior to renewal of the license; in Subsection A, after "background check if required", deleted "for a license accompanied by any required fees", and in Paragraph A(2), after "armed forces of the United States", deleted "and has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license that the applicant applies for pursuant to Chapter 61 NMSA 1978"; in Subsection B, after "A license issued pursuant to this section is", deleted "not", after "privileges and responsibilities as a", added "regular", and after "license", deleted "issued pursuant to Chapter 61 NMSA 1978" and added "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 before making application for renewal."; deleted former Subsection C and redesignated former Subsections D through F as Subsection C through E, respectively; in Subsection C, deleted "Notwithstanding the provisions of Subsection A of this section", and after "the first three years", deleted "a license issued pursuant to this section is valid" and added "of licensure"; and in Subsection E, deleted former Paragraph E(1), which defined "license", and redesignated former Paragraphs E(2) through E(4) as Paragraphs E(1) through E(3), respectively, and in Subparagraph E(2)(c), deleted "person who is 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, provided that" and added "military service member if the".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, amended the existing provision, which provides for expedited licensure and waiver of certain fees for military service members, to include all veterans, shortened the time in which the state agency, board or commission that issues an occupational or professional license must process an application from a military service member or veteran, defined "license", as used in this section, and revised the definition of "veteran", removed the definition of "recent veteran", and revised the definition of "military service member" to include a surviving spouse of a member who at the time of the member's death was serving on active duty; after "dependents", added "and veterans", and after "waiver of fees", deleted "recent veterans"; in Subsection A, after "no later than", changed "sixty" to "thirty", and after "provides", deleted "all of the documents required for the application" and added "a background check if required", and in Paragraph A(2), after "issue a license", added "prima facie"; in Subsection D, deleted "recent" preceding "veteran"; added a new Subsection E and redesignated former Subsection E as Subsection F; and in Subsection F, added Paragraph F(1) and redesignated former Paragraphs E(1) through E(3) as Paragraphs F(2) through F(4), respectively, in Paragraph F(3), Subparagraph F(3)(a), after "United States", added "as an active duty member", in Subparagraph F(3)(b), after "national guard", added "or a surviving spouse of a member who at the time of the member's death was serving on active duty", in Subparagraph F(3)(c), after "United States", added "as an active duty member", and in Paragraph F(4), deleted "recent" preceding "veteran", and after "military service", deleted "within the three years immediately preceding the date the person applied for a professional or occupational license pursuant to this section".

The 2020 amendment, effective July 1, 2020, required state agencies, boards or commissions that issue occupational or professional licenses to process and issue a license to qualified military service members and recent veterans within sixty days of application, waived the licensing fees for the first three years of a valid license for

military service members and recent veterans; defined "licensing fee" and "recent veteran" and amended the definition of "military service member" as used in this section, and after "Chapter 61", deleted "Articles 2 through 34" throughout the section; in the section heading, added "and dependents; waiver of fees; recent"; in Subsection A, after "as soon as practicable", added "but no later than sixty days", after "military service member", deleted "the spouse of a military service member", and after "files an application", added "and provides all of the documents required for the application"; in Subsection B, after "provisional license and", deleted "must" and added "shall"; deleted former Subsections D and E; added a new Subsection D and redesignated former Subsection F as Subsection E; in Subsection E, added a new Paragraph E(1) and redesignated former Paragraph E(1) as Paragraph E(2), in Paragraph E(2), added Subparagraphs E(2)(b) and E(2)(c); and deleted former Paragraph E(2) and added Paragraph E(3).

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, in Subsections B and C, added "potentially" preceding "disqualifying".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "denied licensure or", deleted "relicensure" and added "license renewal".

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.

ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

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

61-2-2. Definitions.

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.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, amended the definition of prescription in the definitions section of the Optometry Act; and in Paragraph (3) of Subsection D, after "a", deleted "topical ocular pharmaceutical agent or an oral".

The 2007 amendment, effective April 2, 2007, added Paragraph (3) of Subsection A.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, in Paragraph A(2), inserted "preventive or corrective measures, including" and "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in the first sentence, deleted "or any controlled substances" after "injections" and added the proviso at the end of the second sentence; inserted "or for an oral pharmaceutical agent as authorized in Section 61-2-10.2 NMSA 1978" and "Device" in the introductory paragraph of Subsection D; and made stylistic changes throughout the section.

"Optometry". — Optometry and the practice of optometry relate basically to the testing of the loss of eyesight and the correction thereof by the use of optical appliances or other means, not including drugs, medicines or surgery. 1958 Op. Att'y Gen. No. 58-158.

Duplicating of lens as "practice of optometry". — A person who duplicates an ophthalmic lens without a prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1954 Op. Att'y Gen. No. 54-5909.

Contact lenses. — Even though not specifically named in former Optometry Practice Act, contact lenses could be considered a lens or other optical appliance. 1958 Op. Att'y Gen. No. 58-158.

Audiometric testing should not be undertaken by optometrist because the various healing arts professions should stay within the confines of their individual professions as defined by the separate licensing acts enacted by the state legislature. 1958 Op. Att'y Gen. No. 58-158.

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

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

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

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.

ANNOTATIONS

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

61-2-4. License required.

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.

ANNOTATIONS

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

The 2003 amendment, effective June 20, 2003, rewrote the introductory paragraph; deleted former Subsection C which read: "prescribe eyeglasses or give a prescription to a patient; or"; redesignated former Subsection D as present Subsection C; and deleted "not including contact lenses without a current prescription or without a written authorization from the patient if the prescription is not available" at the end of present Subsection C.

Retail ophthalmic dispenser may not legally fit contact or corneal lenses either independently or under the supervision of a New Mexico licensed practitioner of optometry or medicine. 1958 Op. Att'y Gen. No. 58-176.

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

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

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

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

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

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

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

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.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board consists" for "composed" following "'board of optometry'" near the beginning of Subsection A.

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

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

61-2-6. 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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, provided that the optometry board is subject to the provisions of the State Rules Act for promulgating rules; in the section heading, added "Optometry board"; in Subsection D, after "rules promulgated in accordance with", deleted "that" and added "the State Rules", and after "beyond the provisions of", deleted "that" and added "the Optometry"; and in Subsection E, Paragraph E(2), deleted "adopt, publish and file", and added "promulgate", and after "in accordance with the", deleted "the Uniform Licensing Act and".

The 2015 amendment, effective June 19, 2015, made changes to the statutory powers of the board of optometry; in Subsection A, after "elect a", deleted "chairman" and added "chair", after "a vice", deleted "chairman" and added "chair", and after "serve until", deleted "his" and added "a"; in Subsection B, after "called by the", deleted "chairman" and added "chair"; added new Subsection D and redesignated the succeeding subsection accordingly; in Paragraph (2) of Subsection E, after "all rules", deleted "and regulations"; in Paragraph (7) of Subsection E, after "upon which", deleted "he" and added "the applicant"; in Paragraph (10) of Subsection E, after "for the use of", deleted "topical ocular pharmaceutical agents and oral", after "Section", deleted "61-2-10" and added "61-2-10.2", and after "certified to use", deleted "topical ocular pharmaceutical agents and oral"; and in Paragraph (11) of Subsection E, after "Section", deleted "61-2-10" and added "61-2-10.2".

The 2003 amendment, effective July 1, 2003, deleted Paragraph D(12), concerning employment of agents or attorneys.

The 1995 amendment, effective July 1, 1995, in Subsection B, substituted "at least annually" for "in January and July of each year" in the first sentence, deleted former provisions relating to the time for examination of candidates for licensure and notices of meetings, and made stylistic changes; and, in Paragraph D(10), inserted "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in two places.

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

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

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

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

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

ANNOTATIONS

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

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

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

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.

ANNOTATIONS

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

For the Parental Responsibility Act, *see* 4-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised the qualifications for licensure as an optometrist; deleted former Subsections B and C, which required an applicant for licensure as an optometrist to be of good moral character and to be a high school graduate or its equivalent; and redesignated former Subsection D as Subsection B.

The 2021 amendment, effective June 18, 2021, removed proof of naturalization or United States citizenship as a requirement for licensure as an optometrist; and deleted former Subsection D and redesignated the succeeding subsection accordingly.

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

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

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

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

61-2-9. Licensure by examination; 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.

ANNOTATIONS

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

The 2022 amendment, effective May 18, 2022, provided for expedited licensure, provided that if the optometry 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, required the optometry board to determine by rule, and to post on its website, which 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 those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in the section heading, added "expedited"; in Subsection A, after "set forth in Section", deleted "67-1-7 NMSA 1953" and added "61-2-8 NMSA 1978 for initial licensure", deleted former Paragraph A(2); and deleted former Subsection B and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

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

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

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.

ANNOTATIONS

Repeals. — Laws 2015, ch. 131, § 7 repealed 61-2-10 NMSA 1978, as enacted by Laws 1977, ch. 30, § 3, relating to certification for use of topical ocular pharmaceutical agents, display, effective June 19, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

61-2-10.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 20, § 10 repealed 61-2-10.1 NMSA 1978, as enacted by Laws 1986, ch. 80, § 1, relating to treatment of glaucoma or iritis, effective July 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, provided optometrists with greater prescribing powers; in the catchline, after "Designation of", deleted "oral"; in the introductory sentence of Subsection A, after "prescribe or administer", deleted the remainder of the sentence, deleted Paragraphs (1) through (5) of Subsection A and added "all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:" to the introductory sentence of Subsection A; added new Paragraphs (1) through (3) of Subsection A; in Subsection B, after "certification for the use of", deleted "oral", after "licensed by the board", deleted "who are certified for the use of topical ocular pharmaceutical agents", and after "administration of", deleted "oral"; and in Subsection C, deleted "As of July 1, 1996, all", after "certification in the use of", deleted "diagnostic, topical therapeutic and oral", and after "board's examination in", deleted "diagnostic, topical and oral".

The 1996 amendment, effective May 15, 1996, inserted "qualified and certified by the board" in the introductory language of Subsection A, inserted "currently licensed by the board" in the first sentence of Subsection B, added Subsection C, and redesignated former Subsection C as Subsection D.

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.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, provided procedures for certain prescriptions prescribed by optometrists; in the catchline, after "Prescription for", deleted "topical ocular pharmaceutical agent, oral"; and in Subsection A, after "prescription written for", deleted "topical ocular pharmaceutical agent or for an oral", after "means of a written", added "or electronic", and after "prescriber", deleted "his" and added "the prescriber's".

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

The 2003 amendment, effective June 20, 2003, deleted Paragraph A(5) which read: "annual license renewal fee in an amount not to exceed three hundred dollars ($300); and"; deleted Paragraph A(6) which read: "late renewal penalty fee in an amount not to exceed one hundred dollars ($100)"; deleted "present" following "renewal of his" in Subsection B; and substituted "the" for "such" following "licensure by endorsement" in Subsection C.

The 1996 amendment, effective May 15, 1996, rewrote Subsection A and substituted "April 3, 1973" for "the effective date of the Optometry Act" near the beginning of Subsection B.

The 1995 amendment, effective July 1, 1995, substituted "taxation and revenue department" for "revenue division" in Subsection C and made a stylistic change.

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

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

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.

ANNOTATIONS

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

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, inserted "as an optometrist" in Subsection A; substituted "secretary-treasurer" for "secretary" throughout the section; substituted "revenue processing division of the taxation and revenue department" for "bureau of revenue" in Subsection B; inserted "to include a minimum of six credit hours of continuing education in ocular therapeutic pharmacological agents" in the first sentence of Subsection C; and made stylistic changes throughout the section.

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

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.

ANNOTATIONS

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

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

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

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

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

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

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

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

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

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

Ophthalmological malpractice, 30 A.L.R.5th 571.

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

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.

ANNOTATIONS

Cross references. — For the Criminal Code, *see* 30-1-1 NMSA 1978 and notes thereto.

The 2015 amendment, effective June 19, 2015, provided for a generalized "pharmaceutical agent" by removing references to certain types of pharmaceutical agents in the provision relating to violations of the Optometry Act; in Paragraph (2) of Subsection A, after "attempting to use a", deleted "topical ocular pharmaceutical agent or an oral"; in Paragraph (3) of Subsection B, after "a copy of", deleted "his" and added "the patient's"; in Paragraph (5) of Subsection B, after "paragraph to prevent", deleted "any" and added "a"; and in Paragraph (6) of Subsection B, after "eyeglasses or any part", deleted "thereof" and added "of them".

The 2003 amendment, effective June 20, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

The 1996 amendment, effective May 15, 1996, added the language beginning "unless, however, the administration of pharmaceutical agents" at the end of Paragraph A(2), deleted "licensed or" following "unless that person is" in Paragraph A(3), and added the language beginning "or unless the administration of pharmaceutical agents" at the end of Paragraph A(3).

The 1995 amendment, effective July 1, 1995, added Subsection A; designated the former introductory paragraph as Subsection B and rewrote the provision; redesignated former Subsections C through F as Paragraphs B(1) through B(4); deleted former Subsection G prohibiting practicing optometry when one's license has been revoked or suspended; designated former Subsections H through J as Paragraphs B(5) through B(7); and made related and other stylistic changes throughout the section.

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

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

Cable television system not "advertising". — Cable television system which did not sell advertising space, nor receive any compensation whatsoever from advertisers or broadcasters for the electronic service it performed, and was supported entirely by the sale of subscriptions to viewers, in return for which it performed the service of increasing the viewer's capacity to receive television signals, was not "advertising" within meaning of statute forbidding advertising of optometry and optometry services;

neither did operators share a "community of purpose" with out-of-state optometrists or broadcasters sufficient to render them liable as accessories. *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Fact that one consequence of the cable television systems' activities was to expose a number of New Mexicans to price advertising inducements to which they might not otherwise have been exposed was merely an incidental effect of an otherwise lawful activity, and did not, of itself, absent intention or purpose, make the activity "advertising." *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

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

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

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

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

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

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

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

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

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

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

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

61-2-14.1. 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.

ANNOTATIONS

Compiler's notes. — Laws 2019, ch. 15, § 1 was not enacted as part of the Optometry Act, but was compiled there for the convenience of the user.

The 2021 amendment, effective June 18, 2021, removed references to the Osteopathic Medicine Act and the board of osteopathic medicine; in Subsection A, after "Medical Practice Act", deleted "or the Osteopathic Medicine Act"; in Subsection D, after "New Mexico medical board", deleted "the board of osteopathic medicine"; in Subsection E, in Paragraph E(5), after "pursuant to the", deleted "Osteopathic Medicine" and added "Medical Practice", and after the next occurrence of "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

Person who duplicates ophthalmic lens without prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1954 Op. Att'y Gen. No. 54-5909.

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

61-2-16. Freedom of choice.

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted the last sentence in Subsection A which read: "For the purpose of this subsection, 'ocular practitioner' includes all validly licensed optometrists, physicians and surgeons."

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.

ANNOTATIONS

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

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

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 15, § 8 repealed 61-2-18 NMSA 1978, as enacted by Laws 1979, ch. 12, § 3, relating to termination of agency life, delayed repeal, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For Sexual Assault Survivors Emergency Care Act, *see* 24-10D-1 NMSA 1978 et seq.

The 2003 amendment, effective January 1, 2004, substituted "Chapter 61, Article 3 NMSA 1978" for "Sections 61-3-1 through 61-3-30 NMSA 1978". Identical amendments were also made to this section by Laws 2003, ch. 276, § 1 and Laws 2003, ch. 282, § 1.

This section was set out as amended by Laws 2003, ch. 307, § 4. *See* 12-1-8 NMSA 1978.

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

61-3-2. Purpose.

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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, inserted "hemodialysis technicians and medication aides".

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

Requiring nurse to "float" not unlawful or serious misconduct. — A hospital's "floating" policy is not necessarily something that "public policy would condemn." Therefore, requiring a nurse to "float" is not the kind of unlawful or serious misconduct for which recognition of the tort of wrongful discharge was intended. *Francis v. Memorial Gen. Hosp.*, 1986-NMSC-072, 104 N.M. 698, 726 P.2d 852.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 190, § 2 repealed former 61-3-3 NMSA 1978, as enacted by Laws 1968, ch. 44, § 3, relating to definitions, effective June 14, 1991, and enacted a new section.

Cross references. — For scope of medical practice, *see* 61-6-6 NMSA 1978.

The 2005 amendment, effective April 7, 2005, added Subsection C to define "certified hemodialysis technician"; added Subsection D to define "certified medication aide"; deleted "emergency procedures" in Subsection G, which was defined as airway and vascular access procedures; and added Subsection Q to define "training program".

The 2003 amendment, effective January 1, 2004, added "or a nurse who practices licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact" at the end of Subsection H; inserted present Subsection J and redesignated the subsequent paragraphs accordingly; and added "or a nurse who practices professional registered nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact" at the end of present Subsection N.

The 2001 amendment, effective June 15, 2001, inserted Subsection G and renumbered the remaining subsections accordingly.

The 1997 amendment, effective June 20, 1997, added Subsections A and M, deleted former Subsection F, which defined "expanded practice", and redesignated the existing subsections accordingly; in Subsection J(8), inserted "and supervising" at the beginning; substituted "who is licensed" for "whose qualifications are endorsed" and "advanced" for "expanded" throughout the section, and made minor stylistic changes.

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

Additional midwife license not required. — A family nurse practitioner authorized by the board of nursing to perform services constituting midwifery need not, as well, have a midwife license from the health services division (now department of health). 1981 Op. Att'y Gen. No. 81-07.

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

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

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

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

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

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.

ANNOTATIONS

Cross references. — For criminal records screening for caregivers employed by care providers, *see* 29-17-2 NMSA 1978 et seq.

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.

ANNOTATIONS

The 2003 amendment, effective January 1, 2004, added "Except as otherwise provided in the Nursing Practice Act," at the beginning of Subsections A, B and C.

The 2001 amendment, effective June 15, 2001, inserted Subsection A and renumbered the remaining subsections accordingly.

The 1997 amendment, effective June 20, 1997, added Subsection F, inserted "or imply" near the end of Subsections A(2) and B(2), substituted "licensed" for "endorsed" throughout the section, and made minor stylistic changes.

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

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

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

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

61-3-5.1. 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.

ANNOTATIONS

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.

ANNOTATIONS

The 2005 amendment, effective April 7, 2005, changed "conscious sedation" to "moderate sedation".

The 1997 amendment, effective June 20, 1997, inserted "licensed" near the end of the first sentence, and in the last sentence substituted "licensed pursuant to the Nursing Practice Act from using hypnosis or from administering local anesthetics or conscious sedation" for "licensed in the healing arts from administering local anesthetics or from using hypnosis".

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

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

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

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

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

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

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

61-3-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 379, § 12 repealed 61-3-7 NMSA 1978, as enacted by Laws 1973, ch. 149, § 3, exempting persons employed to administer general anesthesia on the effective date of the act from the provisions of the act, effective April 6, 1979.

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.

ANNOTATIONS

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

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

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

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

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

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

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

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

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

ANNOTATIONS

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

61-3-10. Powers; duties.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, provided that the board of nursing is subject to the provisions of the State Rules Act for promulgating rules and to the Uniform Licensing Act for licensing and disciplinary matters, required the board of nursing to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in Subsection A, after "shall", deleted "adopt and revise such" and added "promulgate", and after "rules", deleted "and regulations" and added "in accordance with the State Rules Act"; redesignated former Subsections G through R as Subsections H through S, respectively; in Subsection G, added "conduct hearings upon charges related to an applicant or discipline of a licensee"; in Subsection H, after "prosecution of", deleted "all", after "persons", deleted "including firms, associations, institutions and corporations", and after "is necessary", deleted "therefor" and added "for the prosecution"; and added Subsection T.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

2003 Amendments. — Laws 2003, ch. 307, § 7, effective January 1, 2004, substituted "if" for "provided that" following "prescribed standards" near the end of Subsection D; inserted "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" following "discipline of a licensee" near the middle of Subsection F; and added a new Subsection Q and redesignated former Subsection Q as Subsection R.

Laws 2003, ch. 276, § 4, effective June 20, 2003, at the end of Subsection Q inserted "and certified registered nurse anesthetists".

The 1997 amendment, effective June 20, 1997, substituted "who" for "and" preceding "shall define" in Subsection J, added "and shall study methods of monitoring continuing competence" at the end of Subsection L, substituted "license qualified" for "endorse the qualifications of" at the beginning of Subsection P, and added Subsection Q.

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

Volunteers for the board of nursing would likely be covered under the liability policies for the state of New Mexico. — The New Mexico Tort Claims Act explicitly contemplates that volunteers acting on behalf of the government may be considered public employees subject to its protections and to its waivers of those protections, 41-4-3(F)(3) NMSA 1978, and therefore, volunteers charged with reviewing complaints and making recommendations to the nursing board regarding potential disciplinary action against licensees would likely be deemed public employees acting on behalf or in service of a governmental entity, and liability policies of the state of New Mexico likely would cover negligent acts by these volunteers. *Use of Volunteers at the New Mexico State Board of Nursing* (11/26/18), Att'y Gen. Adv. Ltr. 2018-09.

The nursing board's use of volunteer committee members to assist the board in the approval of nursing programs does not violate the law. — The Nursing Practice Act provides that the nursing board is authorized to prescribe standards and approve curricula for educational programs preparing persons for licensure under the Nursing Practice Act and is authorized to appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, and the New Mexico board of nursing employee policies set forth qualifications of committee members for each of the

board's advisory committees. The board of nursing's practice of allowing volunteer committee members to make site visits for the purpose of assisting the board in approval of nursing programs, therefore, appears to comply with the law and is appropriate based on the required qualifications of the committee members. *Use of Volunteers at the New Mexico State Board of Nursing* (11/26/18), Att'y Gen. Adv. Ltr. 2018-09.

Applicability of the Open Meetings Act to volunteer nursing board advisory committees. — The Open Meetings Act, 10-15-1 to 10-15-4 NMSA 1978, applies to a quorum of members of any board or commission or other policy making body of any state agency held for the purpose of formulating public policy or taking any action within the authority of, or the delegated authority of, any board or commission or other policymaking body, and therefore, meetings of a volunteer advisory committee appointed by the nursing board to provide advice and recommendations to the nursing board on various topics would not implicate the Open Meetings Act, unless the advisory committee includes among its members a quorum of the nursing board, in which case the committee meeting would need to be noticed as a public meeting and the minutes would need to be taken, and any minutes that are taken must be open to public access. *Use of Volunteers at the New Mexico State Board of Nursing* (11/26/18), Att'y Gen. Adv. Ltr. 2018-09.

Duplicate certificate. — The board could establish regulations for issuing a duplicate certificate, but no fee could be charged therefor. 1966 Op. Att'y Gen. No. 66-99.

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

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

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 61, § 2 repealed former 61-3-10.1 NMSA 1978, as enacted by Laws 1989, ch. 93, § 1, and enacted a new section, effective June 18, 1993.

The 2021 amendment, effective June 18, 2021, provided for the waiver of hemodialysis technician certification fees for military service members and veterans; and in Subsection D, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective April 7, 2005, changed "hemodialysis technician" to "certified hemodialysis technician"; deleted the former provisions of Subsections A(1) and (2) which defined "hemodialysis technician" and "training program"; provided in Subsection A that a statewide program for certification of hemodialysis technicians is created according to rules of the board; changed "this section" to "the Nursing Practice Act" in Subsection B; provided in Subsection C(4) that the board shall grant, deny or withdraw approval of a program that fails to maintain a current contract with the board; deleted the former provisions of Subsection C(5) which provided that the board shall withdraw approval from a program for failure to maintain a current contract with the board or for failure to pay the administrative fee as provided in the contract; provides in Subsection D that an applicant shall submit evidence of having completed a board-approved training program for hemodialysis technicians; deleted the former provision in Subsection E which provided that certificates shall be renewed every two years by the last day of the hemodialysis technician's certification month upon payment of the required fee; provided a fee for certification by initial or subsequent examination in Subsection F(1); provided a fee for reactivation of a lapsed certificate or following board action in Subsection F(3); increased the fee in Subsection F(3) from $30 to $60; increased the fee in Subsection F(5) from $100 to $200; increased the fee in Subsection F(7) from $150 to $200; and deleted former Subsection G which provided that training programs shall pay the board for administrative and other costs associated with oversight of the program.

The 2003 amendment, effective June 20, 2003, added Paragraph C(5) and redesignated former Paragraph C(5) as (6).

The 2001 amendment, effective June 15, 2001, changed the renewal month of a hemodialysis technician's certificate from the technician's birth month to his certification month in Subsection E; in Subsection F, inserted "by rule" in the introductory language, increased the fee in Paragraph (4) from $150 to $300, increased the fee in Paragraph

(5) from $50 to $100, increased the fee in Paragraph (6) from $25 to $50, increased the fee in Paragraph (7) from $75 to $150; and added Subsection G.

The 1997 amendment, effective June 20, 1997, substituted "every two years by the last day of the hemodialysis technician's birth month" for "biennially" at the beginning of Subsection E.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, provided for the waiver of medication aide certification fees for military service members and veterans; and in Subsection D, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective April 7, 2005, amended Subsection A that limited the licensing of medication aids to licensed intermediate care facilities for the mentally retarded; deleted Subsection B that provided a definition of "medication aide", relettered former Subsections B, C and D as Subsections C, D and E; amended Subsection B to insert "certified" before "medication aide" in two places; amended Subsection C to insert

"certified" before "medication aide" and deleted Subsection C(3) and added Subsection B(5) relating to withdrawal or denial of certification of medication aide training programs that fail to meet standards; deleted former Subsections F, H and I; and added a new Subsection F providing for fees.

Laws 2005, ch. 303, § 1 and Laws 2005, ch. 307, § 4 both enacted amendments to 61-3-10.2 NMSA 1978. The section was set out as amended by Laws 2005, ch. 307, § 4. See 12-1-8 NMSA 1978.

The 2003 amendment, effective June 20, 2003, added Paragraph D(3) and redesignated former Paragraphs D(3) and (4) as Paragraphs D(4) and (5).

The 2001 amendment, effective June 15, 2001, in Paragraph I(2), increased the review fees from $150 to $300 for each initial review or approval, and from $50 to $100 for each subsequent review or approval, and deleted the exception at the end of the paragraph, which read "except where the change or modification has been required by a change in board policy or board rules and regulations, in which case the fee for each review and approval shall not exceed twenty-five dollars ($25.00)"; and in Paragraph I(3), increased the educational review fee from $75 to $150.

The 1997 amendment, effective on June 20, 1997, substituted "every two years by the last day of the medication aide's birth month and" for "biennially" in the first sentence of Subsection G.

The 1995 amendment, effective July 1, 1995, in Subsection A, deleted "trial" following "purpose of the" in the second sentence, deleted the former third sentence requiring a report to the forty-second legislature and substituted "continuing" for "initiating" in the last sentence; substituted "supervision of a licensed nurse" for "direction of a registered nurse" in Subsection B; in Subsection D, added Paragraph (3), redesignated former Paragraph (3) as Paragraph (4) and made a minor stylistic change in Paragraph (2).

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "shall permit the operation of a" for "is enacted to permit the initiation and operation of a two-year" in the first sentence, added the present second sentence and deleted "at the end of the second full year of implementation" following "evaluated" and substituted "and the necessity of continuing" for "of" and "second session of the forty-second legislature" for "first session of the forty-first legislature" in the present third sentence; in Subsection B, added "For the purposes of this section" to the beginning and substituted "registered" for "licensed"; and in Subsection C, deleted "certified" preceding "medication".

61-3-10.3. 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.

ANNOTATIONS

Repeals. — Laws 2005, ch. 307 § 10 repealed 61-3-10.3 NMSA 1978, as enacted by Laws 1995, ch. 117, § 1, relating to medication aides, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

61-3-10.4. Repealed.

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

ANNOTATIONS

Repeals. — Laws 2005, ch. 307 § 10 repealed 61-3-10.4 NMSA 1978, as enacted by Laws 2003, ch. 282, § 2, relating to school medication aides training pilot program, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2017 amendment, effective July 1, 2017, provided loan repayment assistance through nursing license renewal surcharge fees for nurses in advance practice who practice in areas of New Mexico that the higher education department has designated as underserved; in Subsection A, added paragraph designation "(1)", at the end of the paragraph, added "and", and added Paragraph A(2); in Subsection B, in the second sentence, added "surcharge shall be used as follows", and added Paragraphs B(1) and B(2); and added Subsection C.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 276 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-3-11. Bonds; expenses.

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

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

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

ANNOTATIONS

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.

ANNOTATIONS

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

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

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

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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, added the Subsection A designation and added Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "applicant has successfully completed an approved program of nursing for licensure as a registered nurse and has graduated or is eligible for graduation" for former language relating to an approved high school course or the equivalent and completion and graduation from an approved school of nursing.

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

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

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

61-3-14. Licensure of registered nurses; 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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978, and provided that if the board of nursing 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; in the section heading, added "by examination"; in Subsection B, after "The board", deleted "may" and added "shall", deleted "by taking the national licensing examination for registered nurses under the laws of another state if the applicant meets the qualifications required of registered nurses in this state. From July 1, 2014 through June 30, 2019, upon a determination by the board that an

application is complete and approved" and added "in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction", and after "expedite the issuance of a license", deleted "pursuant to this subsection within five business days" and added the remainder of the subsection; and in Subsection C, deleted "The board may issue a license to practice as a registered nurse to", after "a territory or foreign country", deleted "if the applicant meets the qualifications required of registered nurses in this state, is proficient" and added "shall demonstrate proficiency", and after "English", deleted "and passes the national licensing examination for registered nurses".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; in Subsection B, in the first sentence, after "license to practice", deleted "as a" and added "professional" and after "professional registered", changed "nurse" to "nursing", and added the second sentence.

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

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

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

61-3-15. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 137, § 15 repealed 61-3-15 NMSA 1978, as enacted by Laws 1968, ch. 44, § 12, regarding temporary licensure for registered nurses, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-3-5.1 NMSA 1978.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, deleted "Applicants" and added "Except as provided in Section 61-1-34 NMSA 1978, an applicant".

The 2005 amendment, effective April 7, 2005, changed the fee in Subsection D from $50 to $100.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "endorsement" in Subsection D.

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

61-3-17. Registration under previous law.

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.

ANNOTATIONS

Compiler's notes. — The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

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

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, inserted "or registered nurse" following "licensed practical nurse" in Subsection A.

The 2001 amendment, effective June 15, 2001, added the Subsection A designation and added Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "applicant has successfully completed an approved program of nursing for licensure as a licensed practical nurse and has graduated or is eligible for graduation" for former language relating to an approved high school course or the equivalent and completed a state approved course for licensed practical nurses.

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

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

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

61-3-19. Licensure of licensed practical nurses; 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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and provided that if the board of nursing 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; in the section heading, added "by examination"; in Subsection B, after "The board", deleted "may" and added "shall", after "issue", added "an expedited", deleted "by passing the national licensing examinations for licensed practical nurses under the laws of another state if the applicant meets the qualifications required of licensed practical nurses in this state. From July 1, 2014 through June 30, 2019, upon a determination by the board that an application is complete and approved" and added "in another licensing jurisdiction and holds a valid, unrestricted license and is in good standing with the licensing board in that licensing jurisdiction", after "The board shall expedite the issuance of a license", deleted "pursuant to this subsection within five business days" and added the remainder of the subsection; and in Subsection C, deleted "The board may issue a license to practice as a licensed practical nurse to", after "An applicant licensed under the laws of", deleted "another" and added "a", after "foreign country", deleted "if the applicant meets the

qualifications required of licensed practical nurses in this state, is proficient" and added "shall demonstrate proficiency", and after "in English", deleted "and successfully passes the national licensing examination for licensed practical nurses".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; in Subsection A, in the second sentence, after "who", deleted "successfully"; in Subsection B, in the first sentence, after "laws of another state", deleted "or by passing a state-board-constructed licensing examination prior to October 1986", and added the second sentence.

The 1997 amendment, effective June 20, 1997, substituted "passing" for "testing" following licensed by" and "state or by passing a state-board-constructed licensing examination prior to October 1986 if the applicant meets" for "state if the applicants meet" in Subsection B.

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

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

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

61-3-20. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 137, § 15 repealed 61-3-20 NMSA 1978, as enacted by Laws 1968, ch. 44, § 17, regarding temporary licensure for licensed practical nurses, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-3-5.1 NMSA 1978.

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.

ANNOTATIONS

Compiler's notes. — The "effective date of the Nursing Practice Act", referred to in this section, is July 1, 1968, which is the effective date of Laws 1968, ch. 44, § 28.

61-3-22. Fees for licensure as 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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, deleted "Applicants" and added "Except as provided in Section 61-1-34 NMSA 1978, an applicant".

The 2005 amendment, effective April 7, 2005, changed the fee in Subsection A from $90 to $150; changed the fee in Subsection B from $90 to $150; and changed the fee in Subsection C from $30 to $60.

The 1991 amendment, effective June 14, 1991, substituted "ninety dollars ($90.00)" for "forty-five dollars ($45.00)" in Subsections A and B; substituted "by the board not to exceed thirty dollars ($30.00)" for "at fifteen dollars ($15.00)" in Subsection C; and made a minor stylistic change in the introductory paragraph.

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

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "first available" following "to take the" and added "within the time frame set by rules of the board" at the end.

The 1993 amendment, effective June 18, 1993, inserted "available" near the end of Subsection A and substituted the language beginning "the examinee" for "the examinees, at which time all permits are void and those applicants who have passed the examination may be issued a license to practice" at the end of Subsection C.

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

A one-time, nonrenewable permit may be issued to graduate nurse anesthetists, nurse practitioners and clinical nurse specialists awaiting examination and results in accordance with requirements set forth by the board in the rules and regulations.

History: 1978 Comp., § 61-3-23.1, enacted by Laws 1979, ch. 379, § 8; 1991, ch. 190, § 13.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "nurse anesthetists, nurse practitioners and clinical nurse specialists" for "nurse specialists" and made minor stylistic changes throughout the section.

61-3-23.2. Certified nurse practitioner; qualifications; practice; examination; 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.

ANNOTATIONS

Cross references. — For drug prescriptive, distributing and administering authority of certified nurse midwives, *see* 24-1-4.1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing 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, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing 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, and provided that an applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English; and deleted former Subsection F and added a new Subsection F.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 2001 amendment, effective June 15, 2001, inserted "endorsement" in the section heading; deleted "graduate" preceding "program" in Paragraph A(2); in Subsection B, substituted "practice independently and make decisions" for "make independent

decisions" in Paragraph (2) and added Paragraph (3); and in Subsection C, deleted the final sentence, which defined "prescriptive authority".

The 1997 amendment, effective June 20, 1997, added the proviso at the end of Subsection A(2), substituted "prescriptive authority" for "prescribing drugs" near the beginning of Subsection D, inserted "national professional" preceding "certification" near the end of the first sentence in Subsection E, substituted "advanced" for "expanded" and "licensed" for "endorsed" throughout the section, and made minor stylistic changes.

The 1993 amendment, effective June 18, 1993, rewrote Subsections B and C; substituted "including controlled substances included in Schedules II through V of" for "other than controlled substances as defined in" and deleted "unit" preceding "doses of drugs" in Subsection D; and deleted former Subsection F, defining "collaboration".

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.

ANNOTATIONS

Cross references. — For the New Mexico medical board, *see* 61-6-2 NMSA 1978 et seq.

For the Anesthesiologist Assistants Act, *see* 61-6-10.1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing 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, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing 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, and provided that an applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English; in Subsection A, Paragraph A(2), after "nurse anesthesia", deleted "education" and added "educational", and after "a board in another", added "licensing", and in Paragraph A(3), after "certified by the", deleted "council on" and added "national board of"; in Subsection C, after "in New Mexico pursuant to", deleted "Chapter 61, Article 5A, 6, 8 or 10 NMSA 1978" and added "the Dental Health Care Act, the Medical Practice Act or the Podiatry Act"; in Subsection E, after "in accordance with rules", deleted "regulations and guidelines" and added "of the board"; deleted former Subsection F and added a new Subsection F; and in Subsection H, after "shall maintain this certification with the", deleted "American association of nurse anesthetists' council on" and added "national board of", and after "certification", added "and recertification for nurse anesthetists".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 2001 amendment, effective June 15, 2001, inserted "endorsement" in the section heading; in Subsection A, substituted "council on the accreditation of nurse anesthesia education programs" for "American association of nurse anesthetists' council on accreditation" in Paragraph (2) and substituted "council on certification of nurse anesthetists" for "American association of nurse anesthetists" in Paragraph (3); inserted "including ordering of diagnostic tests" in Subsection B; rewrote Subsection C; and added Subsections D through G.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "endorsement" in the section heading, substituted "may license for advanced" for "may

endorse for expanded" at the beginning of Subsection A, rewrote Paragraph A(2), substituted "Chapter 61, Article 5A" for "Chapter 60, Article 5", and made minor stylistic changes in Subsection C.

Interdependent relationship. — Nurse anesthetist held to be an independent contractor and not a federal employee under contract and this section which provides that the relationship between the physician and the certified registered nurse anesthetist to one that is now characterized as interdependent. *Garcia v. Reed*, 227 F. Supp. 2d 1183 (D.N.M. 2002).

Requirement on physician. — This section does not require that the physician "supervise" or be "present" during a procedure administered by the certified registered nurse anesthetist. *Garcia v. Reed*, 227 F. Supp. 2d 1183 (D.N.M. 2002).

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of nursing 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, provided that the board of nursing shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if the board of nursing 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, and provided that an applicant licensed under the laws of a territory or foreign country shall demonstrate proficiency in English; and deleted former Subsection F and added a new Subsection F.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or

different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2014 amendment, effective July 1, 2014, provided for the expedited licensure for nurses licensed in other states; in the catchline, added "expedited licensure"; and added Subsection F.

The 1997 amendment, effective June 20, 1997, designated Subsection A, added Paragraph A(3) and Subsections B through E, substituted "may license for advanced practice" for "may endorse for expanded practice" at the beginning of Subsection A, and made minor stylistic changes.

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.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 19, § 11 contained an emergency clause and was approved February 4, 2019.

61-3-23.6. Recompiled.

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

ANNOTATIONS

Compiler's notes. — Laws 2019, ch. 129, § 1, was erroneously compiled as 61-3-23.6 NMSA 1978 and has been recompiled as 24-1-41 NMSA 1978 by the compiler.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection B, after "application and," added "except as provided in Section 61-1-34 NMSA 1978, a".

The 2005 amendment, effective April 7, 2005, in Subsection A, provided that a person shall show proof of continuing education as required by the board; deleted former Subsection B, which provided that before the renewal month, the board shall mail an application which shall be returned before the end of the renewal month together with proof of education and the renewal fee; in Subsection B, provided that upon receipt of the application and fee which shall not exceed $100, a license valid for two years shall be issued; and deleted the former provision in Subsection C that renewal shall render the holder a legal practitioner of nursing for the period of the renewal license.

The 2003 amendment, effective June 20, 2003, deleted former Subsection D which read: "Applicants for renewal who have not been actually engaged in nursing for two years or more shall furnish the board evidence of having completed refresher courses of continuing education as required by regulations adopted by the board" and redesignated former Subsection E as present Subsection D.

The 2001 amendment, effective June 15, 2001, substituted "renewal month" for "birth month" throughout the section; and substituted "two years" for "five years" in Subsection D.

The 1997 amendment, effective June 20, 1997, in Subsection A, substituted "pursuant to" for "under" following "licensed" and "every two years" for "biennially"; in Subsection C, substituted "licensee's eligibility for continued licensure" for "accuracy of the application", and "a renewal license" for "a certificate of renewal" in the first sentence and "license" for "certificate" at the end of the last sentence; and made minor stylistic changes throughout the section.

The 1991 amendment, effective June 14, 1991, added "except when on active military duty during a military action" at the end of Subsection A; substituted "one hundred dollars ($100)" for "thirty dollars ($30.00)" at the end of Subsection B; and, in Subsection E, substituted "two hundred dollars ($200)" for "sixty dollars ($60.00)" and made a minor stylistic change.

61-3-24.1. 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.

ANNOTATIONS

Repeals and reenactments. — Laws 2018, ch. 1, § 1 repealed former 61-3-24.1 NMSA 1978, and enacted a new section, effective January 18, 2018. For provisions of former compact, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2018, ch. 1, § 3 repealed 61-3-24.2 NMSA 1978, as enacted by Laws 2003, ch. 307, § 2, relating to nurse licensure compact administrator and duties, effective January 18, 2018. For provisions of former section, *see* the 2017 NMSA 1978 on *NMOneSource.com*.

61-3-24.3. Repealed.

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

ANNOTATIONS

Repealed. — Laws 2005, ch. 307, § 10 repealed 61-3-24.3 NMSA 1978, as enacted by Laws 2003, ch. 307, § 3, relating to multistate licensure privilege, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

61-3-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 190, § 24 repealed 61-3-25 NMSA 1978, as enacted by Laws 1968, ch. 44, § 21, relating to licenses, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "61-3-13 or 61-3-18 NMSA 1978" for "67-2-10 or 67-2-15 NMSA 1953" in Subsection D and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 C.J.S. Schools and School Districts §§ 58, 811.

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.

ANNOTATIONS

The 2017 amendment (1st S.S.), effective May 26, 2017, made no changes.

Section 61-3-27 NMSA 1978, as amended by Laws 2017 (1st SS), ch. 1, § 7, in Subsection D, added "Paragraph (11) of Subsection C of Section 3 of this 2017 act". That language was line-item vetoed.

Compiler's notes. — Laws 2017 (1st SS), ch. 1, § 7, effective May 26, 2017, amended Laws 2017, ch. 136, § 7, which was to take effect June 16, 2017.

Laws 2017, ch. 136, § 7, provided for the board of nursing to administer funds deposited in the board of nursing fund pursuant to the Lactation Care Provider Act, and after

"Nursing Practice Act", added "and the Lactation Care Provider Act" throughout the section; in Subsection B, after "Sections", deleted "2 and 3 of this 2003 act" and added "61-3-10.5 and 61-3-10.6 NMSA 1978"; in Subsection D, after "promotion of nursing", added "and lactation care provider"; and added Subsection F.

The 2003 amendment, effective June 20, 2003, in Subsection B, added "Except as provided in Sections 2 and 3 of this 2003 act" at the beginning, and substituted "income earned on investment of the fund shall remain in" for "interest earned on the fund shall be credited to" near the end.

The 1991 amendment, effective June 14, 1991, added the third sentence in Subsection B and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 235 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the board of nursing may deny, revoke or suspend any license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, added Paragraph A(9); in Subsection C, after "complaint is filed", deleted "in good faith and without actual malice" and added "with reasonable care"; and added Subsection G.

The 2003 amendment, effective January 1, 2004, in Subsection A inserted "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" following "licensee on probation" near the end, and added "or nurse" at the end; and added Subsection F.

The 2001 amendment, effective June 15, 2001, deleted "sworn" preceding "complaint" in Subsections B, C, and D and deleted "Notwithstanding Section 61-1-3.1 NMSA 1978" from the beginning of Subsection D.

The 1993 amendment, effective June 18, 1993, deleted "subsequent to licensure" following "felony" in Paragraph (2) of Subsection A; rewrote Paragraph (8) of Subsection A; and substituted "NMSA 1978" for "of the Uniform Licensing Act" in Subsection D.

The 1991 amendment, effective June 14, 1991, added "Limitation" to the section heading; in Subsection A, inserted "or reprimand or place a licensee on probation" in the introductory paragraph, added "as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act" at the end of Paragraph (6), and added "including any rule or regulation adopted by the board pursuant to that act" at the end of Paragraph (7); and added Subsections D and E.

Volunteers for the board of nursing would likely be covered under the liability policies for the state of New Mexico. — The New Mexico Tort Claims Act explicitly contemplates that volunteers acting on behalf of the government may be considered public employees subject to its protections and to its waivers of those protections, 41-4-3(F)(3) NMSA 1978, and therefore, volunteers charged with reviewing complaints and making recommendations to the nursing board regarding potential disciplinary action against licensees would likely be deemed public employees acting on behalf or in service of a governmental entity, and liability policies of the state of New Mexico likely would cover negligent acts by these volunteers. *Use of Volunteers at the New Mexico State Board of Nursing* (11/26/18), Att'y Gen. Adv. Ltr. 2018-09.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

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

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

Privilege of communications by or to nurse or attendant, 47 A.L.R.2d 742.

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

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

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

Validity, construction and application of statutes making public proceedings open to the public, 38 A.L.R.3d 1070, 34 A.L.R.5th 591.

Revocation of nurse's license to practice profession, 55 A.L.R.3d 1141.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

61-3-29. Exceptions.

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.

ANNOTATIONS

2005 Multiple Amendments. — Laws 2005, ch. 303, § 2 and Laws 2005, ch. 307, § 8 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2005, ch. 307, § 8, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2005, ch. 303, § 2 and Laws 2005, ch. 307, § 8 are described below. To view the session laws in their entirety, *see* the 2005 session laws on *NMOneSource.com*.

Laws 2005, ch. 307, § 8, effective April 7, 2005, in Subsection D, deleted "legally licensed" and added "licensed in"; in Subsection E, after "government" deleted "or any bureau, division or agency thereof"; and deleted former Subsection K, which provided that the Nursing Practice Act does not apply to medication aides working in licensed intermediate care facilities for the mentally retarded who are participating in the developmentally disabled medicaid waiver program, who have completed an approved training program and who are certified to administer routine oral medications.

Laws 2005, ch. 303, § 2, effective April 7, 2005, deleted former Subsection K.

The 2003 amendment, effective June 20, 2003, in Subsection D, substituted "patient" for "citizen of this state" following "to transport a" and substituted "if" for "provided that" following "in this state".

The 1997 amendment, effective June 20, 1997, substituted "transport a citizen of this state or who is a camp nurse who accompanies and cares" for "accompany and care" and "nurse's practice in this state" for "temporary residence" in Subsection D, and substituted "pursuant to" for "under" near the end of Subsections G and H.

The 1995 amendment, effective July 1, 1995, in Subsection K, inserted "working", inserted "or serving persons who are participating the developmentally disabled medicaid waiver program and", substituted "have completed" for "complete", and substituted "which may" for "which could".

The 1991 amendment, effective July 1, 1991, added Subsection K and made related stylistic changes. This section was also amended by Laws 1991, ch. 190, § 20, effective June 14, 1991. The section was set out as amended by Laws 1991, ch. 209, § 2. *See* 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, added Subsection J.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Midwifery: state regulation, 59 A.L.R.4th 929.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 5, 13.

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

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.

ANNOTATIONS

The 2018 amendment, effective January 18, 2018, provided an exception to the confidentiality requirements of the nurse rehabilitation diversion program and made technical changes; in Subsection B, after "The executive officer of the board or", deleted "his" and added "the executive officer's"; in Subsection C, Paragraph 4, after "compliance with", deleted "his" and added "the nurse's"; in Subsection E, after "except", added "as required to be disclosed pursuant to the Nurse Licensure Compact", and after "However", deleted "such" and added "the"; and in Subsections F and G, changed "Any person" to "A person".

The 2001 amendment, effective June 15, 2001, in Subsection E, inserted the exception that files of nurses in the diversion program may be used for research purposes if the name of the nurse is not identified and written consent is obtained.

The 1997 amendment, effective June 20, 1997, in Subsection B, rewrote the first sentence and substituted "a regional" for "an" in the second sentence and near the beginning of Subsection F, rewrote Subsection C, and substituted "program contract" for "agreement" in Subsections E and G.

The 1991 amendment, effective June 14, 1991, inserted "or his designee" in the final sentence in Subsection B; substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)" in Subsection D; added Subsection G; and made minor stylistic changes in Subsections A, B and C. Identical amendments to this section were enacted by Laws 1991, ch. 190,

§ 21. The section was set out as amended by Laws 1991, ch. 253, § 2. *See* 12-1-8 NMSA 1978.

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.

ANNOTATIONS

The 2005 amendment, effective April 7, 2005, added Subsection I to provide that it is a misdemeanor to employ as a certified hemodialysis technician or certified medication aide an unlicensed person without a certificate from the board.

The 2001 amendment, effective June 15, 2001, made stylistic changes throughout the section.

The 1991 amendment, effective June 14, 1991, added Subsection H; redesignated former Subsection H as Subsection I and made a related stylistic change in Subsection G; and made minor stylistic changes in Subsections C and E.

61-3-31. 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.

ANNOTATIONS

Repeals. — Laws 2005, ch. 307, § 10 repealed 61-3-31 NMSA 1978, as enacted by Laws 1979, ch. 379, § 11, relating to termination of agency life, effective April 7, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 52 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 20 recompiled and amended former 61-36-1 NMSA 1978 as 61-3B-1 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, changed "Sections 1 through 6 of this act" to "Chapter 61, Article 3B NMSA 1978".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-2 NMSA 1978 as 61-3B-2 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 21 recompiled and amended former 61-36-3 NMSA 1978 as 61-3B-3 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, effective May 18, 2022, provided that the board of nursing shall enforce the provisions of the Lactation Care Provider Act in accordance with the Uniform Licensing Act and promulgate rules in accordance with the State Rules Act; and in Subsection A, after the first occurrence of "Lactation Care Provider Act", added "in accordance with the Uniform Licensing Act", after "promulgate rules", added "in accordance with the State Rules Act", and after "to execute the provisions of", deleted "that" and added "Lactation Care Provider Act".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-4 NMSA 1978 as 61-3B-4 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-5 NMSA 1978 as 61-3B-5 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 22 recompiled and amended former 61-36-6 NMSA 1978 as 61-3B-6 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, made changes to conform with amendments to the Uniform Licensing Act; and in Subsection A, Paragraph A(7), before "jurisdiction" added "licensing", and after "jurisdiction", deleted "territory or possession of the United States or another country".

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Cross references. — For practice of chiropractic being unaffected by act relating to osteopathic medicine and surgery, *see* 61-10-4 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote this section, which formerly read "This act may be cited as the 'Chiropractic Practice Act'."

Am. Jur. 2d, A.L.R. and C.J.S. references. — Evidence of confidential communications, 68 A.L.R. 177.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Competency as expert in personal injury action as to injured person's condition, medical requirements, nature and extent of injury and the like, 52 A.L.R.2d 1384.

Competency of physician or surgeon, of school of practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

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

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

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2008 amendment, effective May 14, 2008, added Subsections A and B; and in Subsection C, permitted the prescribing and administering of natural agents and medical devices and the administering of a drug by injection by a certified advanced practice chiropractic physician, and excluded the prescription or use of controlled drugs and the practice of acupuncture.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the introductory paragraph and in Subsection C; rewrote Subsection A; substituted "board of chiropractic" for "chiropractic board" in Subsection B; substituted "'chiropractic physician'" for "'chiropractor'" and inserted "chiropractor" in Subsection C; added Subsection D; and made minor stylistic changes.

Licensed chiropractor must be considered a "practitioner of the healing arts". *Katz v. N.M. Dep't of Human Servs.*, 1981-NMSC-012, 95 N.M. 530, 624 P.2d 39.

Chiropractor is not a "physician" and that profession or calling is not the practice of medicine; a chiropractor is one skilled in the art of healing in a limited manner, although not one skilled in physic since such latter term refers to the practice of medicine. 1959-60 Op. Att'y Gen. No. 59-96.

Acupuncture falls within scope of chiropractic. 1976 Op. Att'y Gen. No. 76-32.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 5.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

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

61-4-3. Board created; appointment; officers; duties; compensation. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the chiropractic board to establish regulations related to continuing education requirements in accordance with the provisions of the Uniform Licensing Act and instead required the chiropractic board to establish by rule mandatory continuing education requirements for chiropractic physicians and certified advanced practice chiropractic physicians licensed in this state, and made technical amendments; in Subsection A, deleted "There is created", after "The 'chiropractic board'", deleted "The board shall be" and added "is created and is", and after "four", deleted "shall" and added "of whom"; in Subsection F, after "all rules", deleted "and regulations"; in Subsection G, after "shall establish by", deleted "regulations adopted in accordance with the provisions of the Uniform Licensing Act" and added "rule"; and in Subsection H, after "rules", deleted "and regulations".

The 2008 amendment, effective May 14, 2008, added "certified advanced practice chiropractic physician" in Subsection G.

The 2006 amendment, effective May 17, 2006, deleted former Subsection G, which required the board to hold examinations at least twice a year and to notify applicants of the examination.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; and deleted "one of the members shall be appointed for a term ending July 1, 1980, one for a term ending July 1, 1981, one for a term ending July 1, 1982, one for a term ending July 1, 1983 and one for a term ending July 1, 1984. Thereafter, appointments shall be made for terms" following "governor for staggered terms" near the beginning of Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection B, substituted "chiropractic associations" for "chiropractic association" in the third sentence; in Subsection C, substituted "A majority" for "Three members" and "constitutes" for "constitute" in the second sentence and substituted "quarterly" for "at least every three

months" in the third sentence; divided former Subsection E into Subsections E and F, deleting "and" at the end of Subsection E and adding "The board shall" at the beginning of Subsection F; inserted "Physician" and added "including educational requirements for a chiropractic assistant" at the end of Subsection F; redesignated former Subsections F to I as Subsections G to J; and rewrote Subsection I.

The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "six persons" for "five persons" in the second sentence, "Four" for "Three" in the third sentence, "Two persons" for "The fifth person" at the beginning of the fourth sentence, and made a minor stylistic change.

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

61-4-4. Application requirements; 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Cross references. — For age of majority, *see* 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, Subparagraph A(3)(b), added "except as provided in Section 61-1-34 NMSA 1978".

The 2008 amendment, effective May 14, 2008, added Subsection C.

The 2006 amendment, effective May 17, 2006, added Subsection B to provide that in evaluating applications, the board may use professional background information services.

The 1993 amendment, effective June 18, 1993, rewrote Paragraphs (1) and (2) of Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 60.

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

61-4-5. Evidence of graduation; creditation of college. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, substituted "61-4-4 NMSA 1978" for "67-3-12 NMSA 1953" and made a stylistic change.

61-4-6. Examination; subjects; method of treatment; recording license. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2008 amendment, effective May 14, 2008, added "certified advanced practice chiropractic physician" in Subsection F.

The 2006 amendment, effective May 17, 2006, added the provision in Subsection A that the board shall recognize completion of the examination conducted by the national board of chiropractic examiners; added the provision in Subsection B to permit the board to waive the requirement for the board-administered examination upon proof of satisfactory completion of the examination of the national board of chiropractic examiners and added the provision in Subsection C that the board shall issue a license to an applicant who passes the examination conducted by the national board of chiropractic examiners with an average of not less that seventy-five percent with no subject below sixty-five percent.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

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

61-4-7. Disposition of funds; chiropractic fund created; method of payment. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2006 amendment, effective May 17, 2006, deleted the former requirements in Subsection C that the secretary of the board approve payments out of the chiropractic fund and required that the superintendent of regulation and licensing approve the payments and deleted former Subsection F, which required the treasurer of the board to give bond.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the first sentence of Subsection B, in the first and second sentences of Subsection D, and in Subsection E; deleted "chiropractic" preceding "board" in Subsection E; added Subsection G; and made minor stylistic changes in Subsections D and E.

61-4-8. License without examination. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the chiropractic board shall issue an expedited license to an applicant without an examination if the person has been duly licensed as a chiropractor in another licensing jurisdiction and is in good standing with the licensing board in that licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; added new subsection designation “A.” and deleted former Subsections A through C; in Subsection A, after "The board", deleted "may, in its discretion" and added "shall", after "license without examination to a", deleted "chiropractor who has been licensed in any state, territory or foreign jurisdiction and" and added "chiropractic physician", after "standard college of chiropractic", added "and has been licensed in another licensing jurisdiction", and after "if", added the remainder of the subsection; and added a new Subsection B.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 61, 67, 68.

61-4-9. Privileges and obligations. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Cross references. — For incorporation of chiropractors under Professional Corporation Act, *see* 53-6-1 NMSA 1978 et seq.

The 1993 amendment, effective June 18, 1993, inserted subsection designations; substituted "chiropractic physicians" for "chiropractors" in the first sentence of Subsection A; and in Subsection B, inserted "Physician" near the beginning and substituted the language beginning "Physician Practice Act, as provided in rules" for "Practice Act, such as by application of manipulative, manual and mechanical means, including all natural agencies imbued with the healing act, such as food, water, heat, cold, electricity and drugless appliances, but excluding operative surgery and prescription or use of drugs or medicine, except that X ray, analytical instruments and routine laboratory procedures, not involving the penetration of human tissues except for blood testing, may be used for the purpose of examination" at the end.

Chiropractic as healing art. — Restriction of Section 59-18-19 (now Section 59A-22-32) NMSA 1978, prohibiting discrimination against an insured in the choice of a practitioner of the healing arts, applies to chiropractors. 1972 Op. Att'y Gen. No. 72-58.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 44, 132.

Kind or character of treatment which may be given by one licensed as chiropractor, 86 A.L.R. 630.

Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs, 8 A.L.R.4th 1056.

Scope of practice of chiropractic, 16 A.L.R.4th 58.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7.

61-4-9.1. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Effective dates. — Laws 2008, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

Approval of educational requirements. — Where the board of chiropractic examiners adopted a new rule that established additional training requirements for certified advanced practice chiropractic physicians that was not approved by the medical board and the medical board objected to the additional requirements because the hours did not appear to be sufficient, the adoption of the additional training requirements without medical board approval did not violate 61-4-9.1(D) NMSA 1978 because 61-4-9.1(D) NMSA 1978 requires the medical board to approve the institutions that provide the required educational hours to an advanced practice chiropractic physician, but it does not give the medical board authority to decline any other type of approval. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2009 amendment, effective June 19, 2009, in Subsection A, after "homeopathic medicines" added "over-the-counter drugs", after "glandular products" deleted "naturally derived substances" and deleted the last sentence, which provided that a formulary shall be developed by the board; and added Subsection B.

Approval of formulary. — The board of chiropractic examiners is statutorily required to submit its formularies to the board of pharmacy and the medical board for prior approval to the extent the formularies include dangerous drugs, as defined in the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article 1 NMSA 1978, which include drugs for administration by injection. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

Where the board of chiropractic examiners approved an advanced practice chiropractic formulary that included minerals and additional drugs to be administered by injection without obtaining the prior approval of the board of pharmacy and the medical board, the formulary violated the requirement of 61-4-9.2(B) NMSA 1978 that the formulary receive prior approval from the board of pharmacy and the medical board. *Int'l Chiropractors Ass'n v. N.M. Bd. of Chiropractic Exam'rs*, 2014-NMCA-046.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Effective dates. — Laws 2008, ch. 44 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2006 amendment, effective May 17, 2006, added the provision in Subsection A that the board may censure, reprimand, fine or place on probation and suspension any licensees; and added Subsection C to provide that communications made by any person to the board relating to disciplinary action are confidential and not public records for purposes of the Inspection of Public Records Act and that all information in a complaint file is public information and subject to disclosure when the board acts on a complaint.

The 1993 amendment, effective June 18, 1993, designated all the provisions of this section as Subsection A; in Subsection A, redesignated former Subsections A to O as Paragraphs (1) to (15) and added Paragraph (16), deleted "provided" preceding "a copy" in Paragraph (1), inserted "chiropractic physician" in Paragraph (5), inserted "Physician" in Paragraphs (6) and (7), and substituted "another state" for "a sister state" and "Paragraph (6) of this subsection" for "subsection F of this section; provided" in Paragraph (14); and added Subsections B and C.

Expert testimony in disciplinary proceedings. — Because the board of chiropractic examiners has a level of expertise unlike that of a typical jury, expert testimony is not required to establish a standard of care for chiropractors. *Darr v. Village of Tularosa*, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818.

"Detrimental conduct" meriting suspension. — Although there was not substantial evidence to support the board's findings that respondent failed to keep his patient informed as to the possible dangers of his treatment and then failed to refer her to a more qualified physician, other findings were supported by substantial evidence and merited the board's finding that respondent violated the applicable standard of care and that his license should be suspended. *Darr v. Village of Tularosa*, 1998-NMCA-104, 125 N.M. 394, 962 P.2d 640, cert. denied, 125 N.M. 654, 964 P.2d 818.

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

Competency of physician or surgeon, of school or practice other than that to which defendant belongs, to testify in malpractice case, 85 A.L.R.2d 1022.

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

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

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

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

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

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

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42.

61-4-11. Criminal offender's character evaluation. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "Physician".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, designated all of the provisions of this section as Subsection A and redesignated former Subsections A to E as Paragraphs (1) to (5) of that subsection; in Subsection A, substituted "or more than one thousand dollars ($1000)" for "nor more than five hundred dollars ($500)" and "one year" for "six months" in the introductory paragraph, inserted "Physician" in Paragraph (3), and made a minor stylistic change; and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 53 to 57.

61-4-13. Annual renewal of license; fee; notice. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, deleted "Any" and added "Except as provided in Section 61-1-34 NMSA 1978, a".

The 1993 amendment, effective June 18, 1993, designated the provisions of this section as Subsection A; in Subsection A, deleted "in an amount not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for a certificate of renewal for his license to practice chiropractic" following "regulation" in the first sentence, inserted "Physician" in the second sentence, and added the final sentence; and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 44, 56.

61-4-14. Failure to renew; cancellation; reinstatement; permissive temporary cancellation. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 52.

61-4-15. Exemptions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in the introductory paragraph; deleted former Subsection D, exempting chiropractors residing on the border of an adjacent state; and deleted the former final paragraph authorizing regularly licensed physicians or surgeons who procure licenses to practice chiropractic to practice medicine, surgery and chiropractic.

61-4-16. Existing licensees. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-4-17 NMSA 1978.

Compiler's notes. — The "effective date of the Chiropractic Practice Act", referred to in this section, is February 9, 1968, which is the effective date of Laws 1968, ch. 3.

The 1993 amendment, effective June 18, 1993, inserted "Physician" in two places.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the chiropractic board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the chiropractic board to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Chiropractic Physician Practice Act" for "Chapter 61, Article 4 NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 4 NMSA 1978" for "July 1, 1998 Article 4 of Chapter 61, NMSA 1978".

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

ARTICLE 5
Dentistry (Repealed.)

61-5-1 to 61-5-34. Repealed.

ANNOTATIONS

Repeals. — Laws 1994, ch. 55, § 41 repealed 61-5-1 to 61-5-34 NMSA 1978, as enacted by Laws 1971, ch. 125, §§ 1, 3, 5, 12, 14 to 16, and 18 and 21; Laws 1974, ch. 78, § 14; Laws 1981, ch. 229, §§ 1 to 11; and Laws 1987, ch. 181, § 1; and as last amended by Laws 1976 (S.S.), ch. 2, § 1; Laws 1979, ch. 120, § 1; Laws 1981, ch. 230, §§ 1, 2, 4, and 6 to 8; Laws 1983, ch. 200, §§ 1 and 2; Laws 1985, ch. 130, § 1; and Laws 1991, ch. 189, §§ 7 and 8, relating to dentistry, effective July 1, 1994. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-5A-1 to 61-5A-41 NMSA 1978.

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changed the statutory reference to the act.

Former dentistry act not monopolistic. — Laws 1919, ch. 35, regulating dentistry, was not an attempt to confer a monopoly upon those able to comply with its conditions, as the conditions were just and reasonable. *State v. Culdice*, 1929-NMSC-007, 33 N.M. 641, 275 P. 371.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of dentist for injury by X-ray, 41 A.L.R. 385.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Newspapers, magazines or radio broadcasting stations, practice of dentistry through, 114 A.L.R. 1506.

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

Dental hygienists, constitutionality, construction and application of statute regulating, 11 A.L.R.2d 724.

Regulation of prosthetic dentistry, 45 A.L.R.2d 1243.

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

Liability of dentist for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Duty and liability of dentist to patient, 11 A.L.R.4th 748.

Liability for dental malpractice in provision or fitting of dentures, 77 A.L.R.4th 222.

Liability of orthodontist for malpractice, 81 A.L.R.4th 632.

Coverage under medical and health insurance plans for services performed by dentists, oral surgeons, and orthodontists, 43 A.L.R.5th 657.

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.

ANNOTATIONS

Repeals. — Laws 2019, ch. 107, § 18 repealed 61-5A-2 NMSA 1978, as enacted by Laws 1994, ch. 55, § 2, relating to purpose, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 U.S.C. § 501(c)(3).

The 2021 amendment, effective June 18, 2021, revised the definition of "teledentistry", as used in the Dental Health Care Act; and in Subsection AA, after "means", deleted "a dentist's use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with another dentist, a dental therapist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist, dental therapist or dentist" and added the remainder of the subsection.

The 2019 amendment, effective June 14, 2019, defined "dental therapist", "dental therapy post-graduate clinical experience", "dental therapy practice agreement", "federally qualified health center", "federally qualified health center look-alike facility", "long-term care facility", "nonprofit community dental organization", and revised the definitions of certain terms, as used in the Dental Health Care Act; added new Subsections M through O and redesignated former Subsections M through O as Subsections P through R, respectively; added new Subsections S and T and redesignated former Subsections P and Q as Subsections U and V, respectively; in Subsection U, after "procedures to be used by a", added "dental therapist, community dental health coordinator"; in Subsection V, after "in certain settings, a", added "dental therapist", and after "performed by a", added "dental therapist"; added new Subsection W and redesignated former Subsection R as Subsection X; added new Subsection Y and redesignated former Subsections S and T as Subsections Z and AA, respectively; and in Subsection AA, after "in cooperation with another dentist", added "a dental therapist", and after "dental hygienist", added "dental therapist".

The 2011 amendment, effective June 17, 2011, added definitions of "community dental health coordinator", "dental hygiene-focused assessment", "direct supervision", "palliative procedures" and "teledentistry".

The 2003 amendment, effective June 20, 2003, added present Subsections A, D and F, and redesignated the remaining subsections accordingly; rewrote present Subsections H, I, J and K; inserted "at a time the dentist is not physically present" following "diagnosis and treatment plan" near the end of present Subsection L; inserted "or in certain settings a dental hygienist or dental assistant certified in expanded functions" following "means that a dentist" near the beginning of present Subsection M; and added present Subsection N.

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.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, included limited diagnostic and treatment planning via teledentistry within the scope of the practice of dentistry; authorized dental hygienists in a collaborative practice to perform procedures listed in this section without general supervision; clarified the meaning of prophylaxis; included nonsurgical periodontal procedures, assessment of the need for pit and fissure sealants and oral radiographs for abnormalities, and performing dental hygiene-focused assessments within the scope of the practice of dental hygiene; provided for the certification of dental hygienists to administer local anesthetic; prescribed the conditions under which fluoride and antimicrobial substances may be prescribed, administered and dispensed by dental hygienists; and specified the procedures an expanded-function dental auxiliary may perform, including re-cementing crowns and related functions for which the auxiliary is educated and trained to perform.

The 2007 amendment, effective June 15, 2007, added a new Subsection C to authorize a dental hygienist to administer fluoride and remineralization treatments without supervision in facilities specified by rule of the dental hygienists committee.

The 2003 amendment, effective June 20, 2003, added present Paragraphs A(3) and A(4) and redesignated former Paragraph A(3) as present Paragraph A(5); substituted "radiographs" for "roentgenograms" following "readings of" near the end of present Subparagraph A(5)(i); in Subsection B, substituted "hygiene" for "hygienist" following "practice of dental" near the beginning, and inserted "application of the" preceding "science of the prevention" near the middle; inserted "without mechanical alteration of the tooth" following "pit and fissure" near the middle of Paragraph B(3); deleted "preliminary" preceding "assessment of" at the beginning of Paragraph B(6); deleted "and regulations" following "permitted by the rules" near the middle of Paragraph B(7); in Subsection D, inserted "New Mexico licensed" preceding "dental hygienist" near the beginning and deleted "The board may charge a fee not to exceed one hundred fifty dollars ($150) for each application for certification for collaborative dental hygiene practice" following "committee and the board" at the end; and in Subsection E, deleted "practice of" following "collaborative" near the beginning, inserted "practice" following "dental hygiene" near the beginning, inserted "the application of" preceding "the science of" near the beginning, deleted "jointly" following "forth by the rules" near the end and inserted "and approved by both" preceding "the board and" near the end.

The 1999 amendment, effective June 18, 1999, added Subsections D and E.

Former definition of dentistry not vague. — Laws 1919, ch. 35, § 9, defining the practice of dentistry, was not too vague, indefinite and uncertain to serve as basis for a criminal information for practicing dentistry contrary to the provisions of the act, the actions complained of being within the police power of the state. *State v. Culdice*, 1929-NMSC-007, 33 N.M. 641, 275 P. 371.

Board could not permit unlicensed persons to practice dentistry. — The board could not, by rules and regulations, allow unlicensed persons to perform services which, under statutory provisions, constitute the practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 97 N.M. 464, 641 P.2d 495 (1982).

Actions by unlicensed assistants held to be unlawful practice. — Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 1982-NMSC-020, 97 N.M. 464, 641 P.2d 495.

Supervision of dental hygienist. — No services which constitute dental hygiene can be performed unless a licensed dentist is physically and immediately present in the office or building where the work is being performed, in order that the dentist can meet the statutory duty to supervise the services of the dental hygienist. 1971 Op. Att'y Gen. No. 71-121 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 6.

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

61-5A-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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, required licensure to practice as a dental therapist, and allowed certain dental therapists licensed in New Mexico and certain dental therapy students or graduates of a dental therapy educational program to practice dentistry or an area of dentistry without a New Mexico dental license under certain conditions; in Subsection B, added Paragraphs B(8) and B(9); added a new Subsection C and redesignated former Subsections C through H as Subsections D through I; and in Subsection I, Paragraph I(7), after "nonprofit", deleted "community-based entities and" and added "community dental", and after "organizations", deleted "that use public funds to provide dental and dental hygiene services for indigent persons".

Temporary provisions. — Laws 2019, ch. 107, § 17 provided that the department of health shall conduct an outcome report on the first five years of dental therapy practice in the state pursuant to this 2019 act. At a date five years following the date of the first issuance of a license to practice dental therapy in the state, the department of health shall consult with the New Mexico board of dental health care, the New Mexico dental hygienists' association and the New Mexico dental association to compile and issue a report to the legislative health and human services committee of the department's findings and recommendations regarding dental therapy, including:

A. its efficacy, effectiveness and cost;

B. its impact on access to dental health care;

C. the distribution of dental therapists statewide;

D. demographic representation among dental therapists;

E. issues related to supervision of dental therapists and their scope of practice;

F. evaluation of services delivered under indirect supervision; and

G. evaluation of services delivered under general supervision for recommendation to indirect supervision.

The 2011 amendment, effective June 17, 2011, authorized community dental health coordinators to provide dental services within their scope of practice without a dental license and to perform specified dental hygiene functions under general supervision without a dental hygiene license and added Subsection F to authorize community dental health coordinators working under supervision to perform specified functions.

The 2003 amendment, effective June 20, 2003, rewrote Paragraph B(4); added Paragraph B(7); in Paragraph C(3) substituted "defined as" for "enumerated under the definition of" following "any of the acts" near the beginning and deleted "as defined" following "dental hygiene" near the end; substituted "hygiene" for "hygienist" following "New Mexico dental" near the end of Subsection D; added present Paragraph D(3); and added Subsections E, F and G.

Actions by unlicensed assistants held to be unlawful practice of dentistry. — Unlicensed assistants performing such dental services as taking impressions and adjusting dentures constitutes the unlawful practice of dentistry. *Family Dental Ctr. v. N.M. Bd. of Dentistry*, 1982-NMSC-020, 97 N.M. 464, 641 P.2d 495.

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

Entrapment to commit offense of practicing dentistry without license, 18 A.L.R. 186, 66 A.L.R. 478, 86 A.L.R. 263.

Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Kind or character of treatment which may be given by one licensed as dentist, 86 A.L.R. 625.

Corporation or individual not himself licensed, right of, to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12, 16.

61-5A-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.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 409 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, included expanded-functional dental auxiliaries and community dental health coordinators within the scope of this section.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted "Santa Fe and Los Alamos" following "Cibola" at the end of Subsection A; in Subsection B, deleted "Curry" following "San Miguel" near the middle and added "Santa Fe and Los Alamos" at the end; and inserted "Curry" following "Eddy" near the end of Subsection E.

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.

ANNOTATIONS

Cross references. — For establishment of dental districts, *see* 61-5A-7 NMSA 1978.

2003 Multiple Amendments. — Laws 2003, ch. 408, § 4 and Laws 2003, ch. 409, § 6 both enacted amendments to this section. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 409, § 6, as the act last signed by the governor, has been compiled into the NMSA as set out above, and Laws 2003, ch. 408, § 4, while not compiled pursuant to 12-1-8 NMSA 1978, is set out below.

Laws 2003, ch. 409, § 6 [set out above], effective June 20, 2003, added "Members of the board not sitting on the committee shall not be required or allowed to attend committee disciplinary hearings" following "good cause shown" at the end of Subsection D; added "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" following "two full terms" at the end of Subsection E; in Subsection G, substituted "at least four times" for "quarterly" following "board shall meet" near the beginning and inserted "and no more than two meetings shall be public rules hearings. Regular meetings shall not be more than one hundred twenty days apart" following "every year" near the beginning; and deleted "and regulations" following "rules" at the end of Subsection J.

Laws 2003, ch. 408, § 4 [set out below], effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department" following the first sentence of Subsection A, and provided:

"61-5A-8. Board created.--

A. There is created the nine-member "New Mexico board of dental health care". The board shall be administratively attached to the regulation and licensing department. 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. A member shall not 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. A 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.

E. A board member shall not serve more than two full terms.

F. In the event of a 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 quarterly every year. 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 committee.

H. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance; 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 and regulations."

Residential restrictions. — There is no reason why residential restrictions cannot be placed on membership on a professional board so long as the whole state is represented. 1953 Op. Att'y Gen. No. 53-5750.

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

61-5A-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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, rewrote the section.

This section was also amended by Laws 2003, ch. 408, § 5, effective July 1, 2003, which added "The committee shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; inserted "for dental hygienist members" following "Appointments" near the beginning of Subsection C; in Subsection G, inserted "committee" following "accordance with the" near the middle, and deleted "and regulations" following "rules" near the middle; and inserted "the committee" following "as provided in" near the end of Subsection J. The section was set out as amended by Laws 2003, ch. 409, § 7. *See* 12-1-8 NMSA 1978.

Recommendations to board of dental health care. — The dental hygienists committee may make recommendations about the practice of dental hygiene to the board of dentistry upon the request of the board or on its own initiative, but the board of dental health care is not required to follow those recommendations. 1987 Op. Att'y Gen. No. 87-82.

Compliance with Open Meetings Act. — The dental hygiene committee must comply fully with the Open Meetings Act, Sections 10-15-1 through 10-15-4 NMSA 1978. 1987 Op. Att'y Gen. No. 87-82.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21, 22.

61-5A-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.

ANNOTATIONS

Cross references. — For effect of regulations adopted under former Dental Act, *see* 61-5A-28 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the New Mexico board of dental health care to adopt, publish, file and revise rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; and in Subsection B, deleted "adopt, publish, file and revise, in accordance with the Uniform Licensing Act and", and added "promulgate in accordance with", and after "all rules as", deleted "may be".

The 2019 amendment, effective June 14, 2019, required the New Mexico board of dental health care to regulate the examination and licensure of dental therapists, regulate the practice of dental therapy, enforce provisions of the Dental Health Care Act and the Dental Amalgam Waste Reduction Act as it relates to dental therapy, establish continuing education or continued competency requirements for dental therapists, authorized the board to investigate complaints against dental therapists, and authorized the board to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental therapist may prescribe, administer or dispense; in Subsection B, Paragraph B(1), after "licensure of dentists", added "and dental therapists", in Paragraph B(4), after "practice of dentistry", added "dental therapy"; in Subsection F, after "practice dentistry", added "dental therapy", and after "stipulation dentists", added "dental therapists"; in Subsection M, after "against dentists", added "dental therapists"; in Subsection O, after "medications that a", added "dental therapist or"; and in Subsection P, after "requirements for dentists", added "dental therapists".

The 2013 amendment, effective June 14, 2013, provided for the enforcement of the Dental Amalgam Waste Reduction Act by the board and committee; in Subsections A, F, G, L and M after "Dental Health Care Act" added "and the Dental Amalgam Waste Reduction Act".

The 2011 amendment, effective June 17, 2011, authorized the board to obtain services necessary to perform the board's duties, to sue and be sued, to retain attorneys and to maintain a formulary that dental hygienists may administer.

The 2003 amendment, effective June 20, 2003, deleted "and regulations" following "all rules" near the end of Subsection B; added Paragraph B(5); added present Subsection G and redesignated the subsequent subsections accordingly; rewrote present Subsection H; and inserted "and shall include at least one member of the board or committee" preceding "as it deems necessary" near the end of present Subsection J.

Employment of attorney. — The state board of dental examiners (now the board of dental health care) was specifically authorized, under former dental act, to employ and pay an attorney from funds appropriated to it in order to assist in prosecutions to prevent unauthorized practice of dentistry. 1937 Op. Att'y Gen. No. 37-1763.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 45.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22 to 24.

61-5A-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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2011 amendment, effective June 17, 2011, in Subsection B, listed testing agencies that offer examinations that the board may use.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "an accredited dental college or" preceding "a school of dentistry" near the beginning, deleted "of a university" following "school of dentistry" near the beginning and substituted "joint" for "American dental association" following "accredited by the" near the middle; in Subsection B, inserted "license to practice" following "for a general" near the beginning, deleted "licensure" preceding "by examination shall" near the beginning, and substituted "rules" for "regulations" following "covering the laws and" near the

middle; rewrote Subsection C; in Subsection E, substituted "joint" for "American dental association" following "accredited by the" near the middle, and substituted "rules" for "regulations" following "covering the laws and" near the end; and rewrote Subsection F.

The 1999 amendment, effective June 18, 1999, substituted "shall" for "must" and "may" throughout the section, inserted "or" before "school of dentistry" in Subsection A, inserted "the requirements set forth in" in the first sentence of Subsection B, rewrote Subsection B, added Subsection D, redesignated former Subsections D and E as Subsections E and F, deleted "successfully" before "passed a clinical and written" and substituted "rule" and "rules" for "regulations" Subsection E.

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Fee not returnable. — Application fee for examination could not be returned in the event that the examination was not taken by the applicant. 1939 Op. Att'y Gen. No. 39-3220.

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

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry or medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Practicing dentistry without a license as a continuing or separate offense, 99 A.L.R.2d 654.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 16, 19, 20.

61-5A-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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, in Subsection A substituted "degree" for "diploma" following "and received a" near the beginning and substituted "joint" for "American dental association" following "accredited by the" near the middle; and inserted "for the two previous years" following "is in good standing" near the middle of Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection A substituted "shall have" for "must have" near the beginning and inserted "shall" before "have passed" near the middle; in Subsection B, substituted "requirements set forth in Subsection A" for "provisions of Subsection A" and deleted "also" before "pass a written", and substituted "rules" for "regulations", and rewrote Subsection C.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 9 effective June 14, 2019.

Temporary provisions. — Laws 2019, ch. 107, § 17 provided that the department of health shall conduct an outcome report on the first five years of dental therapy practice in the state pursuant to this 2019 act. At a date five years following the date of the first issuance of a license to practice dental therapy in the state, the department of health shall consult with the New Mexico board of dental health care, the New Mexico dental hygienists' association and the New Mexico dental association to compile and issue a report to the legislative health and human services committee of the department's findings and recommendations regarding dental therapy, including:

A. its efficacy, effectiveness and cost;

B. its impact on access to dental health care;

C. the distribution of dental therapists statewide;

D. demographic representation among dental therapists;

E. issues related to supervision of dental therapists and their scope of practice;

F. evaluation of services delivered under indirect supervision; and

G. evaluation of services delivered under general supervision for recommendation to indirect supervision.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 9 effective June 14, 2019.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 107, § 19 made Laws 2019, ch. 107, § 9 effective June 14, 2019.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of dental health care shall issue an expedited license without an 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, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in the section heading, added "expedited licensure"; added new subsection designation “A.” and redesignated former Subsections A through G as Paragraphs A(1) through A(7), respectively; in Subsection A, after "the United States", added "or the District of Columbia", and in Paragraph A(1), after "the United States", added "or the District of Columbia"; and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2003 amendment, effective June 20, 2003, deleted "secretary-treasurer of the" following "The" near the beginning of the first paragraph; substituted "renewed" for "reviewed" following "and may be" near the middle of Subsection E; and deleted "and regulations" following "and all rules" near the end of Subsection G.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 113 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, listed the required contents of a dental therapy license; in the section heading, deleted "license; renewal; retire license" and added "licenses and certificates"; and added a new Subsection B and redesignated the succeeding subsections accordingly.

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality, construction and application of statute relating to dental hygienists, 11 A.L.R.2d 724.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 19, 20.

61-5A-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.

ANNOTATIONS

The 2011 amendment, effective June 17, 2011, required dental assistants certified as expanded-function dental auxiliaries or community dental health coordinators to renew their certificates triennially.

The 2003 amendment, effective June 20, 2003, substituted "licensee" for "practitioner" throughout the section; in Subsection A, added "Except as provided in Subsection I of this section" preceding "all licenses" at the beginning, and substituted "of the board" for "and regulations" following "established in rules" at the end; substituted "of the board" for "and regulations" following "established in rules" at the end of Subsection B; substituted "licensees" for "licensed practitioners" following "All" at the beginning of Subsection D; substituted "licensee or certificate holder" for "practitioner" following "certificate of any" near the middle of Subsection H; and added Subsections I and J.

State's legitimate interest in licensing persons to practice dentistry or dental hygiene is to assure that the individual is competent. 1980 Op. Att'y Gen. No. 80-20.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 59, 60, 67, 68, 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 23.

61-5A-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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, included dental therapy within the provisions related to retirement and inactive status for licensees, and specified that the New Mexico dental hygienists committee governs the practice of dental hygiene; in Subsection A, deleted "Any dentist or dental hygienist" and added "A licensee", after "retire from practice", deleted "of dentistry or dental hygiene", after "rules of the board, and", added "if the licensee is a dental hygienist", and after "date of retirement, the", deleted "dentist or dental hygienist" and added "licensee"; in Subsection B, after "following retirement, a", deleted "dentist or dental hygienist" and added "licensee", in Subsection C, after "practice of dentistry", added "dental therapy", and after "described in", deleted "Section 61-5A-4" and added "the Dental Health Care Act"; in Subsection D, after "set by the board and," added "if the licensee is a dental hygienist, by"; and in Subsection E, after "active practice", deleted "of dentistry or dental hygiene", after "notify the board or", added "if the licensee is a dental hygienist", and after "may resume practice", deleted "of dentistry or dental hygiene".

The 2003 amendment, effective June 20, 2003, inserted the Subsection A designation and added Subsections B through G; in Subsection A, substituted "of the board and the committee" for "and regulation" following "as set by rules" near the beginning, substituted "licensee's" for "practitioner's" near the middle, substituted "three years" for "five years" following "within a period of" near the middle, and substituted "of the board and the committee" for "and regulations" following "as prescribed by rules" near the end.

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "less than" for "not to exceed" following "for a definite period" near the middle of Subsection B; and added present Subsection C and redesignated the subsequent subsections accordingly.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, included dental therapy licensees within the provisions regarding reinstatement of licensees whose licenses have been suspended or revoked, and specified that the New Mexico dental hygienists committee governs the practice of dental hygiene; in Subsection C, after "The suspended", deleted "dentist or dental hygienist will" and added "licensee shall", and after "the suspended", deleted "dentist or dental hygienist" and added "licensee"; in Subsection D, in the introductory clause, deleted "Suspended dentists or dental hygienists indefinite suspension" and added "Procedure for reinstatement of licensee who have been suspended for an indefinite period of time is as follows"; and in Subsection E, Paragraph E(1), after "referred to the board or", added "if the application is for reinstatement of a license to practice dental hygiene, to the", and in Paragraph E(2), after each occurrence of "practice of dentistry", added "dental therapy".

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
			Non-dentist Owners
R.	non-dentist owners license (initial)		$ 300
S.	non-dentist owners license triennial renewal		$ 150
			Dental Therapists
T.	dental therapist license (initial)		$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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective June 14, 2019, provided a schedule of fees for dental therapy licenses and license renewals; after Subsection S, added the heading "Dental Therapists", and added new Subsections T and U.

The 2011 amendment, effective June 17, 2011, imposed a fee for expanded-function dental auxiliary and community dental health coordinator certificates.

The 2003 amendment, effective June 20, 2003, substituted "600" for "450" and "450" for "300" in Subsection H; substituted "300" for "200" and "300" for "200" in Subsection K; and added Subsections N through S.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, clarified that a dentist, dental hygienist or dental therapist practicing teledentistry is subject to disciplinary proceedings pertaining to licensure; and added Subsection F.

The 2019 amendment, effective June 14, 2019, included dental therapists within the provisions regarding disciplinary proceedings, and specified that dental hygienists are under the governance of the New Mexico dental hygienists committee; and in Subsection A, in the introductory clause, after "the board and" added "as it relates to dental hygienist licensure", in Paragraph A(3), after "the practice of dentistry", added "dental therapy", in Paragraph A(7), after "regulation of the board or", added "as relates to the practice of dental hygiene", in Paragraph A(9), after "practice of dentistry", added "dental therapy", and in Paragraph A(13), after "practice as a dentist", added "dental therapist".

The 2003 amendment, effective June 20, 2003, deleted "judicial review" following "Disciplinary proceedings" in the section heading; deleted "and regulations" following "rules" throughout the section; inserted "including those of licensed non-dentist owners" following "license or certificate" near the middle of Subsection A; substituted "rules" for "regulations" following "as defined by" near the middle of Paragraph A(3); deleted "or regulation" following "defined by rule" at the end of Paragraph A(5); substituted "licensure" for "practice" following "beyond the scope of" at the end of Paragraph A(8); and substituted "of the board and the committee" for "and regulations" following "defined in rules" at the end of Paragraph A(12).

Burden of proof for suspension of license. — The standard of proof utilized by the former board of dentistry in determining that a dentist's license should be suspended was a preponderance of the evidence. *Foster v. Board of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Conviction as sufficient basis for revocation. — Since a dentist was convicted of four counts of making or permitting a false claim for reimbursement for public assistance services, a conviction itself, as distinguished from the underlying conduct, is a sufficient basis for revoking a dental license. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Standard for use of conviction to revoke license. — In order for a conviction to be used as a basis for a license revocation, the licensing agency must explicitly state its reasons for a decision prohibiting the licensee from engaging in his or her employment

or profession, and the agency must find that the licensee has not been sufficiently rehabilitated to warrant the public trust and must give reasons for this finding. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100, 102, 106, 107.

Validity of statute providing for revocation of license, 5 A.L.R. 94, 79 A.L.R. 323.

Grounds for revocation of license, 54 A.L.R. 1504, 82 A.L.R. 1184.

Restoration of license wrongfully revoked, 95 A.L.R. 1424.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to, within statute making conviction ground for refusing to grant license, 113 A.L.R. 1179.

Statutory power to revoke or suspend dentist's license for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

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

Conviction as proof of ground for revocation or suspension of dentist's license where a conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court, or court of another state, as bearing upon disqualification to practice as dentist, 175 A.L.R. 803.

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

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

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

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

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38 to 43.

61-5A-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.

ANNOTATIONS

Cross references. — For injunctions generally, *see* Rules 1-065 and 1-066 NMRA.

Dentists may form a professional corporation for the practice of dentistry so long as the name of the corporation contains all of the names of the members of the professional corporation plus the words "professional corporation" or some other word or abbreviation of a word authorized by the Professional Corporations Act. 1969 Op. Att'y Gen. No. 69-63.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 87.

Unlicensed dentist's right to recover for services, 30 A.L.R. 860, 42 A.L.R. 1226, 118 A.L.R. 646.

Right of one licensed as a regular physician to practice dentistry, 86 A.L.R. 624.

Corporation or individual not himself licensed, right to practice dentistry through licensed employees, 103 A.L.R. 1240.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice dentistry from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

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

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, added "or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards" following "or the committee" at the end of Subsection B; and added "or reaches a settlement prior to the issuance of a notice of contemplated action" following "contemplated action" at the end of Subsection C.

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.

ANNOTATIONS

Compiler's notes. — "Paragraph (7) of Subsection C of Section 3 of this 2017 act", referred to in Subsection D of this section, was a fifty thousand dollar ($50,000) transfer from the board of dental health care fund to the fiscal year 2017 appropriation account of the general fund.

The 2017 (1st S.S.) amendment, effective May 26, 2017, authorized the transfer of funds from the board of dental health care fund to the fiscal year 2017 appropriation account of the general fund; in Subsection D, after the subsection designation, added "Except as provided in Paragraph (7) of Subsection C of Section 3 of this 2017 act".

The 2003 amendment, effective June 20, 2003, inserted "of dental health care" following "money to the board" near the middle of the second sentence of Subsection B.

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 15, § 8 repealed 61-5A-30 NMSA 1978, as enacted by Laws 1994, ch. 55, § 42, relating to termination of agency life, delayed repeal, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 15, § 8, effective June 16, 2023, repealed 61-5A-30 NMSA 1978, that provided for the repeal of the Impaired Dentists and Dental Hygienists, effective July 1, 2024.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Notwithstanding the language "Sections 31 through 41 of this act," the Impaired Dentists and Dental Hygienists Act includes Laws 1994, ch. 55, § 30, compiled as 61-5B-1 NMSA 1978.

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, deleted "of the New Mexico board of dental health care" following "dental hygienists committee" at the end of Subsection B.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

61-5B-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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2013, ch. 206 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 2 recompiled former 61-6-1 NMSA 1978, relating to appointment, qualifications and terms of board of medical examiners, as 61-6-2 NMSA 1978, effective July 1, 1989.

Cross references. — For Sexual Assault Survivors Emergency Care Act, *see* 24-10D-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, in Subsection C, after "qualified", added "health care practitioners, including".

The 2003 amendment, effective June 20, 2003, substituted "medical board" for "board of medical examiners" in Subsections B and C; in Subsection C, inserted "anesthesiologist assistants" three times and deleted "to register qualified" preceding "physician assistants".

License requirement does not violate first amendment rights. — The Medical Practice Act does not purport to regulate the expression of ideas or opinions concerning effective treatments or other issues of public concern, nor does it require all speakers at seminars held in New Mexico to be licensed to practice in New Mexico. The act simply requires those who engage in conduct in New Mexico that amounts to the practice of medicine to obtain a New Mexico license. Thus, any burden on the exercise of first amendment rights is at best minimal and incidental, and the act leaves open alternative channels of communication through which ideas and opinions can be expressed. *State v. Ongley*, 1994-NMCA-073, 118 N.M. 431, 882 P.2d 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to sale of practice, 62 A.L.R.3d 918.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to partnership agreement, 62 A.L.R.3d 970.

Validity and construction of contractual restrictions on right of medical practitioner to practice, incident to employment agreement, 62 A.L.R.3d 1014.

Liability for interference with physician-patient relationship, 87 A.L.R.4th 845.

State law criminal liability of licensed physician for prescribing or dispensing drug or similar controlled substance, 13 A.L.R.5th 1.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

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.

ANNOTATIONS

Compiler's notes. — Laws 1989, ch. 269, § 32 repealed former 61-6-2 NMSA 1978, as amended by Laws 1955, ch. 44, § 1, relating to meetings and quorums of the board, effective July 1, 1989. For present comparable provisions, *see* 61-6-3 NMSA 1978.

Cross references. — For Uniform Licensing Act, *see* 61-1-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, increased the number of members of the New Mexico medical board from nine members to eleven members, increased the number of physicians to be appointed to the board, required that at least two of the members be osteopathic physicians and two of the members be medical physicians, and prohibited health care practitioners over which the board has licensure authority from being public members of the board; in Subsection A, after "consisting of", changed "nine" to "eleven", after "physician assistant and", changed "six" to "eight", after "reputable physicians", added "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", and after "shall not have been licensed by the board", deleted "or have practiced as a physician" and added "as a health care provider over which the board has licensure authority"; and added a new Subsection C and redesignated former Subsections C through E as Subsections D through F, respectively.

Temporary provisions. — Laws 2021, ch. 54, § 48 provided:

A. On June 18, 2021, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the board of osteopathic medicine are transferred to the New Mexico medical board.

B. On June 18, 2021, all contractual obligations of the board of osteopathic medicine are binding on the New Mexico medical board.

C. On June 18, 2021, all references in law to the board of osteopathic medicine shall be deemed to be references to the New Mexico medical board.

The 2003 amendment, effective June 20, 2003, substituted "New Mexico medical board" for "Board of medical examiners" in the section heading; in Subsection A, substituted "'New Mexico medical board, consisting of nine members" for "board of medical examiners, consisting of eight members" in the first sentence, inserted "one physician assistant" preceding "and six reputable", deleted "as defined in Section 61-6-6 NMSA 1978" in the second sentence, inserted the present third sentence, and inserted "by the board" in the last sentence; added present Subsection C and redesignated former Subsections C and D as Subsections D and E, and rewrote present Subsection D.

Temporary provisions. — Laws 2003, ch. 19, § 28, effective June 20, 2003, provided that all functions, personnel, appropriations, money, records, equipment, supplies and other property of the New Mexico board of medical examiners shall be transferred to the

New Mexico medical board; all contracts of the New Mexico board of medical examiners shall be binding and effective on the New Mexico medical board; and all references in law to the New Mexico board of medical examiners shall be deemed to be references to the New Mexico medical board.

The 1991 amendment, effective June 14, 1991, in Subsection A, increased the membership of the board from six members to eight members and, in the second sentence, substituted "two public members and six reputable physicians" for "one public member and five reputable physicians" and "licensed physicians" for "registered practitioners"; deleted former Subsection C which read "Two of the physician members of the board first appointed shall hold their offices for a period of two years, and the remaining three physician members shall hold their offices for a period of four years. Thereafter, the physician members shall hold their offices for a period of four years. All board members shall hold office until their successors are appointed and qualified"; designated former Subsections D and E as Subsections C and D, rewriting present Subsection C which read "The public member shall be appointed to a four-year term"; and made related and minor stylistic changes in Subsections A and B.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-1 NMSA 1978; inserted "or schools" near the middle of the second sentence of Subsection A; substituted the present provisions of Subsection D for " The public member, upon the effective date of this act, shall be appointed to a term expiring January 1, 1982. Thereafter the public member shall be appointed to a four-year term"; substituted all of the present language of Subsection E following "removed" for "as a member of this board"; and made minor stylistic changes throughout the section.

Governor's power not usurped. — Requirement that the governor appoint to the board of medical examiner's nominees who were submitted by the New Mexico medical society, where only the governor has this prerogative, would not unconstitutionally usurp the governor's power. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Review of board's proceedings. — On review of proceedings of board of medical examiners, court is limited to a determination of whether the board's order was reasonable, lawful and had substantial evidence to support it. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Corporation to perform medical services. — Because the legislature chose to expressly prohibit the corporate practice, apart from professional corporations, in the case of dentists and podiatrists, and chose to expressly permit, with limitation, other forms of corporate practice in the case of psychologists and engineers, it may be inferred from the legislature's silence in the case of medical doctors that a corporation may be formed to provide medical services. 1987 Op. Att'y Gen. No. 87-39.

A corporation, organized and controlled by non-physicians, may provide medical services to the general public through employed physicians, unless prohibited by statute

or unless it exercises lay control of medical judgment or engages in lay exploitation of the medical profession in a manner prohibited by public policy. 1987 Op. Att'y Gen. No. 87-39.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 131, 135.

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

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Practice of medicine or surgery, interstate commerce clause as affecting requirement of license, 82 A.L.R. 1388.

Right of corporation or individual, not himself licensed, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Newspapers, magazines or radio, practice of medicine through, 114 A.L.R. 1506.

Dentist as a physician or surgeon within statutes, 115 A.L.R. 261.

Treatment by electricity as practice of medicine or surgery within statute, 115 A.L.R. 957.

Medical practice acts, health service plan as violation of, 119 A.L.R. 1290.

Prescriptions, one who fills under reciprocal arrangement with physician, as subject to charge of practice of medicine without license, 121 A.L.R. 1455.

Application to masseurs of statutes governing practice of medicine, 17 A.L.R.2d 1183.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Malpractice in diagnosis and treatment of brain injuries, diseases or conditions, 29 A.L.R.2d 501.

Liability for injury by X-ray, 41 A.L.R.2d 329.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

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

Malpractice: treatment of fractures or dislocations, 54 A.L.R.2d 200.

Liability of physician for extending operation or treatment beyond that expressly authorized, 56 A.L.R.2d 695.

Liability of physician for lack of diligence in attending patient, 57 A.L.R.2d 379.

Liability of physician who abandons case, 57 A.L.R.2d 432.

Malpractice in nose and throat treatment, 58 A.L.R.2d 216.

Malpractice in administering medicine to which patient is unusually susceptible or allergic, 64 A.L.R.2d 1281.

Malpractice in treatment of tuberculosis, 75 A.L.R.2d 814.

Malpractice in treatment of the ear, 76 A.L.R.2d 783.

Physician's or surgeon's malpractice in connection with care and treatment of hemophiliac or diagnosis of hemophilia, 1 A.L.R.3d 1107.

Practice by attorneys and physicians as corporate entities or associations under professional service corporation statutes, 4 A.L.R.3d 383.

Physician's or surgeon's malpractice in connection with diagnosis or treatment of rectal or anal disease, 5 A.L.R.3d 916.

Malpractice in connection with intravenous or other forced or involuntary feeding of patient, 6 A.L.R.3d 668.

Validity and construction of contract exempting hospital or doctor from liability for negligence to patient, 6 A.L.R.3d 704.

Liability of physician, surgeon, anesthetist or dentist for injury resulting from foreign object left in patient, 10 A.L.R.3d 9.

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

Liability in connection with insertion of prosthetic or other corrective devices in patient's body, 14 A.L.R.3d 967.

Liability of physician or hospital where patient suffers heart attack or the like while undergoing unrelated medical procedure, 17 A.L.R.3d 796.

Malpractice in diagnosis and treatment of diseases or conditions of the heart or vascular system, 19 A.L.R.3d 825.

Doctor's liability for mistakenly administering drug, 23 A.L.R.3d 1334.

Medical malpractice, and measure and element of damages, in connection with sterilization or birth control procedures, 27 A.L.R.3d 906.

Malpractice in diagnosis and treatment of tetanus, 28 A.L.R.3d 1364.

Malpractice in connection with diagnosis and treatment of epilepsy, 30 A.L.R.3d 988.

Physician's failure to advise patient to consult specialist or one qualified in a method of treatment which physician is not qualified to give, 35 A.L.R.3d 349.

Attending physician's liability for injury caused by equipment furnished by hospital, 35 A.L.R.3d 1068.

Liability of physician or dentist for injury to patient from physical condition of office premises, 36 A.L.R.3d 1341.

Liability for negligence in diagnosing or treating aspirin poisoning, 36 A.L.R.3d 1358.

Surgeon's liability for inadvertently injuring organ other than that intended to be operated on, 37 A.L.R.3d 464.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Recovery against physician on basis of breach of contract to achieve particular result or cure, 43 A.L.R.3d 1221.

Physician's tort liability for unauthorized disclosure of confidential information about patient, 48 A.L.R.4th 668.

Construction and application of "Good Samaritan" statutes, 68 A.L.R.4th 294.

Tort liability of medical society or professional association for failure to discipline or investigate negligent or otherwise incompetent medical practitioner, 72 A.L.R.4th 1148.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21; 73 C.J.S. Public Administrative Law and Procedure § 13.

61-6-3. Meetings of the board; quorum.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1989, ch. 269, § 3 repealed former 61-6-3 NMSA 1978, as amended by Laws 1979, ch. 63, § 1, relating to bond of secretary-treasurer, reimbursement of board members and duties of officers, and enacted a new section, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, in Subsection B, after "annual meeting", deleted "during which it" and added "and".

The 2003 amendment, effective June 20, 2003, deleted "Two of those meetings shall be licensing meetings" from end of Subsection A; deleted former Subsection C relating to regular licensing meetings and redesignated former Subsections D and E as Subsections C and D; inserted "or electronic" following "at the written" in present Subsection C.

Implied powers of board. — Although the statutes are silent in respect to the powers of the board to contract generally, the board possesses the implied authority necessary to fulfill the duties for which the board was created. Among the implied powers of the board would be the authority to maintain office equipment, files and records incident to the carrying out of the board's statutory functions. 1962 Op. Att'y Gen. No. 62-87.

Board of medical examiners may negotiate lease of office space for board use; however, such lease may not, in the absence of specific statutory authority, lawfully be entered into for a time period in excess of that for which the legislature has made an appropriation for the payment of such expenses. 1962 Op. Att'y Gen. No. 62-87.

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

61-6-4. Election; duties of officers; reimbursement of board members.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 6 recompiled former 61-6-4 NMSA 1978, relating to definitions, as 61-6-6 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, required that the secretary-treasurer of the New Mexico medical board be a physician member of the board; and in Subsection D, after "shall", added "be a physician member of the board and shall".

The 2003 amendment, effective June 20, 2003, substituted "chair" for "president" throughout Subsections A to C; deleted former Paragraphs (1) to (4) of Subsection D relating to the duties of the secretary-treasurer and added present Paragraphs (1) to (4) of Subsection D; substituted "chair" for "president between meetings" at the end of Paragraph (5) of Subsection D; in Subsection G, inserted "or agents" near the beginning, and deleted "as required by Sections 61-6-11 and 61-6-13 NMSA 1978" following "of applicants".

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.

ANNOTATIONS

Cross reference. — For provisions of the Pain Relief Act, *see* 24-2D-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, included the Podiatry Act within the scope of the medical board's enforcement and administration duties; and in Subsections A and B, after "Practice Act", added "the Podiatry Act".

Temporary provisions. — Laws 2023, ch. 141, § 18 provided that on July 1, 2023:

A. all functions, personnel, records, equipment, supplies and other property of the board of podiatry shall be transferred to the podiatry advisory committee; and

B. all money and appropriations of the board of podiatry shall be transferred to the New Mexico medical board fund.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the New Mexico medical board to adopt, publish and file rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; clarified that the medical board is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in the section heading, added "Medical board"; in Subsection B, deleted "adopt, publish and file" and added "promulgate", and after "in accordance with", deleted "the Uniform Licensing Act and"; in Subsection H, deleted "grant" and added "discipline licensees or", deleted "Medical Practice Act, the Implied Health Care Provider Act, the Naturopathic Doctors' Practice Act and the Naprapathic Practice Act" and added "law that the board is charged with enforcing"; and in Subsection K, after "the laws in relation to", deleted "the medical" and added "a health care", and after "profession", added "or occupation over which the board has authority".

The 2021 amendment, effective June 18, 2021, made changes to reflect the New Mexico medical board's new regulatory oversight; in Subsection L, after "continuing", deleted "medical", and after "licensed", deleted "physicians and continuing education requirements for physician assistants" and added "practitioners over which the board has authority"; and in Subsection P, after "the purpose of", deleted "medical doctor" and added "the", and after "retention", added "of health care practitioners over which the board has authority".

Temporary provisions. — Laws 2021, ch. 54, § 48 provided:

A. On June 18, 2021, all functions, personnel, money, appropriations, records, furniture, equipment, supplies and other property of the board of osteopathic medicine are transferred to the New Mexico medical board.

B. On June 18, 2021, all contractual obligations of the board of osteopathic medicine are binding on the New Mexico medical board.

C. On June 18, 2021 of, all references in law to the board of osteopathic medicine shall be deemed to be references to the New Mexico medical board.

The 2019 amendment, effective June 14, 2019, required the New Mexico medical board, in accordance with the Naturopathic Doctors' Practice Act, to enforce and administer, adopt rules for implementation and enforcement, and regulate licenses; and added "the Naturopathic Doctors' Practice Act" throughout the section.

Temporary provisions. — Laws 2019, ch. 244, § 19 provided that by June 30, 2020, the New Mexico medical board shall issue licenses to those applicants who have met the requirements of the Naturopathic Doctors' Practice Act and board rules promulgated in accordance with that act.

The 2011 amendment, effective July 1, 2011, in Subsections A, B and H, required the medical board to administer and enforce the Naprapathic Practice Act, including licensure and rule making.

The 2008 amendment, effective May 14, 2008, added Subsection P.

The 2005 amendment, effective June 17, 2005, added Subsection O to require the board to establish and maintain rules related to the management of pain based on national standards for paid management.

The 2003 amendment, effective June 20, 2003, substituted "the Anesthesiologist Assistants Act and the Impaired Health Care Provider Act" for "and the Impaired Physician Act" in Subsections A and B; deleted "and regulations" following "all rules" in Subsection B; deleted former Subsections G and H related to keeping records of all persons taking examinations and certified as passing any persons with a passing grade and redesignated Subsections I to O as Subsections G to M; in present Subsection H, substituted "licensees and applicants" for "physicians" following "probation and stipulation", added "and the Impaired Health Care Provider Act" at the end; deleted "including those provided for in Section 61-6-28 NMSA 1978" at the end of present Subsection K; and added Subsection N.

The 1989 amendment, effective July 1, 1989, substituted the present section heading for "Administration of act"; and substituted the present provisions for "The New Mexico board of medical examiners shall enforce and administer the provisions of this act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 23.

61-6-6. Definitions.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 9, § 1 recompiled former 61-6-6 NMSA 1978, relating to certification as physician's assistant, as 61-6-7 NMSA 1978, effective March 4, 1989.

Cross references. — For provision for telemedicine license, *see* 61-6-11.1 NMSA 1978.

The 2023 amendment, effective June 16, 2023, included "podiatric physician" within the definition of "licensee" or "health care practitioner"; and in Subsection E, after "naturopathic doctor", added "podiatric physician".

The 2021 amendment, effective June 18, 2021, revised the definitions of terms to include osteopathic and medical physicians and osteopathic physician assistants in the Medical Practice Act; in Subsection A, after "training program", added "for physicians", and after "graduate medical education", added "the American osteopathic association or other board-approved program"; in Subsection D, after "medical", deleted "doctor" and added "or osteopathic physician"; in Subsection E, after "'licensee'", added "'or health care practitioner'", and after "medical", deleted "doctor" and added "physician, osteopathic physician"; in Subsection F, after "standing", added "for medical physicians", and after "American medical association", added "and for osteopathic physicians means a college of osteopathic medicine accredited by the commission of osteopathic college accreditation"; in Subsection H, after "means a health", deleted "professional" and added "care practitioner"; deleted Subsection I, which defined "intern", and redesignated former Subsections J through O as Subsections I through N, respectively; in Subsection J(1), after "authorized to practice medicine", added "or to practice health care that is under the authority of the board"; in Subsection L, after "acceptable medical", added "or health care"; and in Subsection M, after "scope of acceptable medical", added "or health care".

The 2019 amendment, effective June 14, 2019, included "naturopathic doctor" in the definition of "licensee"; in the introductory clause, after "As used in", deleted "Chapter 61, Article 6 NMSA 1978" and added "the Medical Practice Act"; and in Subsection E, after "anesthesiologist assistant", added "naturopathic doctor".

The 2017 amendment, effective June 16, 2017, defined "collaboration" as used in this article to provide for collaboration between a physician assistant and a licensed physician, and made technical changes; in Subsection A, after "approved by the", deleted "accrediting" and added "accreditation", after "council", deleted "on" and added "for", and after "education", deleted "of the American medical association or by the board"; added a new Subsection C and redesignated the succeeding subsections accordingly; and in Subsection H, after "services to patients", deleted "under" and added "with", after "supervision", deleted "and direction", after "of", added "or in collaboration with", and after "licensed physician", added "as set forth in rules promulgated by the board".

The 2011 amendment, effective July 1, 2011, in Subsection D, defined a "licensee" to include a licensed naprapath.

The 2008 amendment, effective July 1, 2008, added "polysomnography technologist" in Subsection D.

The 2003 amendment, effective June 20, 2003, deleted former Subsections A defining "acting in good faith" and F defining "person"; added present Subsections A and D and redesignated subsections accordingly; substituted "medical board" for "board of medical examiners" in Subsection B; rewrote Subsection G; deleted "postgraduate year one or" at the beginning of Subsection H; in Subsection I, deleted "postgraduate year two through eight or" at the beginning, substituted "assistant resident" for "fellow" near the end; in Paragraph J(7), deleted "Paragraphs (1) through (6) of" following "things listed in".

The 2001 amendment, effective April 2, 2001, added Subsection K, and renumbered the remaining subsections accordingly.

The 1997 amendment, effective July 1, 1997, substituted "licensed" for "registered" in Subsection G; and deleted "approved by the board" following "standing" in Subsections H and I.

The 1994 amendment, effective May 18, 1994, substituted "eight" for "five" in Subsection I; added "administer, dispense or" and added language and punctuation beginning with ", except" and ending with "1978" in Subsection J(2); substituted "administer, dispense or prescribe any drug" for "administer any dangerous drug" in Subsection J(3); deleted "or" following the semicolon in Subsection J(5); added Subsection J(6); substituted "(6)" for "(5)" in former Subsection J(6) and renumbered it as Subsection J(7); deleted "and" following the semicolon in Subsection K; added "; and" at the end of Subsection L; and added Subsection M.

The 1991 amendment, effective June 14, 1991, substituted "or treat" for "and treat" near the beginning of Paragraph (5) in Subsection J; added Subsections K and L; and made related and other stylistic changes in Subsections D and I.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-4 NMSA 1978; added present Subsection A; redesignated former Subsections A and B as present Subsections B and C; in present Subsection C, substituted "medical doctor licensed under the Medical Practice Act" for "physician licensed"; added Subsections D, E and F; redesignated former Subsection C as present Subsection G while substituting therein "physician assistant" for "physician's assistant" and "registered" for "certified"; and added Subsections H through J.

License requirement does not violate first amendment rights. — The Medical Practice Act does not purport to regulate the expression of ideas or opinions concerning effective treatments or other issues of public concern, nor does it require all speakers at seminars held in New Mexico to be licensed to practice in New Mexico. The act simply requires those who engage in conduct in New Mexico that amounts to the practice of medicine to obtain a New Mexico license. Thus, any burden on the exercise of first amendment rights is at best minimal and incidental, and the act leaves open alternative channels of communication through which ideas and opinions can be expressed. *State v. Ongley*, 1994-NMCA-073, 118 N.M. 431, 882 P.2d 22.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 3, 5.

61-6-7. 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.

ANNOTATIONS

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-6-7 NMSA 1978, as enacted by Laws 1973, ch. 361, § 3, relating to short title, licensure as a physician assistant, scope of practice, biennial registration of supervision, license renewal, fees, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 30 recompiled and amended former 61-6-7.1 NMSA 1978 as 61-6C-2 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 32 recompiled and amended former 61-6-7.2 NMSA 1978 as 61-6C-4 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.3 NMSA 1978 as 61-6C-5 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.4 NMSA 1978 as 61-6C-6 NMSA 1978, effective May 18, 2022.

61-6-8 to 61-6-8.1. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-8 and 61-6-8.1 NMSA 1978, as enacted by Laws 1973, ch. 361, § 4 and Laws 1997, ch. 187, § 6, respectively, relating to the power to deny, revoke or suspend any license to practice as a physician assistant and the physician assistant advisory committee. For provisions of former sections, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 33 recompiled and amended former 61-6-9 NMSA 1978 as 61-6C-7 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 34 recompiled and amended former 61-6-10 NMSA 1978 as 61-6C-8 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 35 recompiled and amended former 61-6-10.1 NMSA 1978 as 61-6D-1 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.3 NMSA 1978 as 61-6D-3 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.4 NMSA 1978 as 61-6D-4 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.5 NMSA 1978 as 61-6D-5 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.6 NMSA 1978 as 61-6D-6 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.7 NMSA 1978 as 61-6D-7 NMSA 1978, effective May 18, 2022.

61-6-10.8. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-10.8 NMSA 1978, as enacted by Laws 2001, ch. 311, § 8, relating to the power to deny, revoke or suspend a license to practice as an anesthesiologist assistant, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 36 recompiled and amended former 61-6-10.9 NMSA 1978 as 61-6D-8 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.10 NMSA 1978 as 61-6D-9 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.11 NMSA 1978 as 61-6D-10 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 8 recompiled former 61-6-11 NMSA 1978, relating to criminal offender's character evaluation, as 61-6-12 NMSA 1978, effective July 1, 1989.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, provided that a graduate of an accredited osteopathic medical school, having met other requirements, may be considered for licensure by the New Mexico medical board, clarified acceptable training programs required to be considered for physician licensure, and removed a provision that a candidate for physician licensure must be in compliance with United States immigration laws; after each occurrence of "approved postgraduate training program", added "for physicians" throughout; in the section heading, added "Physician"; in Subsection A, after "Canadian medical", added "or osteopathic medical"; in Subsection C, after "good moral character", deleted "and is in compliance with the United States immigration laws"; and in Subsection E, after "who holds a medical", added "or osteopathic".

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the board may consider for licensure a person who is a graduate of an accredited United States or Canadian medical school; in Subsection C, provided that a graduate of a medical school located outside the United States who completes two years of postgraduate training at or affiliated with an institution located in New Mexico prior to December 30, 2007 and who is otherwise qualified may be granted a license to practice medicine; and in Subsection E, provided that the board may by rule establish exceptions to the time requirements of Subsection E.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, added Subsection H and renumbered the remaining subsection accordingly.

The 1997 amendment, effective June 20, 1997, inserted "of good moral character and is" preceding "a graduate" in Subsection A and inserted "of good moral character and after" preceding "successfully" in Subsection E.

The 1994 amendment, effective May 18, 1994, amended the section heading, which read "Licensure by examination - Admission to examination - Graduates of foreign colleges"; substituted "two years" for "one year" and deleted "approved by the board in accordance with its regulations" following "training" in Subsection A; added Subsections B and C and redesignated former Subsections B through F as Subsections D through F, respectively; substituted "a board-approved licensing examination" for "the examination as prescribed by the federation of state boards of medical examiners" in Subsection D; in Subsection F, deleted "and its possessions" following "outside the United States,"

substituted "the applicant" for "he" four times, substituted "is in compliance with the United States immigration laws" for "is a legal resident of the United States," substituted "an examination as required by the board and" for "the examination as required and given by the educational council for foreign medical graduates" and substituted "training in a board-approved program" for "education and also successfully passes the examination as prescribed by the board"; substituted "a" for "any" in Subsection G; and substituted "the fees required by" for "an examination fee and an examination fee as provided in" in Subsection H.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-10 NMSA 1978; added "Licensure by examination" to the catchline and deleted therefrom "medical college in good standing defined" preceding "admission"; in Subsection A, substituted "may admit" for "shall, upon production of evidence satisfactory to it, admit" and "person" for "reputable person who has applied for citizenship in the United States or is a citizen of the United States", inserted "or school", substituted "Subsection D of Section 61-6-6 NMSA 1978" for "this section", and deleted "in a hospital" following "training"; in Subsection B, substituted the present provisions for the former definition of a "medical college in good standing"; added present Subsection C; redesignated former Subsection C as present Subsection D; in present Subsection D, substituted "and is a legal resident" for "and has applied for citizenship in the United States or is a citizen", and inserted "has successfully completed two years of post-graduate medical education"; deleted former Subsection D, relating to license by endorsement and without examination for graduates of foreign medical colleges; added Subsections E and F; and made minor stylistic changes throughout the section.

Reinstatement after license revocation. — Once a physician's license has been revoked the only method of reinstating the former licensee to full privileges is by means of reapplication. 1953 Op. Att'y Gen. No. 53-5839.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 55 to 60.

Tort claim for negligent credentialing of physician, 98 A.L.R.5th 533.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

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.

ANNOTATIONS

Cross references. — For penalty for practicing medicine across state lines without license, *see* 61-6-20 NMSA 1978.

The 2023 amendment, effective July 1, 2023, in Subsection A, added "expedited" preceding "licensure", and after "licensure", deleted "by endorsement".

The 2021 amendment, effective June 18, 2021, clarified that the New Mexico medical board shall issue telemedicine licenses to licensed physicians; and in Subsection A, after "shall issue", added "a licensed physician".

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-12 NMSA 1978, as amended by Laws 1979, ch. 63, § 2, relating to examinations, licenses without examination, and temporary licenses, effective July 1, 1989. For present comparable provisions, *see* 61-6-13 NMSA 1978.

Cross references. — For criminal records screening for caregivers employed by care providers, *see* 29-17-2 to 29-17-5 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided that the provisions of the Criminal Offender Employment Act govern any consideration of criminal records by the New Mexico medical board of health care practitioners over which the board has licensure authority; and after "Medical Practice Act", added "and to all health care practitioners over which the board has licensure authority".

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-11 NMSA 1978, and substituted "the Medical Practice Act" for "Sections 67-5-1 through 67-5-26 NMSA 1953".

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 10 recompiled former 61-6-13 NMSA 1978, relating to organized youth camp or school licenses, as 61-6-14 NMSA 1978, effective July 1, 1989.

Cross references. — For perjury generally, *see* 30-25-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, rewrote the section, applying existing provisions to expedited licensure, and struck language related to licensure by endorsement; in the section heading, added "expedited", and deleted "by endorsement"; in Subsection A, in the former introductory clause, after "may grant", added "an expedited", and deleted "by endorsement to a physician applicant who" and added "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"; deleted former Paragraphs A(1) through A(5) and added new Paragraphs A(1) and A(2); deleted former Subsections B through E, added a new Subsection B and redesignated former Subsection F as Subsection C; and in Subsection C, added "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.".

2021 Amendments. — Laws 2021, ch. 54, § 32, effective June 18, 2021, provided that a graduate of an accredited osteopathic medical school, having met other requirements, may be granted a license by endorsement by the New Mexico medical board, included board certification in a specialty recognized by the American osteopathic association as acceptable for meeting certain licensure requirements, and removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws; in the section heading, added "Physician"; in Subsection A, in the introductory clause, preceding "applicant", added "a physician", in Paragraph A(1), after "Canadian medical", added "or osteopathic medical", and in Paragraph A(2), after "medical specialties", added "the American osteopathic association or other specialty boards as approved by the board"; and in Subsection B, in the introductory clause, after "grant a", added "physician", in Paragraph B(1), after "from a medical", added "or osteopathic medical", deleted former Paragraph B(3) and redesignated former Paragraphs B(4) through B(7) as Paragraphs B(3) through B(6), respectively, and in Paragraph B(3), after "medical specialties", added "the American osteopathic association or other boards as approved by the board".

Laws 2021, ch. 70, § 8, effective June 18, 2021, removed a provision that an applicant for licensure by endorsement must be in compliance with United States immigration laws; and in Subsection B, deleted Paragraph B(3) and redesignated former Paragraphs B(4) through B(7) as Paragraphs B(3) through B(6), respectively.

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the board may grant a license by endorsement to an applicant who has graduated from an accredited United States or Canadian medical school and deleted the provision that the

officers of the examining board with jurisdiction or the Canadian medical council endorse the applicant; and in Subsection B, deleted the provision that the officers of the examining board with jurisdiction or the Canadian medical council endorse the applicant.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, in subsection D, inserted the language beginning "In cases when the applicant is board certified" and ending "where the applicant is licensed."

The 1994 amendment, effective May 18, 1994, rewrote Subsections A, B and C, added Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively, and substituted "any" for "a" in subsection E.

Findings regarding "equivalent" "qualifications and requirements". — The district court may find that the differences in methodology of examination scoring between this state and another do not rationally relate to the question of "equivalent" "qualifications and requirements". *Fiber v. N.M. Bd. of Med. Exam'rs*, 1979-NMSC-046, 93 N.M. 67, 596 P.2d 510.

Practice of medicine limited. — The practice of medicine, as characterized by the art of diagnosing, administration and prescribing of drugs and medicines, surgery, psychiatric examination, analysis and consultation, is limited in New Mexico to persons who, as determined by the New Mexico board of medical examiners, are duly accredited graduates of approved medical schools and have successfully passed a written examination or who have been granted their licenses by way of endorsement from the officers of examining boards of other states or certified to the New Mexico board of medical examiners by the national board of medical examiners. 1958 Op. Att'y Gen. No. 58-136.

Entitlement to license. — Absent properly issued and reasonable regulations, a person is entitled to a license if all the qualifications established by the legislature are met. 1965 Op. Att'y Gen. No. 65-11.

Function of interview. — The interview is a helpful aid in determining whether or not an applicant has met the New Mexico qualifications for licensing by endorsement. 1965 Op. Att'y Gen. No. 65-11.

Osteopath is a physician and surgeon who has been trained in that "system or school of medicine which is taught and practiced in standard colleges of osteopathy and surgery," substantially the same as those in which applicants for a license to practice medicine are required to be examined. 1934 Op. Att'y Gen. No. 34-806.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 67, 68.

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

61-6-14. Organized youth camp or school temporary licenses and temporary licenses for out-of-state physicians.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 11 recompiled former 61-6-14 NMSA 1978, relating to refusal, revocation or suspension of license, as 61-6-15 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, after each occurrence of "practice medicine", deleted "and surgery".

The 2005 amendment, effective April 5, 2005, in Subsection A, provided that the secretary-treasurer of the board or its designee may by examination or endorsement approve a temporary license to practice medicine and surgery to an applicant temporarily at an organized youth camp or school; and in Subsection B, provided that the secretary-treasurer of the board or its designee may by examination or endorsement approve a temporary license to practice medicine and surgery under the supervision of a licensed physician to an applicant who is licensed to practice medicine outside New Mexico and who is otherwise qualified to practice medicine.

The 2003 amendment, effective June 20, 2003, substituted "the qualifications of the applicant as specified by board rule" for "his qualifications as the secretary-treasurer of the board, in his discretion, may require" at the end of Paragraph A(2); in Subsection B, substituted "supervision of a licensed physician" for "sponsorship of and in association with a licensed New Mexico physician" following "medicine under the"; rewrote Paragraph B(1); deleted Subsection C concerning interim licenses and redesignated former Subsection D as present Subsection C.

The 1991 amendment, effective June 14, 1991, in Paragraph (1) of Subsection B, added "and for physician educational purposes" at the end of the second sentence and inserted "licensed" preceding "New Mexico physician" in the third sentence.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-13 NMSA 1978; in Subsection A, deleted "the average temporary daily population of which exceeds one hundred persons, for a period of not less than two weeks nor more than three months" following "school" near the middle of the

introductory paragraph; added all of the language of Subsection B(2) following "fees"; added present Subsection C; redesignated former Subsection C as present Subsection D while substituting all of the language thereof following "fee" for "as determined by the board, but not to exceed one hundred dollars ($100), payable to the board"; and deleted "or permit" following "license" several times throughout the section.

The 1988 amendment, effective February 18, 1988, added "temporary" and "and temporary licenses for out-of-state physicians" to the section heading; deleted "of medical examiners" following "of the board" and "apply for a license to" following "qualified to" near the beginning of Subsection A, and added "and the following provisions shall apply" at the end of the Subsection; redesignated former Subsections B and C as present Subsections A(1) and A(2), substituting "permit may" for "permit shall" in Subsection A(2); deleted former Subsection D, regarding a $25.00 license fee; and added present Subsection B.

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-15 NMSA 1978, as amended by Laws 1973, ch. 361, § 7, relating to definition of "practice of medicine" and exceptions from this article, effective July 1, 1989.

The 2023 amendment, effective June 16, 2023, included podiatric physicians within the scope of the section; and in Subsection A, after "naprapathic practitioner", added "or a podiatric physician".

The 2021 amendment, effective June 18, 2021, made the provisions of this section applicable to naturopathic practitioners and naprapathic practitioners, revised the definition of "unprofessional or dishonorable conduct" as used in this section, including removing "criminal abortion" from the definition of "unprofessional or dishonorable conduct"; in Subsection A, after "unable to practice", deleted "medicine" and added "as a physician", after "genetic", deleted "counseling" and added "counselor, a naturopathic practitioner or naprapathic practitioner"; and in Subsection D, Paragraph D(1), after "abetting", deleted "a criminal abortion" and added "an illegal procedure", in Paragraph D(14), after "certified copy of the record of", deleted "suspension or revocation of the state making the suspension or revocation" and added "disciplinary action or sanction taken by another jurisdiction", in Paragraph D(19), after "negligent acts", added "or a pattern of conduct otherwise described in this section or in violation of a board rule", in Paragraph D(22), after "failure to report to the board", added "the denial of licensure", and in Paragraph D(32), after "derived from the", added "current or".

The 2017 amendment, effective June 16, 2017, included the use of conversion therapy on a minor in the list of acts that are deemed unprofessional or dishonorable conduct under this section, provided that the New Mexico medical board may revoke or suspend any license issued by the board if any licensee is guilty of using conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, after "anesthesiologist assistant", deleted "or"; in Subsection D, added Paragraph D(39); and in Subsection E, added Paragraph E(1) and paragraph designation "(2)" preceding the remaining language from former Subsection E, and added Paragraphs E(3) through E(5).

2008 Amendments. — Laws 2008, ch. 54, § 13, effective July 1, 2008, in Subsection A, after "anesthesiologist assistant", added "or engage in the practice of polysomnography".

Laws 2008, ch. 53, § 12, effective July 1, 2009, in Subsection A, after "anesthesiologist assistant", added "or practice genetic counseling".

The 2005 amendment, effective April 5, 2005, in Subsection D(14), added that "unprofessional or dishonorable conduct" includes the denial of a license by another state; and in Subsection D(28), deleted the qualification that the licensee represent or infer that the activity is a legitimate part of the patient's treatment.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 2001 amendment, effective April 2, 2001, inserted "or conviction of a misdemeanor associated with the practice of medicine" in Paragraph D(6).

The 1997 amendment, effective June 20, 1997, substituted "Impaired Health Care Provider Act" for "Impaired Physician Act" at the end of Subsection A, substituted "discipline imposed on a licensee to practice medicine by another state, including probation, suspension or revocation" for "the suspension or revocation by another state of a license to practice medicine" at the beginning of Paragraph D(14), added Paragraph D(30), and made minor stylistic changes in Subsections B and D.

The 1994 amendment, effective May 18, 1994, added the second sentence and added "or the Impaired Physician Act" in the last sentence in Subsection A; substituted "the physician" for "he" in Subsection B; substituted "the" for "his" preceding "period of suspension" and "the physician's" for "his" preceding "license reinstated" in Subsection C; substituted "the physician" for "him" in Subsection D(2); deleted "annual" preceding "renewal" in Subsection D(8); substituted "the physician" for "his" twice and "the physician" for "him" in Subsection D(9); substituted "the physician's" for "his" in Subsection D(10); added "administering or dispensing" following "prescribing" in Subsection D(17); substituted "the physician" for "him" in Subsection D(21); added "administering or dispensing of any drug or medicine" in Subsection D(26); and substituted "for" for "of" following "inducement" in Subsection E.

The 1991 amendment, effective June 14, 1991, in Subsection D, added Paragraphs (27) and (28), redesignated former Paragraph (27) as Paragraph (29) and made a related stylistic change and made a minor stylistic change in Subsection A.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-14 NMSA 1978, inserted in the section heading "licensee may be fined, censured or reprimanded", "unprofessional and dishonorable conduct defined", and "fees and expenses"; in Subsection A twice substituted "may" for "shall" and inserted "and may fine, censure or reprimand any licensee" in the first sentence, and deleted "in connection with the issuance, renewal, suspension or revocation of licenses" following "proceedings" in the second sentence; designated the former third and fourth sentences of Subsection A as present Subsection B; designated the former fifth and sixth sentences of Subsection A as present Subsection C, while substituting "61-6-20" for "61-6-18" at the end of the last sentence therein; redesignated former Subsection B as present Subsection D; substituted "confidence" for "secret" in Subsection D(5); substituted all of the present language of Subsection D(8) beginning with "annual" for "an annual registration"; added all of the language of Subsection D(10) following "registration"; substituted the present provisions of Subsection D(15) for "making a fraudulent claim"; added present Subsections D(18) through D(26); redesignated former Subsection D(18) as present Subsection D(27); redesignated former Subsection C as present Subsection E; deleted former Subsection D, relating to hospital report of loss of

physician's privilege; added Subsections F and G; redesignated former Subsection E as present Subsection H; in Subsection H substituted "entity" for "company", inserted "or indemnifying physicians for professional liability", and substituted "settlements or judgments" for "malpractice claims"; and made minor stylistic changes throughout the section.

Due process. — Former Subsection D(27) (now Subsection D(29)) of this section, defining "unprofessional or dishonorable conduct" to include conduct unbecoming in one licensed to practice medicine or detrimental to the best interests of the public, is not void for vagueness. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Terms of probation not unconstitutionally vague. — Where one of the terms of probation imposed by the board on a physician found guilty of unprofessional conduct for falsely prescribing demerol for the alleged use of another when in fact the drug was for personal use was that the doctor not take or have in the doctor's possession "any dangerous drugs" without the consent of a psychiatrist, and the physician thereafter prescribed the drug ritalin for a patient and diverted some of it for personal use, revocation of the physician's license for violating probation was justified, as under the facts the terms thereof were not unconstitutionally vague. *McDaniel v. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Prior judicial determination unnecessary. — An administrative determination of "unlawful, illegal or unauthorized" conduct sufficient to support a conclusion of "unprofessional conduct," as provided in this section, is not dependent upon a prior judicial determination of criminal guilt. *Strance v. N.M. Bd. of Med. Exam'rs*, 1971-NMSC-081, 83 N.M. 15, 487 P.2d 1085.

Restraint of proceedings. — Board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice, and as statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Subsection D(5) does not create privilege; it only describes ethical constraints placed upon a physician. *Trujillo v. Puro*, 1984-NMCA-050, 101 N.M. 408, 683 P.2d 963, cert. denied, 101 N.M. 362, 683 P.2d 44.

Reinstatement after revocation. — Board of medical examiners has the power to suspend a license inherent in its power to revoke, but when revocation is accomplished, the only method of reinstating revoked licensee to full privileges is by the means of reapplication. 1953 Op. Att'y Gen. No. 53-5839.

Under former law, the legislature did not define unprofessional conduct, nor prohibit advertising by physicians; former statute did not go far enough to give power to the board of medical examiners to revoke the license of a physician for advertising unless said advertising was false, immoral and against the public welfare. 1939 Op. Att'y Gen. No. 39-3048.

No lay control of professional medical judgments. — An entity, such as a clinic, hospital or other similar corporate entity employing physicians, may not engage in conduct amounting to the practice of medicine by exerting lay control of professional medical judgments. 1987 Op. Att'y Gen. No. 87-39.

Law reviews. — For article, "New Mexico's 1969 Criminal Abortion Law," see 10 Nat. Res. J. 591 (1970).

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

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

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

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Moral turpitude, what offenses involve, within statute providing grounds for denying license, 109 A.L.R. 1459.

Conviction, what amounts to within statute making conviction ground for refusing license, 113 A.L.R. 1179.

Practice of medicine, dentistry or law through radio broadcasting stations, newspapers or magazines, 114 A.L.R. 1506.

Acquittal or dismissal in criminal prosecution, effect of, on revocation of license of physician, 123 A.L.R. 779.

Statutory power to revoke or suspend license of physician for "unprofessional conduct" as exercisable without antecedent adoption of regulation as to what shall constitute such conduct, 163 A.L.R. 909.

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

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

Governing law as to existence or character of offense for which one has been convicted in a federal court or court of another state, as bearing upon his qualification to practice as physician or surgeon, 175 A.L.R. 803.

Professional incompetency as ground for disciplinary measure, 28 A.L.R.3d 487.

Duty of physician or surgeon to warn or instruct nurse or attendant, 63 A.L.R.3d 1020.

Criminal responsibility for physical measures undertaken in connection with treatment of mentally disordered patient, 99 A.L.R.3d 854.

Use, in attorney or physician disciplinary proceeding, of evidence obtained by wrongful police action, 20 A.L.R.4th 546.

Wrongful or excessive prescription of drugs as ground for revocation or suspension of physician's or dentist's license to practice, 22 A.L.R.4th 668.

Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 A.L.R.4th 671.

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

Recovery for emotional distress resulting from statement of medical practitioner or official, allegedly constituting outrageous conduct, 34 A.L.R.4th 688.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

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

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 A.L.R.4th 132.

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

Existence, nature, and application to medical professional disciplinary board of privilege against disclosure of identity of informer, 86 A.L.R.4th 1024.

Liability of doctor or other health practitioner to third party contracting contagious disease from doctor's patient, 3 A.L.R.5th 370.

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

False or fraudulent statements or nondisclosures in application for issuance or renewal of license to practice as ground for disciplinary action against, or refusal to license, medical practitioner, 32 A.L.R.5th 57.

Denial by hospital of staff privileges or referrals to physician or other health care practitioner as violation of Sherman Act (15 USCS § 1 et seq.), 89 A.L.R. Fed. 419.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 43, 50, 53 to 57.

61-6-15.1. 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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 74 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 13 recompiled former 61-6-16 NMSA 1978, relating to exceptions from this article, as 61-6-17 NMSA 1978, effective July 1, 1989.

The 2008 amendment, effective May 14, 2008, in Subsection A, required reports to the board of payments that involve a licensee.

The 2003 amendment, effective June 20, 2003, inserted "federal" following "Section 431 of the" in Subsection A; in Subsection B, substituted "The" for "No" at the beginning, inserted "not" following "good faith shall", substituted "of providing the information" for "thereof" at the end; and substituted "ten thousand dollars ($10,000)" for "two thousand dollars ($2,000)" in Subsection C.

Law reviews. — For case note, "Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v.

University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

61-6-17. Exceptions to act.

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-17 NMSA 1978, as amended by Laws 1982, ch. 110, § 2, relating to fees for license by endorsement application and for examination, effective July 1, 1989.

Cross references. — For the Public Health Act, *see* 24-1-1 NMSA 1978 et seq.

The 2021 amendment, effective June 18, 2021, removed osteopathy from the list of practices to which the Medical Practice Act does not apply or affect, and removed a provision providing that the Medical Practice Act does not apply to the acts, tasks or functions of a physician assistant; in Subsection F, deleted former Paragraph F(1) and redesignated former Paragraphs F(2) through F(10) as Paragraphs F(1) through F(9), respectively; and deleted former Subsection G and redesignated former Subsections H through M as Subsections G through L, respectively.

The 2017 amendment, effective June 16, 2017, provided that the Medical Practice Act shall not apply to or affect an act, task or function performed by a physician assistant in collaboration with a licensed physician in certain circumstances, and made technical changes; in Subsection D, after "medical officers of the", added "commissioned corps of the", after "public health service or", deleted "the veterans administration of", after the second occurrence of "United States", added "department of veterans affairs"; and in Subsection G, in the introductory clause, after "at the direction of and", deleted "under" and added "with", and after "the supervision of", added "or in collaboration with", in Paragraph G(2), after "performed", deleted "at the direction of and under" and added "with", and after "supervision of", added "a licensed physician or in collaboration with", and in Paragraph G(3), after "supervising", added "or collaborating", and after "within the scope of the", added "physician".

The 2003 amendment, effective June 20, 2003, rewrote Paragraph G(1).

The 2001 amendment, effective April 2, 2001, added Subsections L and M.

The 2000 amendment, effective May 17, 2000, substituted "biennially" for "annually" in Subsection G(1) and added Subsection K.

The 1997 amendment, effective June 20, 1997, substituted "supervising licensed physician" for "supervising physician" in Paragraph G(3), and in Subsection I, inserted "or a visiting physician or surgeon operating under the physician's direct supervision" near the middle of the first sentence and added "in New Mexico" at the end of the first sentence.

The 1994 amendment, effective May 18, 1994, added "employment and" and deleted "not in violation of any other statute" following "customary manner" in Subsection I.

The 1993 amendment, effective June 18, 1993, inserted "and oriental medicine" in Paragraph (9) of Subsection F; and substituted "department of health" for "health and environment department" in Paragraph (1) of Subsection H.

The 1991 amendment, effective June 14, 1991, in Subsection H, rewrote the introductory paragraph following "nurse practitioners" which read "or medical technologists permitted by law or established by custom as part of the duties required in their employment by" and substituted "public health division" for "health services division" in Paragraph (1); added Subsection I; designated a formerly undesignated provision as Subsection J; and made a related stylistic change. Laws 1991, ch. 148, § 4 enacted identical amendments to this section. The section was set out as amended by Laws 1991, ch. 164, § 1. *See* 12-1-8 NMSA 1978.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-16 NMSA 1978; substituted "Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the introductory paragraph and Subsection I; substituted "regulated in this state" for "regulated by the health and social services department" in Subsection C; substituted present Subsection D for former Subsection D, which read "surgeons of the United States in the discharge of their official duties"; substituted present Subsection E for former Subsection F, which read as set out in the 1986 Replacement Pamphlet; added Subsections F(9) and F(10); made minor stylistic changes in Subsections G(1) and G(2); substituted present Subsection G(3) for former Subsection G(3), which read as set out in the 1986 Replacement Pamphlet; in Subsection H(1) inserted "licensed physician or a" and substituted "health services division of the health and environment department" for "health and social services department"; and, in Subsection I, inserted "as provided by law".

Chiropractors' services are not physicians' services under the medicaid program. Chiropractors' services thus are not included in the general categories of medical treatment which must be included in the state plan. *Katz v. N.M. Dep't of Human Servs.*, 1981-NMSC-012, 95 N.M. 530, 624 P.2d 39.

Delegation of dispensation of dangerous drugs. — The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physician's assistants the task of dispensing dangerous drugs. *N.M. Pharm. Ass'n v. State*, 1987-NMSC-054, 106 N.M. 73, 738 P.2d 1318 (decided under prior law).

Board to determine credentials. — While a New Mexico license was not required as a prerequisite to the employment of a doctor by the Carrie Tingley hospital, only the New Mexico board of medical examiners had authority to determine the present standing or validity of the doctor's credentials in other states. 1958 Op. Att'y Gen. No. 58-136.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers §§ 35 to 50.

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

Dentist as physician or surgeon within statutes, 115 A.L.R. 261.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 26, 27.

61-6-17.1. 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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, removed all references to surgery; and in Subsection A, after "good standing to practice medicine", deleted "and surgery", in Paragraph A(8), after "the individual's practice of medicine", deleted "and surgery", in Paragraph A(9), after "an individual practicing medicine", deleted "or surgery", and after "licensed to practice medicine", deleted "and surgery".

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 16 recompiled former 61-6-18 NMSA 1978, relating to penalty for practicing without a license, as 61-6-20 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, included "fellows" and "fellowships" within the provisions of this section; after "residents", added "fellows"; in Subsection B, after "resident", added "or fellow", and after "residency", added "or fellowship"; and in Subsection C, after "residency", added "or fellowship".

The 2005 amendment, effective April 5, 2005, in Subsection B, provided that an intern or resident who is appointed to a board-approved residency training program may pursue the training after obtaining a license from the board and adds the provision that the board may adopt by rule specific education or examination requirement for a postgraduate training license.

The 1994 amendment, effective May 18, 1994, substituted "Any" for "Nothing in the Medical Practice Act shall require an," substituted "in New Mexico may" for "to obtain a license to" and added "after obtaining a postgraduate training license from the board" in Subsection B, rewrote Subsection C, and added Subsections D, E and F.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, included "fellowships" within the provisions of this section; and in Subsection A, Paragraph A(1), after "residency", added "or fellowship".

The 2005 amendment, effective April 5, 2005, deleted former Subsection A(3), which required applicants to obtain advance written approval from the training program director of the applicant to return to the residency training program after public service and provided in Subsection C that public service licenses expire on September 1 of each year.

The 2003 amendment, effective June 20, 2003, in Subsection A, rewrote the undesignated paragraph, added present Paragraph (1) and redesignated former Paragraphs (1) and (2) as present Paragraphs (2) and (3), substituted "obtain written approval from the" for "obtains approval from his" at the beginning of present Paragraph (2), substituted "obtain advance written approval from the" for "obtains advance approval from his" at the beginning of present Paragraph (3), inserted "of the applicant" following "program director" in present Paragraphs (2) and (3), substituted "satisfy" for "satisfies any" at the beginning of Paragraph (4); in Subsection B, substituted "or has immediate access to a licensed physician by electronic means when the public service physician" for "or when the physician" following "licensed physician or".

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-19 NMSA 1978, as amended by Laws 1969, ch. 46, § 9, relating to rules and regulations of the board, effective July 1, 1989. For present comparable provisions, *see* 61-6-5(B) NMSA 1978.

The 2021 amendment, effective June 18, 2021, increased certain fees imposed by the New Mexico medical board; in Subsection A, Paragraph A(1), changed "four hundred dollars ($400)" to "five hundred dollars ($500)", in Paragraph A(2), changed "four hundred dollars ($400)" to "five hundred dollars ($500)", in Paragraph A(3), changed "four hundred fifty dollars ($450)" to "five hundred dollars ($500)", in Paragraph A(7), changed "six hundred dollars ($600)" to "seven hundred dollars ($700)", in Paragraph A(20), changed "four hundred dollars ($400)" to "nine hundred dollars ($900)", and in Paragraph A(21), after "cost of application", added "and license or renewal".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective June 16, 2017, removed the fee charged to a physician assistant for each change of supervising licensed physician, and made technical changes; in Subsection A, Paragraph A(15), after "biennial", deleted "licensing" and added "license renewal", and after "supervising", added "or collaborating", and deleted Paragraph A(19), which provided a fee for each change of a supervising licensed physician for a physician assistant, and redesignated the succeeding paragraphs accordingly.

The 2008 amendment, effective May 14, 2008, added Paragraphs (22) and (23) of Subsection A.

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted Paragraph (3) which read: "an examination fee equal to the cost of purchasing the examination plus an administration fee not to exceed fifty percent of that cost" and redesignated Paragraphs (4) to (20) as (3) to (21) and inserted present Paragraphs (18) and (19), substituted "six hundred dollars ($600)" for "the current application fee" following "not to exceed" in present Paragraph (7), inserted "licensed" near the end of present Paragraph (15).

The 2001 amendment, effective April 2, 2001, in Subsection A, substituted "for physicians who renew their license" for "for licensees who fail to renew their license" in Paragraph (6), substituted "physicians who renew their licenses between forty-six and ninety days" for "licensees who fail to renew their licenses from forty-six days to ninety days" in Paragraph (7); deleted "fail to" preceding "renew their licensure" in Paragraphs (17) and (18), and added Paragraph (20).

The 1997 amendment, effective June 20, 1997, in Subsection A, added Paragraphs (5) and (17) to (19), redesignated former Paragraphs (5) to (15) as Paragraphs (6) to (16), rewrote Paragraphs (6), (7) and (16), and, in Paragraph (15), substituted "licensure" for

"registration". Laws 1997, ch. 187, § 9 also amended this section. The section was set out as amended by Laws 1997, ch. 221, § 4. *See* 12-1-8 NMSA 1978.

The 1994 amendment, effective May 18, 1994, added Paragraph (A)(13) and redesignated former Paragraphs A(13) and A(14) as Paragraphs A(14) and A(15), respectively.

Disposition of fees. — The application fees paid pursuant to this section by applicants for licenses to practice medicine revert to the general fund at the end of the licensing year. 1960 Op. Att'y Gen. No. 60-28.

Licensing year. — The licensing year for physicians licensed to practice medicine in New Mexico is the calendar year. 1960 Op. Att'y Gen. No. 60-28 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 22; 73 C.J.S. Public Administrative Law and Procedure § 8.

61-6-20. Practicing without license; penalty.

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.

ANNOTATIONS

Repeals. — Laws 1979, ch. 132, § 9, repealed former 61-6-20 NMSA 1978, as enacted by Laws 1977, ch. 207, § 1, relating to rules and regulations for care of infants born

alive and for experimentation with aborted fetuses, effective March 27, 1979. For present provisions, *see* 24-9A-3 and 24-9A-4 NMSA 1978.

Cross references. — For injunction to prevent unauthorized practice of medicine, *see* 61-6-22 NMSA 1978.

The 2001 amendment, effective April 2, 2001, added the provision that doctors who practice or attempt to practice medicine across state lines without having a license to do so and without complying with the Medical Practice act are guilty of a forth degree felony and are subject to the penalties provided by Subsection C.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-18 NMSA 1978; added the second sentence, and, in the first sentence, substituted "the Medical Practice Act" for "Sections 67-5-23 NMSA 1978" and the present language following "is guilty of" for "felony, upon conviction, punished by a fine not to exceed one thousand dollars ($1,000.00) or imprisonment in the county jail not to exceed one year or by both such fine and imprisonment in the discretion of the court", and made minor stylistic changes.

Injunction not precluded. — The state has authority to punish one who engages in the practice of medicine without a license, but this remedy is not exclusive and does not preclude injunction to protect the public health, morals, safety and welfare from irreparable injury. *State ex rel. Marron v. Compere*, 1940-NMSC-041, 44 N.M. 414, 103 P.2d 273.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

For comment, "Perspectives on the Abortion Decision," see 9 N.M.L. Rev. 175 (1978-79).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Constitutionality of statute prescribing conditions of practicing medicine or surgery as affected by question of discrimination against particular school or method, 16 A.L.R. 709, 37 A.L.R. 680, 42 A.L.R. 1342, 54 A.L.R. 600.

Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 44 A.L.R. 1418, 57 A.L.R. 978.

Entrapment to commit offense of practicing medicine without license, 86 A.L.R. 272.

Corporation or individual not himself licensed, right of, to practice medicine or surgery through licensed employees, 103 A.L.R. 1240.

Health service plan as violation of medical practice acts, 119 A.L.R. 1290.

One who fills prescriptions under reciprocal arrangement with physician or optometrist as subject to charge of practice of medicine or optometry without license, 121 A.L.R. 1455.

Group medical and hospital service plan as illegal practice of medicine, 167 A.L.R. 327.

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining or operating an office therefor, 20 A.L.R.2d 808.

Illegal practice of medicine under statute, ordinance or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28 to 33.

61-6-21. Continuing medical education; penalty.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 18 recompiled former 61-6-21 NMSA 1978, relating to injunction to prevent practice without a license, as 61-6-22 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, required the New Mexico medical board to establish mandatory continuing education requirements for licensees under its authority, and authorized the board to take disciplinary action if licensees fail to comply with continuing medical education; in Subsection A, deleted "The board may establish rules pertaining to continuing medical education for licensees." and added the remainder of the subsection; and in Subsection B, after "fulfilled", added "and may take any further disciplinary action if the licensee fails to remediate the deficiencies, including revocation of license".

The 2003 amendment, effective June 20, 2003, in Subsection A, deleted "and regulations" near the beginning, substituted "for licensees" for "for physicians and continuing education for physician assistants" at the end; in Subsection B, substituted "license of a licensee" for "license or registration of any physician or physician assistant" near the beginning, and deleted "such time as" following "requirements until".

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-22 NMSA 1978, as amended by Laws 1987, ch. 204, § 1, relating to annual registration fees, effective July 1, 1989. For present comparable provisions, *see* 61-6-19 NMSA 1978.

Cross references. — For penalty for practicing medicine without a license, *see* 61-6-18 NMSA 1978.

For injunctions, *see* Rules 1-065 and 1-066 NMRA.

The 1989 amendment, effective July 1, 1989, renumbered this section which formerly was 61-6-21 NMSA 1978, corrected a misspelling in the section heading, substituted "the board" for "the board of medical examiners" in two places in the first sentence, and made numerous minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 122.

43A C.J.S. Injunctions § 242.

61-6-23. Investigation; subpoena.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 23 recompiled former 61-6-23 NMSA 1978, relating to issuance and display of registration certificate, as 61-6-27 NMSA 1978, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to investigate complaints against applicants for licensure; and after "complaint against", added "an applicant or".

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 24 recompiled former 61-6-24 NMSA 1978, relating to practitioners changing location or beginning practice, as 61-6-28 NMSA 1978, effective July 1, 1989.

The 2008 amendment, effective May 14, 2008, added the reference to Section 61-6-15.1 NMSA 1978.

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-25 NMSA 1978, as amended by Laws 1969, ch. 46, § 14, relating to publication and distribution of lists of registrants, effective July 1, 1989.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 26 recompiled former 61-6-26 NMSA 1978, relating to fees and other requirements for delinquent registrants, as 61-6-30 NMSA 1978, effective July 1, 1989.

The 2003 amendment, effective June 20, 2003, rewrote Subsection A; in Subsection B, substituted "physicians" for "practitioners" near the beginning, deleted "all practitioners" following "NMSA 1978 and", substituted "other required documentation" for "proof of continuing medical education" at the end; in Subsection C, substituted "licensed physician's" for "practitioner's" following "shall state the", substituted "license number and date" for "the date and number of his license" following "business address"; in Subsection D, substituted "licensed physician" for "practitioner" near the beginning, substituted "by August 15" for "within forty-five days thereafter" following "for triennial renewal"; substituted "physician" for "practitioner" once in Subsections (E) and (F); in Subsection E, substituted "August 16 and September 30" for "forty-five and ninety days of the July 1 deadline" following "triennial renewal between", substituted "Paragraph (6)" for "Paragraph (7)" preceding "of Subsection A"; in Subsection F, added "After September 30" at the beginning, and deleted "within ninety days of July 1" at the end.

The 2001 amendment, effective April 2, 2001, in Subsection E, substituted "A practitioner who submits the application" for "Any practitioner who fails to submit the application", and updated the internal reference.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 38; 73 C.J.S. Public Administrative Law and Procedure §§ 60, 100.

61-6-27. Issuance and display of renewal certificate.

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-27 NMSA 1978, as amended by Laws 1961, ch. 11, § 3, relating to disposal of registration fees, effective July 1, 1989. For present comparable provisions, *see* 61-6-19 NMSA 1978.

The 2003 amendment, effective June 20, 2003, substituted "licensed physician, upon" for "duly licensed practitioner, upon his" preceding "application in accordance", substituted "licensed physician's name, business address, license date and number and" for "practitioner's name, his business address, the date and number of his license to practice and such" preceding "other information as", and substituted "licensed physician" for "practitioner" near the end.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-27 NMSA 1978; substituted "renewal certificate" for "registration certificate" in the catchline; divided the former first sentence into the present first two sentences; in the first sentence, substituted "in accordance with the provisions of the Medical Practice Act and upon payment of the appropriate fees and upon documentation of continuing education requirements" for "in accordance with the provisions of Sections 67-5-1 through 67-5-23 NMSA 1953", "certificate of triennial renewal" for "certificate of annual registration", and "for the ensuing three years" for "for the ensuing year and ending December 31st of that year"; in the second sentence, substituted "certificate of renewal" for "certificate of registration"; in the last sentence, substituted "certificate of triennial renewal" for "certificate of annual registration" and "the principal office of practice location" for "the office"; and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-28 NMSA 1978, as amended by Laws 1969, ch. 46, § 16, relating to the penalty for failure to register, effective July 1, 1989. For present comparable provisions, *see* 61-6-26 NMSA 1978.

The 2021 amendment, effective June 18, 2021, required applicants and licensees to maintain current contact information with the New Mexico medical board; and after "A licensed physician", added "or practitioner under licensure authority of the board or who applies for a license issued by the board", and added the last sentence.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-24 NMSA 1978, and substituted "triennial renewal" for "annual registration" in both sentences and "the Medical Practice Act" for "Sections 67-5-1 through 67-5-23 NMSA 1978" in the second sentence.

61-6-29. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 19, § 29 repealed 61-6-29 NMSA 1978, relating to publication and distribution of lists of registrants, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Repeals. — Laws 1989, ch. 269, § 32 repealed former 61-6-30 NMSA 1978, as enacted by Laws 1961, ch. 130, § 2, relating to clerk of court's order of commitment establishing mental illness of licensee, effective July 1, 1989.

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to require an oral or written examination to determine the competency as well as current fitness of an applicant seeking restoration of the applicant's license, and authorized the board, in its discretion, to impose terms and restrictions on an applicant seeking restoration of the applicant's license; in Subsection A, after "current fitness", added "and competence", after "impose", added "terms", and after "conditions", added "or restrictions"; and in Subsection B, after "conditions", added "or restrictions".

The 2003 amendment, effective June 20, 2003, deleted "for delinquent registrants" in the section heading; in Subsection A, substituted "that" for "or certificate of registration which" following "standing a license", substituted "the current fitness of the applicant" for "his present fitness" following "both, to determine"; in Subsection D, deleted "or certificate of registration" following "reissued a license", and substituted "shall pay to the board a reinstatement fee" for "shall also pay to the board all fees for the current and all delinquent years" at the end.

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-26 NMSA 1978; in the catchline, inserted "Restoration of good standing"; in Subsection A, inserted "license or", "revoked", and "and may impose conditions in its discretion" and deleted "state medical" preceding "board"; in the introductory language of Subsection B, inserted "but is not limited to"; in Subsection D, inserted "license or" and substituted "all fees" for "the regular annual registration fee"; and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons, and Other Healers § 79.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52; 73 C.J.S. Public Administrative Law and Procedure §§ 27, 28.

61-6-31. Disposition of funds; 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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, authorized the New Mexico medical board to receive funds collected under the Podiatry Act; and in Subsections B and E, after "Naturopathic Doctors' Practice Act", added "the Podiatry Act".

The 2021 amendment, effective June 18, 2021, authorized the New Mexico medical board to use funds from the New Mexico medical board fund to recruit and retain osteopathic physicians; and in Subsection D, Paragraph D(3), after "retain medical", deleted "doctors" and added "and osteopathic physicians".

The 2019 amendment, effective June 14, 2019, provided that all funds received by the medical board under the Naturopathic Doctors' Practice Act be deposited with the state treasurer, and that funds from the New Mexico medical board fund be used for the purpose of meeting necessary expenses incurred in the administration of the Naturopathic Doctors' Practice Act; and added "the Naturopathic Doctors' Practice Act" throughout the section.

The 2011 amendment, effective July 1, 2011, in Subsections A, B, D and E, provided for the disposition of funds received under the Naprapathic Practice Act.

The 2008 amendment, effective May 14, 2008, added Paragraph (3) of Subsection D.

The 2003 amendment, effective June 20, 2003, substituted "New Mexico medical board" for "board of medical examiners" in the section heading and Subsections A and D; substituted "the Anesthesiologist Assistant Act and the Impaired Health Care Provider Act" for "and the Impaired Physician Act" in Subsections B and E and Paragraph (1) of Subsection D; substituted "the New Mexico medical board fund" for "the medical examiners fund" in Subsections B and E; substituted "the designee of the secretary-treasurer" for "his designee" preceding "upon warrants drawn" in Subsection C; substituted "the New Mexico medical board fund" for "the board of medical examiners fund" in Subsection D; substituted "by those acts" for "thereby" near the end of Paragraph (1) of Subsection D; deleted "medical examiners" preceding "fund for use" in Subsection E; and deleted former Subsection F relating to any employee or the secretary-treasurer shall within thirty days after election or employment execute a bond in accordance with the Surety Bond Act.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Effective dates. — Laws 2003, ch. 235 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 1989, ch. 269, § 31 recompiled former 61-6-32 NMSA 1978, relating to termination of agency life, as 61-6-35 NMSA 1978, effective July 1, 1989.

Laws 2014, ch. 44, § 1 repealed 61-6-35 NMSA 1978 effective May 21, 2014.

The 2021 amendment, effective June 18, 2021, removed "surgery" from the provisions of the section; in Subsection A, after "practice medicine", deleted "and surgery", and in Paragraph A(2), after "privilege to practice medicine", deleted "and surgery".

The 1989 amendment, effective July 1, 1989, renumbered this section, which formerly was 61-6-31 NMSA 1978; added the catchline; designated the formerly undesignated

introductory paragraph as Subsection A, substituting therein "under Paragraph (25) of Subsection D of Section 61-6-15 NMSA 1978" for "under Section 1 of this act"; redesignated former Subsections A and B as present Subsections A(1) and A(2), respectively, and former Subsection C as present Subsection B, deleting "and surgery" following "medicine" in both sentences therein; and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

61-6-33. Licensure status.

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.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, substituted "a licensee may request that the" for "any practitioner licensed under the Medical Practice Act may request his" near the beginning, and inserted "inactive" preceding "or voluntary lapsed".

The 2001 amendment, effective April 2, 2001, substituted "61-6-30 NMSA 1978" for "61-6-29 NMSA 1978".

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.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, added "current or former," added language beginning with "officer" and ending with "served the board," added "or omission," and substituted "scope of the board's duties" for "proper functions of the board" in Subsection A.

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.

ANNOTATIONS

Repeals. — Laws 2014, ch. 44, § 1 repealed 61-6-35 NMSA 1978, as enacted by Laws 1979, ch. 40, § 2, relating to the delayed repeal of the Medical Practice Act, effective May 21, 2014. For provisions of former section, *see* the 2013 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, removed osteopathic physicians licensed by the board of osteopathic medical examiners from the list of physicians to which the Genetic Counseling Act does not apply; and in Subsection B, deleted former Paragraph B(3).

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 53 § 14 made the Genetic Counseling Act effective July 1, 2009.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection E, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 54, § 15 made the Polysomnography Practice Act effective July 1, 2008.

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 30 recompiled and amended former 61-6-7.1 NMSA 1978 as 61-6C-2 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, defined "board" and "licensed physician", as used in the Physician Assistant Act; added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively; and added Subsection E and redesignated former Subsection D as Subsection F.

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 32 recompiled and amended former 61-6-7.2 NMSA 1978 as 61-6C-4 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, clarified that it is grounds for discipline pursuant to the Physician Assistant Act and Medical Practice Act in accordance with the Uniform Licensing Act for a physician assistant to engage in practice while the physician assistant's license is lapsed or on inactive status; in the section heading, added "Physician assistant"; and in Subsection C, after "Medical Practice Act", added "in accordance with the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, included the Medical Practice Act within the provisions of the section, placing physician assistant licensees under the governance of the Medical Malpractice Act; and after "Physician Assistant Act", added "and Medical Practice Act" throughout.

The 2003 amendment, effective June 20, 2003, inserted present Subsection A and redesignated former Subsections A to C as Subsections B to D; and added Subsections E to G.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.3 NMSA 1978 as 61-6C-5 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-7.4 NMSA 1978 as 61-6C-6 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 33 recompiled and amended former 61-6-9 NMSA 1978 as 61-6C-7 NMSA 1978, effective May 18, 2022.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico medical board is required to follow the provisions of the State Rules Act when promulgating rules and the provisions of the Uniform Licensing Act when enforcing those rules; and after "The board may", deleted "adopt" and added "promulgate in accordance with the State Rules Act", and after "those rules", added "in accordance with the Uniform Licensing Act".

The 2017 amendment, effective June 16, 2017, removed the provision requiring biennial registration of a physician assistant's supervising physician, allowed the medical board to adopt rules allowing a supervising or collaborating licensed physician to temporarily delegate supervision or collaboration responsibilities for a physician assistant to another licensed physician and establishing when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician; in Subsection A, after "biennial", deleted "licensure and registration of supervision by a licensed physician" and added "license renewal"; in Subsection D, after "supervising", added "or collaborating", and after "delegate", deleted "supervisory" and added "supervision or collaboration"; and in Subsection E, deleted "allowing" and added "establishing when", after "physician assistant", deleted "to temporarily serve under the supervision of a licensed physician other than the supervising" and added "may engage in the practice of medicine in collaboration with a", and after "licensed physician", added "of record".

The 2003 amendment, effective June 20, 2003, deleted "and regulations" in the section heading; deleted "and regulations" at the end of the undesignated paragraph; deleted "for setting qualifications of" preceding "education, skill and experience"; added "for:" to the end of the present undesignated paragraph; redesignated former Paragraphs A(2) to A(6) as present Subsections B to F; and deleted former Subsection B relating to no rule shall be adopted that will allow a physician's assistant to measure or perform treatment outside the physician assistant's scope of practice.

The 1997 amendment, effective July 1, 1997, in Subsection A, rewrote Paragraph (1), and substituted "licensure" for "registration" in Paragraph (2).

The 1995 amendment, effective June 16, 1995, substituted the language beginning "treatment of the human foot" for "diagnosis or medical, surgical, mechanical, manipulative and orthopedic treatment of the human foot" at the end of the final sentence of Subsection B and made stylistic changes throughout the section.

The 1994 amendment, effective May 18, 1994, designated the previously undesignated introductory paragraph as Subsection A, and the previously undesignated last paragraph as Subsection B; redesignated former Subsections A to D as Paragraphs A(1), A(2), A(3) and A(6); in Subsection A, inserted "licensed" in Paragraph (1), rewrote Paragraph (3), and inserted Paragraphs (4) and (5); and deleted "Provided, however" at the beginning of the first sentence in Subsection B. Laws 1994, ch. 57, § 14 enacted identical amendments to this section. The section was set out as amended by Laws 1994, ch. 80, § 4. *See* 12-1-8 NMSA 1978.

The 1989 amendment, effective March 4, 1989, renumbered this section, which formerly was 61-6-8 NMSA 1978; added "Physician assistants" at the beginning of the catchline; in Subsection A substituted "registration" for "certification" near the beginning of the subsection, and "registration" for "qualification" near the end of the subsection, and added all of the language following "employment"; in Subsection B substituted "registration" for "certificates of qualification"; added present Subsection C; redesignated former Subsection C as present Subsection D; in Subsection D, substituted "the Physician Assistant Act" for "this act"; and made minor stylistic changes throughout the section.

Rule disallowed which authorized delegation of dispensation of dangerous drugs. — The board of medical examiners acted outside the scope of its authority and contrary to law when it promulgated a rule allowing physicians, in certain circumstances, to delegate to physicians' assistants the task of dispensing dangerous drugs in view of Section 61-6-16G(3) NMSA 1978 (now Section 61-6-17 NMSA 1978). *N.M. Pharm. Ass'n v. State*, 1987-NMSC-054, 106 N.M. 73, 738 P.2d 1318 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 87 to 102.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 34 recompiled and amended former 61-6-10 NMSA 1978 as 61-6C-8 NMSA 1978, effective May 18, 2022.

Cross references. — For notice required upon employment of physician's assistant, *see* 61-14C-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that rules promulgated by the New Mexico medical board pursuant to the Physician Assistant Act are required to be promulgated in accordance with the State Rules Act; and in Subsection B, after "Rules promulgated", added "in accordance with the State Rules Act".

The 2017 amendment, effective June 16, 2017, required physician assistants to inform the medical board, for board-approval, of the name of the licensed physician under whose supervision the physician assistant would practice, and required that all physician assistants in specialty care be supervised, but a physician assistant whose practice is primary care could be either in a supervisory or collaborative relationship with a licensed physician; in the catchline, added "or collaborating"; in Subsection A, after "New Mexico shall", deleted "inform the board of the name of the licensed physician under whose supervision they will practice. All supervising physicians shall be licensed under the Medical Practice Act and shall be approved by the board" and added the remainder of the subsection; in Subsection B, after the second occurrence of "physician assistant", added "the physician supervises", and added "Rules promulgated pursuant to the Physician Assistant Act shall", and added Paragraphs B(1) and B(2); and in Subsection C, after "supervised by", added "or collaborate with", and after "a physician", deleted "as approved" and added "in accordance with rules adopted".

The 2007 amendment, effective June 15, 2007, deleted the former Subsection C, limiting the number of assistants under the supervision of a licensed osteopathic physician, and added a new Subsection C.

The 2003 amendment, effective June 20, 2003, inserted "licensed" to the section heading; in Subsection A, substituted "of licensure" for "of biennial licensure and renewal of registration of supervision" near the beginning, inserted "name of the licensed" preceding "physician under whose"; in Subsection B, inserted "licensed" near the beginning, substituted "the acts and omissions of the physician assistant" for "any of his own acts and omissions" at the end; in Subsection C, substituted "A licensed physician shall not supervise" for "No physician may have under his supervision" at the beginning, and inserted "or for good cause shown" following "private charitable institutions".

The 1997 amendment, effective July 1, 1997, in Subsection A, substituted "biennial licensure and" for "registration and annual" and inserted "of supervision"; in Subsection B, deleted "using" preceding "supervising" and substituted "a licensed" for "or employing a registered"; and in Subsection C, deleted "currently registered" following "two" and substituted "that" for "which".

The 1989 amendment, effective March 4, 1989, renumbered this section, which formerly was 61-6-9 NMSA 1978; added "Supervising physician" at the beginning of the section heading; added Subsection A; designated the formerly undesignated first and second sentences as Subsection B; designated the formerly undesignated third sentence as Subsection C; and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability to patient for results of medical or surgical treatment by one not licensed as required by law, 57 A.L.R. 978.

Release of one responsible for injury as affecting liability of physician or surgeon for negligent treatment of injury, 39 A.L.R.3d 260.

Joint and several liability of physicians whose independent negligence in treatment of patient causes indivisible injury, 9 A.L.R.5th 746.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 35 recompiled and amended former 61-6-10.1 NMSA 1978 as 61-6D-1 NMSA 1978, effective May 18, 2022.

Cross references. — For practice of certified registered nurse anesthetist, *see* 61-3-23.3 NMSA 1978.

The 2022 amendment, effective May 18, 2022, changed "This act" to "Chapter 61, Article 6D NMSA 1978".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.

The 2021 amendment, effective June 18, 2021, revised the definition of "anesthesiologist" to include certification by the American osteopathic board of anesthesiology within the list of required qualifications; and in Subsection A, after "American board of anesthesiology", added "or the American osteopathic board of anesthesiology".

The 2015 amendment, effective July 1, 2015, expanded the definitions of "anesthesiologist" and "anesthesiologist assistant" as used in the Anesthesiologist Assistants Act; in Subsection A, after "equivalent", deleted "and who is an employee of the department of anesthesiology of a medical school in New Mexico"; and in Subsection B, after "person", deleted "employed or to be employed by a university in New Mexico with a medical school certified" and added "licensed".

The 2003 amendment, effective June 20, 2003, inserted "or who has foreign certification determined by the board to be the substantial equivalent" following "last three years" near the end of Subsection A.

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.*

ANNOTATIONS

Recompilations. *— Laws 2022, ch. 39, § 105 recompiled former 61-6-10.2 NMSA 1978 as 61-6D-2 NMSA 1978, effective May 18, 2022.*

Repeals and reenactments. *— Laws 2015, ch. 52, § 4 repealed former 61-6-10.2 [61-6D-2] NMSA 1978, and enacted a new section, effective July 1, 2025.*

The 2023 amendment, *effective June 16, 2023, revised the definition of "anesthesiologist assistant"; and in Subsection B, after "skilled person", deleted "employed or to be employed by a university in New Mexico with a medical school".*

The 2021 amendment, *revised the definition of "anesthesiologist" to include certification by the American osteopathic board of anesthesiology within the list of required qualifications; and in Subsection A, after "American board of anesthesiology", added "the American osteopathic board of anesthesiology".*

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.3 NMSA 1978 as 61-6D-3 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; in Subsection C, Paragraph C(1), after "anesthesiologist who", deleted "must" and added "shall"; and in Subsection D, after "completed form", deleted "with the" and added "and, except as provided in Section 61-1-34 NMSA 1978, the".

The 2003 amendment, effective June 20, 2003, in Paragraph C(1) inserted "and perform a physical exam" following "comprehensive patient history" and inserted "and exam findings" following "present the history".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.4 NMSA 1978 as 61-6D-4 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.5 NMSA 1978 as 61-6D-5 NMSA 1978, effective May 18, 2022.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.6 NMSA 1978 as 61-6D-6 NMSA 1978, effective May 18, 2022.

The 2021 amendment, effective June 18, 2021, included the Medical Practice Act within the provisions of the section; and in Subsection B, after "Anesthesiologist Assistants Act", added "and Medical Practice Act".

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.7 NMSA 1978 as 61-6D-7 NMSA 1978, effective May 18, 2022.

The 2013 amendment, effective July 1, 2013, provided for additional supervision of anesthesiologist assistant students; and in Subsection A, after "functioning as an anesthesiologist assistant student", deleted "If the student is providing anesthesia, the student shall be supervised on a one-to-one basis by an anesthesiologist who is continuously present in the operating room" and added the remainder of the sentence.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 36 recompiled and amended former 61-6-10.9 NMSA 1978 as 61-6D-8 NMSA 1978, effective May 18, 2022.

The 2023 amendment, effective June 16, 2023, revised practice requirements for anesthesiologist assistants; and in Subsection C, Paragraph C(4), after "general", deleted "or regional", in Paragraph C(7), after "establishing", deleted "with respect to practice outside of a university in New Mexico with a medical school", and deleted former Paragraph C(8), which related to limitations on the number of anesthesia providers an anesthesiologist may supervise, and redesignated former Paragraph C(9) as Paragraph C(8).

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico medical board is required to follow the provisions of the State Rules Act when promulgating rules and the provisions of the Uniform Licensing Act when enforcing those rules; and in Subsection A, after "The board may adopt", added "in accordance with the State Rules Act", and after "and enforce", added "in accordance with the Uniform Licensing Act".

The 2015 amendment, effective July 1, 2015, required the New Mexico medical board to adopt and enforce additional rules relating to anesthesiologist assistants; in Subsection A, Paragraph (4), after "delegate", deleted "his"; in Subsection C, Paragraph (7), after "establishing", added "with respect to practice outside of a university in New Mexico with a medical school, that", after "time", deleted "which number", and after "three", added "anesthesiologist assistants"; designated the last sentence in Paragraph (7) of Subsection C as Paragraph (8) of Subsection C; redesignated the succeeding paragraph accordingly; and in Subsection C, Paragraph (8), after "(8)", added "establishing, with respect to practice at a university in New Mexico with a medical school, that".

The 2003 amendment, effective June 20, 2003, in Paragraph C(7) substituted "three" for "two" following "shall not exceed" at the end of the first sentence, and substituted "four" for "three" following "more than" near the middle of the second sentence.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.10 NMSA 1978 as 61-6D-9 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-6-10.11 NMSA 1978 as 61-6D-10 NMSA 1978, effective May 18, 2022.

Repeals. — Laws 2023, ch. 91, § 4 repealed Laws 2015, ch. 52, § 5, which would have repealed Laws 2015, ch. 52, § 3, effective July 1, 2025.

The 2023 amendment, effective June 16, 2023, revised employment conditions for anesthesiologist assistants; and in Subsection B, Paragraph B(2), after "health where", deleted "at the time the anesthesiologist assistant begins practicing there, at least three", and in Paragraph B(4), after "by", added "a licensed", and after "who is", deleted "a licensed physician; and who is board-certified as an anesthesiologist by the American board of anesthesiology" and added "physically present at all times in the health facility while supervising an anesthesiologist assistant".

The 2021 amendment, effective June 18, 2021, changed each occurrence of "medical doctor" to "licensed physician".

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote this section which read "This act may be cited as the 'Impaired Physician Act'".

Law reviews. — For article, "Medical Malpractice Legislation in New Mexico," see 7 N.M.L. Rev. 5 (1976-77).

61-7-2. Definition.

As used in the Impaired 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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, substituted "a board or department" for "the boards" and "licenses, registers or certifies" for "license, register or certify".

The 1995 amendment, effective June 16, 1995, rewrote this section which read "As used in the Impaired Physician Act, 'board' means the board of medical examiners or the board of osteopathic medical examiners".

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.

ANNOTATIONS

Cross references. — For refusal, revocation or suspension of license generally, *see* 61-6-15 NMSA 1978.

For suspension of license for mental illness, *see* 61-6-32 NMSA 1978.

The 1995 amendment, effective June 16, 1995, inserted "registration or certification" in the section heading and in the introductory paragraph; substituted "health care provider" for "physician" and "licensee" throughout the section; and deleted "medicine" following "practice" in two places.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 80, 90, 100.

Validity of statute providing for revocation of license of physician or surgeon, 5 A.L.R. 94, 79 A.L.R. 323.

Liquor law, violation of, as infamous crime or offense involving moral turpitude for which physician's license may be revoked, 40 A.L.R. 1049, 71 A.L.R. 217.

Grounds for revocation of valid license of physician or surgeon, 54 A.L.R. 1504, 82 A.L.R. 1184.

Conviction as proof of ground for revocation or suspension of license of physician or surgeon where conviction as such is not an independent cause, 167 A.L.R. 228.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 38, 39.

61-7-4. 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "Health care provider boards" for "New Mexico Board of Medical Examiners; board of osteopathic medical examiners" in the section heading; substituted "health care provider" for "physician" throughout the section; in Subsection A, inserted "registered or certified" near the beginning, deleted "medicine" following "practice" in two places, and made a minor stylistic change; in Subsection B, inserted "appropriate", and deleted a former second sentence which read "The examining committee shall include at least one psychiatrist if a question of mental illness is involved".

The 1993 amendment, effective June 18, 1993, made stylistic changes near the middle of Subsection A and rewrote the first sentence of Subsection B.

The 1991 amendment, effective June 14, 1991, added "New Mexico" at the beginning of the section heading; in Subsection A, substituted "Section 61-7-3 NMSA 1978" for "Section 3 of the Impaired Physician Act", substituted "the Impaired Physician Act" for "the Act" at the end of the Subsection and made minor stylistic changes, and rewrote Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure §§ 49 to 86.

61-7-5. Examination by committee.

A. The examining committee assigned to examine a 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; deleted "medicine" following "practice" throughout the section; inserted "registered or certified" and "registration or certification" in the second sentence of Subsection B and near the end of Subsection E, respectively; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "examination" for "hearing" in two places in the third sentence and made stylistic changes throughout; in Subsection B, deleted "annual" before "registration" in the introductory language of the second sentence; designated the former last sentence of Subsection B as Subsection C and rewrote the sentence; redesignated former Subsections C and D as Subsections D and E; and substituted "examination by the committee" for "hearing" in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 60.

61-7-6. Voluntary restriction of licensure.

A 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" in two places; inserted "registration or certification" in three places; deleted "medicine" following "practice" in two places; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 32.

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

61-7-7. Report to the board; action.

A. 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "person" for "physician" throughout the section; deleted "medicine" following "practice" in three places; substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in Subsection B and in two places in Subsection C; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes in Subsections A and C, and rewrote Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 60.

61-7-8. Proceedings.

A. The board may formally proceed against a 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in four places; in Subsection D, inserted "Impaired Health Care Provider Act or the" in the first sentence and added the second sentence; and made stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 102 to 116.

Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 50; 73A Public Administrative Law and Procedure §§ 115 to 171.

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" throughout the section; inserted "registration or certification" in two places; and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 52.

61-7-10. Judicial review.

All orders of the board 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, in the first sentence, substituted "made pursuant to provisions of" for "under" and made a related stylistic change.

The 1993 amendment, effective June 18, 1993, made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 117, 118.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 25, 51.

61-7-11. Protected action and communication.

There shall be no liability on the part of and no action for damages against:

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section which read "There shall be no liability on the part of and no action for damages against any person providing information to the committee or to the board in good faith in the reasonable belief that the information is accurate".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees § 301 et seq.

Malice as ground of attack on or relief from acts or regulations of public officers in exercise of discretionary powers, 57 A.L.R. 208.

73 C.J.S. Public Administrative Law and Procedure § 15.

61-7-12. Impaired 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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "health care provider" for "physician" in the section heading and in three places in the text of the section and deleted "with a nonprofit corporation" following "agreement" in Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 14, 45 to 46; 39 Am. Jur. 2d Health § 25.

39A C.J.S. Health and Environment §§ 37, 47; 53 C.J.S. Licenses §§ 5, 7, 30, 37 to 40.

61-7A-5. Board created. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

The 1996 amendment, effective March 5, 1996, in Subsection A, substituted "five" for "seven" in the second sentence, inserted "licensed" and substituted "two" for "four" in third sentence and rewrote the fourth sentence; deleted former Subsection B relating to initial appointments to the board and redesignated the following subsections accordingly; and in Subsection D, substituted "two" for "three" in the third sentence, substituted "Three" for "Four" and "one" for "two" in the fourth sentence and added the last sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

The 1996 amendment, effective March 5, 1996, in Subsection A, added Paragraph (1) and redesignated the following paragraphs accordingly, and substituted "three-fifths" for "two-thirds" in Paragraph (8).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 1996 amendment, effective March 5, 1996, rewrote Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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 permitee's [permittee's] application has been approved and a license issued, whichever is first.

History: Laws 1989, ch. 387, § 9.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 47.

61-7A-11. Fees. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

53 C.J.S. Licenses §§ 50 to 63.

61-7A-14. Penalty; enforcement. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-7A-15 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the nutrition and dietetics practice board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the nutrition and dietetics practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

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.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, substituted "Chapter 61, Article 8 NMSA 1978" for "This act" at the beginning of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

61-8-2. Definitions.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, defined "committee" and "podiatric physician" and revised the definitions of "board" "foot and ankle radiation technologist" and "practice of podiatry"; in Subsection A, after "means the", deleted "board of podiatry" and added "New Mexico medical board"; added a new Subsection B and redesignated former Subsection B as Subsection C; in Subsection C, after "supervision of a", deleted "podiatrist" and added "podiatric physician"; added a new Subsection D and redesignated former Subsection C as Subsection E; and in Subsection E, deleted "podiatrist" and added "podiatric physician", and after "the scope of", deleted "his" and added "the podiatric physician".

The 1998 amendment, effective July 1, 1998, rewrote the section to such an extent that a detailed comparison would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 4.

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

61-8-3. License required.

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.

ANNOTATIONS

Cross references. — For Uniform Licensing Act, *see* 61-1-1 NMSA 1978 et seq.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

For prohibition against use of fluoroscopic or X-ray machine for shoe-fitting, *see* 74-3-14 NMSA 1978.

The 2023 amendment, effective June 16, 2023, after "Unless licensed as a", deleted "podiatrist" and added "podiatric physician".

The 1998 amendment, effective July 1, 1998, substituted "pursuant to the provisions of" for "under" and inserted "or exempted from that act pursuant to Section 61-8-4 NMSA 1978" near the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

Regulation of chiropody, 45 A.L.R.4th 888.

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

61-8-4. Persons exempted.

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.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection C, deleted "nor shall" following "duties" and "shall not" following "Podiatry Act", and rewrote Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 43.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

61-8-4.1. Criminal offender's character evaluation.

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.

ANNOTATIONS

Applicability. — Laws 1986, ch. 90, § 2 made the provisions of Laws 1986, ch. 90, § 1 applicable to applications for licensure pending or submitted after January 1, 1986.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the board of podiatry to the podiatry advisory committee, and provided the qualifications for members of the podiatry advisory committee; in the section heading, substituted "Board" with "Podiatry advisory committee", deleted "removal"; in Subsection A, deleted "There is created a 'board of podiatry'. The board shall be administratively attached to the regulation and licensing department." and added "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.", after "The", deleted "board" and added "committee", after "shall consist of", deleted "five" and added "three", after "members", deleted "three of whom" and added "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", after "shall be", deleted "podiatrists" and added "podiatric physicians", and deleted "and two members who shall represent the public and who shall not have been licensed as podiatrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated"; in Subsection B, after "Members of the", deleted "board required to be licensed podiatrists" and added "committee", after "appointed by the", deleted "governor", after "board", deleted "members shall be appointed for staggered terms of five years each, made in a manner that the terms of not more than two board members end on December 31 of each year commencing with 1978. Board" and added "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" and deleted "A vacancy shall be filled for the unexpired term by appointment by the governor."; and deleted Subsections C through E.

Temporary provisions. — Laws 2023, ch. 141, § 18 provided that on July 1, 2023:

A. all functions, personnel, records, equipment, supplies and other property of the board of podiatry shall be transferred to the podiatry advisory committee; and

B. all money and appropriations of the board of podiatry shall be transferred to the New Mexico medical board fund.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; deleted "All members of the state board of podiatry in office on the effective date of the Podiatry Act shall serve out their unexpired terms." following "appointment by the governor" at the end of Subsection B; and deleted "for any reason" following "event of a vacancy" near the beginning of Subsection E.

The 1998 amendment, effective July 1, 1998, deleted "members of the New Mexico podiatry society and" preceding "actively engaged" in Subsection A; deleted "from a list of not more than five names for each vacancy submitted to him by the New Mexico podiatry society" following "governor" at the end of the first sentence in Subsection B; substituted "rule" for "regulation" in Subsection C; substituted "rules" for "regulations" in Subsection D; and in Subsection E, inserted "and" following "governor", and deleted "and the New Mexico podiatry society" following "board members".

The 1991 amendment, effective June 14, 1991, in Subsection A, substituted "five members" for "four members" and "appointments and two members" for "appointment and one" and made related stylistic changes in the second sentence and made a minor stylistic change in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 11, 42, 43, 48-56, 88, 105-114, 116-118, 120-122.

73 C.J.S. Public Administrative Law and Procedure §§ 9, 13 to 14.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided for podiatry advisory committee meetings, and required the podiatry advisory committee to advise the New Mexico medical board on certain issues; in Subsection A, after "The", deleted "board" and added "committee", deleted "a regular meeting at least annually and shall elect annually a chair, vice chair and secretary-treasurer from its membership, each of whom shall serve until a successor is selected and qualified." and added "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."; deleted former Subsections B and C and redesignated former Subsections D and E as Subsections B and C respectively; in Subsection B, after "Members of the", deleted "board may be reimbursed" and added "committee are entitled to reimbursement"; and in Subsection C, in the introductory clause, after "The board", added "with the advice of the committee", deleted former Paragraphs (6) and (7) and redesignated former Paragraphs (8) through (13) as Paragraphs C(6) through C(11), respectively, in Paragraph C(6), after "records of", deleted "registration in which", and after "licensed", deleted "podiatrists are recorded" and added "podiatric physicians", in Paragraph C(9), after "promulgate rules", deleted "and prepare and administer examinations", after "for the", added "examination", and after "podiatric assistants", deleted "as are necessary to protect the public", in Paragraph C(10), after "licensure as", deleted "podiatrists" and added "podiatric physicians", in Paragraph C(11), after "promulgate rules", deleted "and prepare and administer examinations for applicants seeking" and added "for the examination and", and after "radiation technologists", added the remainder of the paragraph, and added Paragraph C(12).

Temporary provisions. — Laws 2023, ch. 141, § 18 provided that on July 1, 2023:

A. all functions, personnel, records, equipment, supplies and other property of the board of podiatry shall be transferred to the podiatry advisory committee; and

B. all money and appropriations of the board of podiatry shall be transferred to the New Mexico medical board fund.

The 2022 amendment, effective May 18, 2022, removed a provision requiring the board of podiatry to adopt, publish and file rules in accordance with the Uniform Licensing Act, leaving in place a requirement that the board promulgate rules in accordance with the State Rules Act; and in Subsection E, Paragraph E(2), deleted "adopt, publish and file" and added "promulgate", and after "in accordance with", deleted "the Uniform Licensing Act and", and in Paragraphs E(10), E(11), and E(13), deleted "adopt and".

The 2003 amendment, effective July 1, 2003, inserted "provisions for" following "podiatric assistants and" near the end of Paragraph E(11); and deleted Paragraph E(14), concerning employment of agents or attorneys.

The 1998 amendment, effective July 1, 1998, rewrote the section to such an extent that a detailed comparison would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 69, 230-265, 271-274, 378, 387, 414.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 114; 73A C.J.S. Public Administrative Law and Procedure §§ 114 to 171.

61-8-7. 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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 141, § 19 repealed 61-8-7 NMSA 1978, as enacted by Laws 1977, ch. 221, § 7, relating to disposition of funds, podiatry fund created, method of payments, bonds, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For age of majority, *see* 28-6-1 NMSA 1978.

The 2023 amendment, effective June 16, 2023, changed the title of "podiatrist" to "podiatric physician"; substituted "podiatrist" with "podiatric physician" throughout the section.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a podiatrist; in Subsection A, deleted Paragraph A(2), which provided "is of good moral character", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3), respectively; and in Subsection D, after "subject to rules", deleted "adopted and".

The 1998 amendment, effective July 1, 1998, added the Subsection A designation, redesignated former Subsections A through C as Paragraphs A(1) through A(3), rewrote Paragraph A(3), added Paragraph A(4), and added Subsections B and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 43, 51 to 58, 61, 132.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

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

61-8-9. 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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed requirements in applications for licensure by reciprocity; and in Subsection A, Paragraph A(1), after "at least", deleted "five" and added "three".

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by reciprocity, provided that the board of podiatry shall issue an expedited license to a podiatrist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction,

provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "rules on reciprocity and", deleted "shall", after "having been licensed by", added "national", deleted "state that had qualifications equal to or exceeding those of this state on the date of his original licensure" and added "licensing jurisdiction", and after "each applicant for", deleted "registration pursuant to the provisions for", in Paragraph A(1), after "state board showing", deleted "current registration" and added "a valid, unrestricted license", and deleted "privilege. The applicant shall also complete and pass those supplemental examinations as the board deems necessary if required by the board rule" and added "licensure and is in good standing with the other licensing jurisdiction; and", and added Paragraph A(2); and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1998 amendment, effective July 1, 1998, deleted "examination; licensure by" from the heading, and rewrote the text to the extent that a detailed comparison would be impracticable.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

61-8-10. License fees; licensure under prior law; renewal.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the fees for licensure as a podiatric physician; and in Subsection A, in the introductory clause, substituted "podiatrist" with "podiatric physician", in Paragraph A(1)(b), after "not to exceed", deleted "five hundred dollars ($500)" and added "six hundred dollars ($600)", in Paragraph A(3), after "for the", deleted "annual" and added "biennial", after "January 1 of", deleted "each" and added "the renewal", and after "not to exceed", deleted "three hundred dollars ($300)" and added "six hundred dollars ($600)", and in Paragraph A(4), after "January 1", deleted "of each year" and added "for the ensuing two years".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, removed a provision related to licensing under prior laws of New Mexico, and made certain technical amendments; in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978"; and deleted former Subsection E, which related to persons licensed as a podiatrist under the provisions of any prior laws of New Mexico.

The 1998 amendment, effective July 1, 1998, rewrote Subsection A; substituted "Paragraphs (3), (4) and (5)" for "Paragraphs (4), (5) and (6)" in Subsection C; and deleted "biennial" preceding "renewal" and "as provided in that law" following "current license" in Subsection E.

The 1989 amendment, effective April 3, 1989, substituted "five hundred dollars ($500)" for "one hundred twenty-five ($125)" in Subsection A(1); substituted "five hundred dollars ($500)" for "two hundred fifty dollars ($250)" in Subsection A(2); substituted "twenty-five dollars ($25.00)" for "fifteen dollars ($15.00)" in Subsection A(3); in Subsection A(4), substituted "annual" for "biannual", deleted "even-numbered" preceding "year", and substituted "two hundred dollars ($200)" for "one hundred dollars ($100)"; in Subsection A(5), substituted "January 1 of each year" for "December 31 of each odd-numbered year", substituted "charge not to exceed fifty dollars ($50.00)" for "charge of five dollars ($5.00)", and substituted "January 2" for "January 1 of the even-numbered year"; in Subsection A(6), substituted "fee not to exceed two hundred fifty dollars ($250)" for "fee of twenty-five dollars ($25.00)" and "fee of five hundred dollars ($500)" for "fee of one hundred dollars ($100)"; added Subsection A(7); substituted "current license" for "present license" in Subsection E; and deleted former Subsection F, relating to continuing education and post-graduate study requirements.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 22, 26.

61-8-10.1. License renewal; continuing education; penalty for failure to renew.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, revised license renewal requirements, and removed the taxation registration number requirement; in Subsection A, after "January 1 of", deleted "each year" and added "every second year", and after "furnish evidence that", deleted "he holds a registration number with the taxation and revenue department and" and added "the licensee"; in Subsection B, substituted "podiatry" with "podiatric medical", and after "incapacity", added "or during a public health emergency"; and in Subsection C, after "license of", deleted "any podiatrist" and added "a podiatric physician", and after "renew", deleted "his" and added "the podiatric physician's".

The 1998 amendment, effective July 1, 1998, substituted "shall" for "must" and "rule" for "regulation" in Subsection B.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, provided that the New Mexico medical board may refuse to issue or may suspend or revoke a license if an applicant has a disqualifying criminal conviction as determined by the board, and defined "disqualifying conviction"; in Subsection B, deleted "conviction of a crime involving moral turpitude, as shown by a certified copy of the record of the court of conviction" and added "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"; and in Subsections C and D, substituted each occurrence of "podiatrist" with "podiatric physician".

The 1998 amendment, effective July 1, 1998, deleted "or take other action specified in Section 61-1-3 NMSA 1978" following "license" in the introductory language; in Subsection A, substituted "part of" for "affidavit required for" and "pursuant to" for "under"; in Subsection C, substituted "alcohol" for "ardent spirits, stimulants" and "that" for "which"; substituted "violation of a patient's right to confidentiality" for "betrayal of a professional confidence" in Subsection F; deleted former Subsections G and H, relating to soliciting the public, and use of advertising; redesignated Subsections I and J as G and H, substituted "rule" for "regulation" in Subsection G; and substituted "the Podiatry Act or rules adopted pursuant to that act" for "regulation of the board" in Subsection H.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Practicing medicine, surgery, dentistry, optometry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

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

Podiatry or chiropody statutes: validity, construction, and application, 45 A.L.R.4th 888.

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

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 38 to 42, 53 to 57.

61-8-12. Offenses; penalties.

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 "chiropodist", "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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, added "podiatric physician" to a list of terms that are prohibited in advertising unless the person holds a license under the Podiatry Act; and in Subsection D, after "'podiatrist'", added "'podiatric physician'".

The 1998 amendment, effective July 1, 1998, substituted "or" for "nor" and "ten thousand dollars ($10,000)" for "two hundred dollars ($200)" in the introductory language, and substituted "doctor" for "treatments" in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

61-8-13. Unprofessional conduct.

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.

ANNOTATIONS

Cross references. — For incorporation of podiatrists under the Professional Corporation Act, *see* 53-6-1 NMSA 1978 et seq.

The 2023 amendment, effective June 16, 2023, included podiatric physicians within the scope of the section, and removed exceptions from the provisions of the section; in the section heading, deleted "exceptions"; substituted "podiatrist" with "podiatric physician"; and deleted Subsection B.

The 1998 amendment, effective July 1, 1998, rewrote Subsection A; in Paragraph B(2), substituted "the" for "such" and deleted "his" preceding "occupation"; and deleted "provided that such program or campaign is approved and endorsed by the state society and done in the name of the society" at the end of Paragraph B(5).

Listing of association. — A listing in a telephone book of an association to practice podiatry was not advertising and did not violate former podiatry act. 1973 Op. Att'y Gen. No. 73-04.

Podiatrist may not advertise in telephone book as a "foot clinic". 1968 Op. Att'y Gen. No. 68-45.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 87, 89, 141 to 143.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 39, 53 to 57.

61-8-14. Limitation on licensure; temporary license.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, in Subsection A, after "licensed", substituted "podiatrist" with "podiatric physician".

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "as otherwise allowed by law" and "professional limited liability company"; in Subsection B, substituted "61-8-8 NMSA 1978" for "67-6-8 NMSA 1953", deleted "state" following "next", inserted "meeting at which licenses by" preceding "examination", and substituted "are approved" for "for licensure" and "emergency" for "temporary"; and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 53, 54, 150 to 152.

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

61-8-15. Privileged communications.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1998, ch. 24, § 16 repealed 61-8-15 NMSA 1978, as enacted by Laws 1977, ch. 221, § 15, and enacted a new section, effective July 1, 1998.

The 2023 amendment, effective June 16, 2023, substituted each occurrence of "podiatrist" with "podiatric physician" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170, 172.

61-8-16. Power to enjoin violations.

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.

ANNOTATIONS

Cross references. — For injunctions, *see* Rules 1-065 and 1-066 NMRA.

The 1998 amendment, effective July 1, 1998, substituted "final determination that a" for "conviction of any", "has violated a" for "for violation of any", and "other remedies" for "the penalty herein"; inserted "in that act" near the middle of the section; and deleted "and the order may be enforced by contempt proceedings" at the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123; 42 Am. Jur. 2d Injunctions § 127.

61-8-17. 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.

ANNOTATIONS

Repeals. — Section 61-8-17 NMSA 1978, as enacted by Laws 1979, ch. 385, § 2, relating to termination of agency life, delayed repeal, was repealed by Laws 2023, ch. 15, § 8 and Laws 2023, ch. 141, § 19, effective June 16, 2023. The section was set out as repealed by Laws 2023, ch. 141, § 19. *See* 12-1-8 NMSA 1978. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2002 amendment, effective July 1, 2002, substituted "Chapter 61, Article 9 NMSA 1978" for "This Act".

Qualification under statute is sufficient to qualify psychologist as expert witness. — Where plaintiff brought action against defendant for psychological injury and mental anguish as a result of defendant's negligent care following plaintiff's breast reconstructive surgery; the trial court permitted a clinical psychologist to testify as an expert witness for plaintiff; and the psychologist was certified as a clinical psychologist under the New Mexico Professional Psychologist Act, the psychologist was qualified to testify as an expert witness in cases involving the negligent infliction of mental distress. *Whalley v. Sakura*, 804 F.2d 580 (10th Cir. 1986).

61-9-2. Repealed.

History: 1978 Comp., § 61-9-2, enacted by Laws 1989, ch. 41, § 2; repealed by Laws 2019, ch. 19, § 10.

ANNOTATIONS

Repeals. — Laws 2019, ch. 19, § 10 repealed 61-9-2 NMSA 1978, as enacted by Laws 1989, ch. 41, § 2, relating to legislative findings and purpose, effective February 4, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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 and whose primary indication for use has been approved by the federal food and drug administration for the treatment of mental disorders or is listed as a psychotherapeutic agent in *Drug Facts and Comparisons 2017*, or the most recent edition of that book, or in *American Hospital Formulary Service Drug Information*;

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, 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, defined "independent licensed prescribing clinician" and "supervising clinician" as used in the Professional Psychologist Act; in Subsection B, after "under the supervision of a", deleted "licensed physician" and added "supervising clinician"; added a new Subsection C and redesignated former Subsections C through I as Subsections D through J, respectively; in Subsection G, after "mental disorders", deleted "and" and added "or", after "Drug Facts and Comparisons", added "2017, or the most recent edition of that book", and after "American Hospital Formulary Service", added "Drug Information"; and added Subsection K.

The 2002 amendment, effective July 1, 2002, added new Subsections B, D, E, and F, and redesignated former Subsections B, C, D, and E as present Subsections C, G, H, and I, respectively.

The 1999 amendment, effective, June 18, 1999, deleted "but is not limited to" following "includes" in the second sentence of Subsection D; and in Subsection E, deleted "or approved by the American psychological association" following "accredited", substituted "rule" for "regulation", and added the language beginning "or that" to the end.

The 1996 amendment, effective May 15, 1996, rewrote Subsection E. This section was also amended by Laws 1996, ch. 51, § 5. The section was set out as amended by Laws 1996, ch. 54, § 1. *See* 12-1-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "engages in the practice of psychology or" in Subsection C and made a minor stylistic change.

The 1989 amendment, effective June 16, 1989, rewrote Subsection D, which formerly read "practice of psychology means the application of established methods or procedures of understanding, predicting or modifying behavior. The application of said principles includes counseling, guidance and behavior modification with individuals or groups with problems in the areas of work, family, school and personal relationships; measuring and testing of personality, intelligence, aptitudes, emotions, public opinion, attitudes skills; teaching or lecturing in psychology; and doing research on problems relating to human behavior; and in Subsection E, inserted "which is regionally accredited or" and also inserted "public" preceding "education".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 11.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 4, 5.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 1996 amendment, effective May 15, 1996, deleted the Subsection A designation and deleted Subsection B, which related to persons certified on July 1, 1989.

The 1993 amendment, effective July 1, 1993, inserted "engage in the practice of psychology or" in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26 to 28, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12.

61-9-5. State board of examiners; psychology fund. (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. The governor shall appoint the professional members from a list of names nominated by the New Mexico psychological association, the state psychologist association and the New Mexico school psychologist association;

(2) one member shall be licensed under the Professional Psychologist Act as a psychologist or psychologist associate; and

(3) three members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of psychology.

B. A member shall hold office until the expiration of his appointed term or until a successor is duly appointed. When the term of a member ends, the governor shall appoint his 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.

ANNOTATIONS

Repeals and reenactments. — Laws 1989, ch. 41, § 5 repealed former 61-9-5 NMSA 1978, as amended by Laws 1981, ch. 239, § 1, relating to state board of examiners, and enacted a new section, effective June 16, 1989.

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall consist" for "consisting" following "psychologist examiners" near the beginning of Subsection A.

The 1996 amendment, effective May 15, 1996, rewrote Subsection C. This section was also amended by Laws 1996, ch. 51, § 6. The section was set out as amended by Laws 1996, ch. 54, § 3. *See* 12-1-8 NMSA 1978.

The 1993 amendment, effective June 18, 1993, in Subsection A, increased the number of members from seven to eight in the introductory language; added "as psychologists" to the end of the first sentence and added "the state psychologist association and the New Mexico school psychologist association" to the end, in Paragraph (1); and added present Paragraph (2), renumbering former Paragraph (2) as Paragraph (3) and making a related grammatical change, and in Subsection B, corrected a misspelling in the third sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 42, 43.

73 C.J.S. Public Administrative Law and Procedure § 9.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, in Subsections B and C, inserted "Inspection of" preceding "Public Records Act".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico state board of psychologist examiners is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, after "The board", deleted "is authorized to" and added "may", in Paragraph B(1), deleted "adopt and from time to time revise such", and added "promulgate", and after "rules", deleted " not inconsistent with the law as may be necessary" and added "in accordance with the State Rules Act", in Paragraph B(3), after "the Professional Psychologist Act", added "in accordance with the Uniform Licensing Act", and in Paragraph B(4), after "conduct hearings", added "in accordance with the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, required the New Mexico state board of psychologist examiners to include in its annual report to the governor the appropriate application of technology for supervision; and in Subsection C, after "future policies", added "including the appropriate application of technology for supervision".

The 2003 amendment, effective July 1, 2003, deleted "but not be limited to" following "regulations shall include" near the end of Paragraph B(1); deleted Paragraph B(2), concerning employment of administrator and personnel, and redesignated the subsequent paragraphs accordingly; and in Subsection C, deleted "or printed" following "submit a written" near the beginning and deleted "the names, remuneration and duties of any employees of the board" near the end.

The 1996 amendment, effective May 15, 1996, added "and secretary-treasurer" at the end of the first sentence in Subsection A; substituted "an administrator" for "a secretary" in Paragraph B(2); and substituted "administrator" for "secretary" in Paragraph B(3). This section was also amended by Laws 1996, ch. 51, § 7. The section was set out as amended by Laws 1996, ch. 54, § 3. *See* 12-1-8 NMSA 1978.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "annually" for "within sixty days after the effective date of the Professional Psychologist Act and annually thereafter" in the first sentence; in Subsection B(1), inserted "and psychologist associates" in the second sentence; in Subsection B(4), substituted "licensure" for "certification"; and in Subsection C, substituted "licenses" for "certificates" in the second sentence.

Authority and power of board. — New Mexico state board of psychologist examiners was empowered by the legislature to set standards of conduct for psychologists and to revoke professional licenses when appropriate in response to the violation of those standards. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 133 N.M. 362, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Am. Jur. 2d Public Officers and Employees §§ 69, 230 to 264, 378, 387, 414.

73 C.J.S. Public Administrative Law and Procedure §§ 49 to 171.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2006 amendment, effective May 17, 2006, changed the maximum application fee from $300 to $600 in Subsection B; added Subsection C to authorize the board to establish staggered biennial license terms; designated former Subsection C as Subsection D; provided for a biennial license renewal in Subsection D; and increased the maximum renewal fee from $300 to $600 in Subsection D.

The 1989 amendment, effective June 16, 1989, added "license renewal" at the end of the section heading; substituted "license" for "certificate" in the first sentence of Subsection A; substituted "licensure" for "certification" in Subsections A and B; and rewrote Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 8.

61-9-8. Records. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Cross references. — For proof of official records, *see* Rule 1-044 NMRA.

For self-authentication of certified copies of public records, *see* Rule 11-902D NMRA.

The 1996 amendment, effective May 15, 1996, rewrote Subsection B.

The 1989 amendment, effective June 16, 1989, substituted "licensure" for "certifications" in the introductory paragraph of Subsection A; substituted "a license" for "certification" in Subsection A(6); and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 73 C.J.S. Public Administrative Law and Procedure § 22.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1989, ch. 41, § 9, repealed former 61-9-9 NMSA 1978, as amended by Laws 1973, ch. 54, § 1, relating to certification of psychologists without examination, and enacted a new section, effective June 16, 1989.

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Compiler's Notes. — Subparagraph (b) of Paragraph (6) of Subsection A of Section 61-9-11 NMSA 1978 was deleted by Laws 2006, Ch. 6, § 3.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 63; 63C Am. Jur. 2d Public Officers and Employees §§ 234, 235.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23; 73 C.J.S. Public Administrative Law and Procedure § 60.

61-9-10. Licensure of psychologists from other areas; 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by reciprocity, provided that the New Mexico state board of psychologist examiners shall issue without examination an expedited license to a psychologist or prescribing psychologist licensed in another licensing jurisdiction if the applicant holds a license that is current and in good standing issued by the other licensing jurisdiction and the applicant has practiced psychology for at least two years immediately prior to application in New Mexico, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "expedited licensure"; in Subsection A, added "Except as provided in", after "Section 61-9-10.1 NMSA 1978", added "for temporary or other provisional licensure that is not an expedited license", after "without written or oral examination, issue", deleted "a" and added "an expedited", after "prescribing psychologist by another", deleted "state, a territorial possession of the United States, the District of Columbia or another country" and added "licensing jurisdiction", and added the remainder of the subsection; and added Subsections B through D.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the board of psychologist examiner's power to issue a license to a person who furnishes evidence to the board that the person has been licensed or certified as a psychologist or prescribing psychologist by another state, territory of the United States, the District of Columbia or another country for two years, and revised the qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "areas", deleted "reciprocity"; after "Professional Psychologist Act, the board", changed "may" to "shall", after "evidence", deleted

"satisfactory", after "or another country for", deleted "a minimum of five" and added "two", after "An applicant seeking", deleted "reciprocity" and added "a license", and after "demonstrate to", deleted "the satisfaction of".

The 2019 amendment, effective February 4, 2019, authorized the New Mexico state board of psychologist examiners to provide reciprocity to qualifying prescribing psychologists licensed outside of New Mexico; after "certified as a psychologist", added "or prescribing psychologist".

The 2009 amendment, effective July 1, 2009, deleted the former provisions that provided for licensure of psychologists from Puerto Rico and Canada and for the promulgation of rules to ensure reciprocity; added “or another country for a minimum of five years”; and added the last sentence.

The 2006 amendment, effective May 17, 2006, added the qualification that this section is subject to the provisional and temporary provisions of Laws 2006, ch. 6, § 5 (compiled as 61-9-10.1 NMSA 1978); added "Canadian province" as a reciprocal licensing jurisdiction; and provided that the board shall promulgate rules to ensure a process of reciprocity for licensure of practitioners from other states or a Canadian province.

The 1989 amendment, effective June 16, 1989, substituted "Licensure" for "certification" in the section heading, substituted "license" for "certificate" near the beginning of the section, deleted "and where the state or territory has like reciprocal privileges for the state of New Mexico" at the end of the section, and made minor stylistic changes throughout the section.

Reciprocal licensing. — If an applicant establishes under the board's uniform requirements for proving equivalence, that he or she has been duly licensed or certified as a psychologist by another state, and the other state has similar procedures for certifying a New Mexico psychologist, the state board of psychologist examiners may issue its certificate to that individual. 1969 Op. Att'y Gen. No. 69-136.

Section does not require mutual reciprocity agreement between New Mexico and another state before New Mexico may issue a certificate to a psychologist duly licensed under the laws of that other state. 1969 Op. Att'y Gen. No. 69-136.

All that this section requires is that the other state also provide in a similar manner for certification of an individual psychologist previously licensed in New Mexico. 1969 Op. Att'y Gen. No. 69-136.

61-9-10.1. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided public health emergency exceptions to existing provisions that prohibit the extension or renewal of temporary and provisional licenses; in Subsection A, after "not subject to extension or renewal", added "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 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"; added new subsection designation "B." and redesignated former Subsection B as Subsection C; and in Subsection C, after "not subject to extension or renewal", added "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".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a psychologist; in Subsection A, after "evidence", deleted "satisfactory", deleted former Paragraph A(2), which required the applicant to furnish evidence that the applicant is of good moral character, and redesignated former Paragraphs A(3) through A(8) as Paragraphs A(2) through A(7), respectively, in Paragraph A(4), after "psychological work", deleted "of a type satisfactory to the board", and in Paragraph A(6), after "cultures", deleted "as determined by" and added "to".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A,

after "the board prescribes", deleted "accompanied by the" and added "and, except as provided in Section 61-1-34 NMSA 1978, pays any".

The 2011 amendment, effective July 1, 2011, required supervised experience in postdoctoral practicum hours and internship or postdoctoral psychological work.

The 2009 amendment, effective July 1, 2009, deleted former Paragraph (4) of Subsection A that required an applicant to be a graduate of a doctoral program that is designated as a doctoral program in psychology by a nationally recognized accreditation body and hold a degree in psychology from a university offering a full-time course of study in psychology; added Paragraph (4) of Subsection A; added Subparagraph (b) of Paragraph (5) of Subsection A; and in Subsection B, added "including a criminal background check".

The 2006 amendment, effective May 17, 2006, deleted former Paragraphs (4) and (5), which provided that applicants hold a doctoral degree based in part on a psychological dissertation and have had an internship and one year of experience after receiving a doctoral degree and at least two years of supervised experience in psychological work; required in Paragraph (4) that applicants graduate from a doctoral program in psychology and hold a degree with a major in clinical, counseling or school psychology; required in Subparagraphs (a) and (b) of Paragraph (5) that applicants have had a predoctoral internship and one year of supervised professional training after receiving the doctoral degree and at least two years of supervised experience in psychological work; added Paragraph (7) to require applicants to demonstrate an awareness and knowledge of New Mexico cultures; and added Paragraph (8) to require applicants to pass a jurisprudence examination.

The 1999 amendment, effective, June 18, 1999, in Subsection A deleted "and regulations" following "the rules" in Paragraph (3), substituted the language beginning "a total" to the end for "a minimum score equivalent to or greater than the statistical mean as reported by the association of state and provincial psychology boards for all doctoral-level candidates taking the examination on that occasion; and" in Subparagraph (6)(a); and made a minor stylistic change in Subsection D.

The 1996 amendment, effective May 15, 1996, deleted "as defined in the Professional Psychologist Act" at the end of Paragraph A(4), inserted "supervised" in Paragraph A(5), inserted "and provincial" twice in Subparagraph A(6)(a), deleted "of his area of practice" at the end of the first sentence in Subparagraph A(6)(b), and rewrote Subsections C and D.

The 1989 amendment, effective June 16, 1989, substituted "Licensure" for "Certification" in the section heading and "license" for "certification" in the introductory paragraph of Subsection A; substituted the present language of Subsection A(1) for "complies with the requirements of Subsections A, B and C of Section 61-9-9 NMSA 1978"; added present Subsections A(2) and A(3), redesignated former Subsection A(2) as present Subsection A(4); substituted Subsection A(5) for former Subsection A(3)

which read "has had, after receiving the doctoral degree, at least two years of experience in psychological work of a type satisfactory to the board"; redesignated former Subsection A(4) as present Subsection A(6), while substituting all of present language of Subparagraph (a) thereof beginning with "equivalent" for "of seventy-five percent correct"; and in Subsection B substituted "licensure" for "certification" in the first sentence.

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

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20.

61-9-11.1. Psychologist associates; licensure; examination. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a psychologist associate; and in Subsection A, Paragraph A(1), after "age of majority", deleted "is of good moral character", and in Paragraph A(4), after "cultures", deleted "as determined by" and added "to".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, in the introductory clause, after "prescribes", added "and, except as provided in Section 61-1-34 NMSA 1978".

The 2006 amendment, effective May 17, 2006, deleted former Subparagraph (b) of Paragraph (3) of Subsection A, which provided that applicants had to have passed an oral examination investigating the applicant's training, experience and knowledge of his area of practice; added Paragraph (4) of Subsection A to require applicants to demonstrate an awareness and knowledge of New Mexico cultures; and added Paragraph (5) of Subsection A to require applicants to pass a jurisprudence examination.

The 2003 amendment, effective July 1, 2003, deleted former Paragraph A(3), concerning experience, and renumbered the remaining paragraph.

The 1996 amendment, effective May 15, 1996, deleted "as defined in the Professional Psychologist Act" at the end of Paragraph A(2), inserted "one of which shall be supervised" in Paragraph A(3), substituted "association of state and provincial" for "American Association of State" twice in Paragraph A(4)(a), and rewrote Subsections C and D.

The 1989 amendment, effective June 16, 1989, substituted "licensure" for "certification" in the catchline; substituted "license" for "certification" in the introductory paragraph of Subsection A; substituted all of the present language of Subparagraph (a) of Subsection A(4) beginning with "score" for "minimum score of sixty percent correct"; and substituted "licensure" for "certification" in the first sentence of Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be fingerprinted only upon initial licensure; in Subsection A, Paragraph A(2), after "fingerprinted", added "only upon initial licensure".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 1996 amendment, effective May 15, 1996, substituted "or their designee" for "of the board".

The 1989 amendment, effective June 16, 1989, substituted "License" for "Certificate" in the section heading, substituted "license" for "certificate" and "licensure" for "certification", and deleted "therefor" following "qualifies".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico state board of psychologist examiners is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2019 amendment, effective February 4, 2019, authorized the New Mexico state board of psychologist examiners to deny, revoke or suspend a psychologist or psychologist associate license upon proof that the applicant, licensed psychologist or psychologist associate failed to adequately supervise a licensed psychologist holding a conditional prescription certificate; in Paragraph A(16), after "psychologist associate", added "or a licensed psychologist holding a conditional prescription certificate".

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the New Mexico state board of psychologist examiners may deny, revoke or suspend any license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, Paragraph A(15), after "following", added "a disciplinary investigation, or", and added Paragraph A(19); and added Subsection C.

The 2009 amendment, effective July 1, 2009, added "psychologist or psychologist associate".

The 1996 amendment, effective May 15, 1996, substituted "five" for "four" and "eight" for "six" in the introductory language of Subsection A, added Paragraphs A(10) through A(18), deleted former Subsection B relating to the time limit of the suspension of license, redesignated former Subsection C as Subsection B, and substituted "restricted or suspended" for "revoked" and "the restriction or suspension is terminated" for "denial or revocation is legally effective" in Subsection B.

The 1989 amendment, effective June 16, 1989, substituted "license" for "certificate" in the section heading and throughout the section; in the introductory paragraph of Subsection A substituted "six members" for "five members" and "licensed psychologist" for "certified psychologist"; substituted "drug, substance or" for "narcotic or any" in Subsection A(2); substituted "psychologist or psychologist associate license" for "psychology certificate" in Subsection A(3); made minor stylistic changes in Subsection A(6); and substituted "licensure" for "certification" in Subsection C.

Scope of board's authority. — Although a psychologist was merely an applicant for certification at the time the applicant engaged in sex with clients, under the supervision of a certified psychologist, the board had jurisdiction to revoke the applicant's certification. *Gares v. N.M. Bd. of Psychologist Exam'rs*, 1990-NMSC-087, 110 N.M. 589, 798 P.2d 190.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 120.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

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

Sexual relations: civil liability of doctor or psychologist for having sexual relationship with patient, 33 A.L.R.3d 1393.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42, 52.

61-9-14. Violation and penalties. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "practice psychology or to" in Paragraph (1) of Subsection A.

The 1989 amendment, effective June 16, 1989, deleted "after eighteen months from the effective date of the Professional Psychologist Act" at the end of the introductory paragraph of Subsection A; substituted "licensed" for "certified" in Subsection A(1); in Subsection A(2) substituted "practice psychology during the time that his license" for "represent himself as a psychologist or psychologist associate during the time that his certification"; and in Subsection B substituted "one thousand dollars ($1,000)" for "two hundred dollars ($200)" in the first sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 130.

Validity of legislation regulating, licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 28, 33.

61-9-15. Injunctive proceedings. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Cross references. — For injunctions, *see* Rules 1-065 and 1-066 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 122, 123.

Privilege, in judicial or quasi-judicial proceedings, arising from relationship between psychiatrist or psychologist and patient, 44 A.L.R.3d 24.

61-9-16. Scope of act. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 1996 amendment, effective May 15, 1996, added Paragraph A(3), and, in Subsection E, deleted the Paragraph (1) designation and redesignated former Paragraph (2) as Subsection F and made related changes, and deleted "from July 1, 1994 to June 30, 1998" from the end of Paragraph F(6).

The 1993 amendment, effective July 1, 1993, deleted "as defined in the Professional Psychologist Act" following "college" in Paragraph (2) of Subsection A, in the first sentence of Subsection B, and in Subsection C; in Subsection D, substituted "who are licensed or regulated under the laws of this state from engaging in activities within the scope of practice of their respective licensing or regulation statutes" for "from engaging in activities consistent with the standards and ethics of their respective professions"; and added Subsection E.

The 1989 amendment, effective June 16, 1989, in Subsection A(1), substituted "the agency or institution" for "such agency or institution or a private agency or business in which the psychological services performed are the requirements of a salaried position, provided that such private agency or business does not charge a fee for such services"; deleted former Subsection B, relating to employment of psychologists by corporations, partnerships or business associations; redesignated former Subsection C as present Subsection B and made a minor stylistic change therein; redesignated former Subsection D as present Subsection C; and added present Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 63, 132.

Validity of legislation regulating licensing or prescribing for certification of psychologists, 81 A.L.R.2d 791.

61-9-17. Drugs; medicines. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Cross references. — For definition of "practice of medicine," *see* 61-6-6 NMSA 1978.

The 2019 amendment, effective February 4, 2019, provided that a licensed psychologist holding a conditional prescription certificate may prescribe psychotropic medication under the supervision of a supervising clinician; in Subsection B, after "supervision of a", deleted "licensed physician" and added "supervising clinician".

The 2002 amendment, effective July 1, 2002, inserted the exception clause in Subsection A; and added Subsections B and C.

The 1989 amendment, effective June 16, 1989, substituted "licensed" for "certified".

Law reviews. — For case note, "Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 36, 50.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 15, 26, 27.

61-9-17.1. 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 fewer 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 physician; 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 physician 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 [61-1-1 to 61-1-31 NMSA 1978].

History: Laws 2002, ch. 100, § 6; 2019, ch. 19, § 5.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, revised the requirements for applicants applying to the New Mexico state board of psychologist examiners for a conditional prescription certificate, revised the conditions under which a psychologist with a conditional prescription certificate may prescribe psychotropic medication, added a liability provision for supervising clinicians; substituted "medical board" for "board of medical examiners" throughout; in Paragraph A(6), after "certified by", added "each of", and after "applicant's supervising", deleted "psychiatrist or physician" and added "independently licensed prescribing clinicians", in Subparagraph A(6)(a), after "pathophysiology", added "under the supervision of an independently licensed prescribing physician", in Subparagraph A(6)(b), after "supervised by", added "any one or a combination of", after "appropriately trained", added "independently licensed prescribing", and added the last sentence; in Subsection B, after "under the supervision of a", deleted "licensed physician" and added "supervising clinician", deleted former Paragraphs B(2) and B(3) and added new Paragraphs B(2) and B(3); added a new Subsection C and redesignated former Subsections C through F as Subsections D through G, respectively; and in Paragraph D(1), after "supervising", deleted "licensed physician" and added "clinician".

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. A committee composed of members of the board and the New Mexico medical board shall be established and, pursuant to the guidelines, shall evaluate complaints. The committee shall report its findings and recommendations to each board for each board's appropriate actions.

F. 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.

G. 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.

H. 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.

I. 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 between 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.

J. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 2019 amendment, effective February 4, 2019, required prescribing psychologists and psychologists with a conditional prescription certificate to provide written notice to health care practitioners within 24 hours of a prescription to a practitioner's patient; substituted "medical board" for "board of medical examiners" throughout; added new subsection designations "C", "D", and "E" and redesignated former Subsections C through G as Subsections F through J, respectively; in Subsection D, after "conditional prescription certificate and the", deleted "treating physician" and added "health care practitioner", and after "to provide optimal care.", added the remainder of the subsection; in Subsection H, after "federal drug enforcement", deleted "agency" and added "administration"; and in Paragraph J(2), after "nurse practitioner", added "physician assistant or clinical nurse specialist".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 19, § 11 contained an emergency clause and was approved February 4, 2019.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9-19 NMSA 1978.

The 1989 amendment, effective June 16, 1989, twice substituted "licensed psychologist" for "certified psychologist", and substituted "clerk or any person supervised by the psychologist or psychologist associate" for "or clerk".

Law reviews. — For case note, "Workers' Compensation Law: A Clinical Psychologist Is Qualified to Give Expert Medical Testimony Regarding Causation: Madrid v. University of California, d/b/a Los Alamos National Laboratory," see 18 N.M.L. Rev. 637 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 169, 170.

Privilege, judicial or quasi-judicial proceedings, arising from relationship between psychiatrist and patient, 44 A.L.R.3d 24.

61-9-19. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the New Mexico state board of psychologist examiners, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the New Mexico state board of psychologist examiners to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Professional Psychologist Act" for "Chapter 61, Article 9 NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998", and substituted "July 1, 2004, Chapter 61, Article 9 NMSA 1978" for "July 1, 1998 Article 9 of Chapter 61, NMSA 1978".

The 1996 amendment, effective May 15, 1996, substituted "1997" for "1995" in the first sentence and "1998" for "1996" in the second and third sentences. This section was also amended by Laws 1996, ch. 51, § 8. The section was set out as amended by Laws 1996, ch. 54, § 3. *See* 12-1-8 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "1995" for "1991" in the first sentence, and substituted "1996" for "1992" in the second and third sentences.

ARTICLE 9A
Counseling and Therapy

61-9A-1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Chapter 61, Article 9A NMSA 1978" for "Sections 1 through 30 of this act".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the definition of "appropriate clinical supervision" and removed the definition of "defined by rule", as used in the Counseling and Therapy Practice Act; in Subsection C, Paragraph C(8), after "drug abuse counselor", deleted "A licensed alcohol and drug abuse counselor shall have completed" and added "with"; and deleted Subsection O and redesignated former Subsections P through BB as Subsections O through AA, respectively.

The 2021 amendment, effective June 18, 2021, revised the definitions of terms used in the Counseling and Therapy Practice Act related to education and experience requirements; after "counseling psychology", added "human services; family services" throughout; in Subsection C, Paragraph C(8), after "have completed three years of",

added "work experience in the field of", and after "alcohol and drug abuse", deleted "experience"; and in Subsection N, after "clinical psychology", added "or".

The 2005 amendment, effective June 17, 2005, deleted the definition of "alcohol abuse counselor" in former Subsection B; deleted the definition of "appraisal" in former Subsection C; changed "appropriate supervision" to "appropriate clinical supervision" as the defined term in Subsection C; deleted "licensed professional health counselor" in Subsection C(1); added Subsections C(6) and (7); deleted from former Subsection E the requirement that three years of alcohol and drug experience be acquired by an alcohol and drug abuse counselor after licensure and the former provision that supervision may be provided by a clinical nurse specialist in psychiatry or licensed independent social worker with two years of mental health and supervised clinical experience; added the definition of "appropriate clinical supervisor for substance abuse associate" in Subsection D; changed "appropriate clinical supervision" to "approved clinical supervisor" as the defined term in Subsection E; provided in Subsection E that an approved clinical supervisor is a person who provides supervision to a licensed mental health counselor or therapist; added the definition of "art therapy" in Subsection F; changed "consulting and consultation" to "consultation" in Subsection J; deleted from Subsection N the former provision that "counseling-related field" include those fields in which training includes coursework in the diagnosis and treatment of mental disorders, added psychology to the list of counseling-related fields and deleted the requirement that art education include appropriate clinical background to meet the clinical core curriculum; deleted the definition of "counseling and therapy practice" in former Subsection O; deleted the definition of "counselor and therapist practitioner" in former Subsection P; added the definition of "defined by rule" in Subsection O; deleted the definition of "drug abuse counselor" in former Subsection S, deleted the former requirement in Subsection S that the experience enhance basic counseling or student development and skills and integrate and authenticate professional knowledge; deleted the definition of "licensed mental health counselor" in former Subsection V; deleted the definition of "marriage and family therapist" in former Subsection Y; changed "classification of diseases manual" to "classification of mental disorders" in Subsection V; deleted the definition of "peer counselor" in former Subsection AA; deleted the definition of "practice of alcohol or drug abuse counseling" in former Subsection BB; deleted the definition of "practice of art therapy" in former Subsection CC; deleted the definition of "practice of marriage and family therapy" in former Subsection DD; deleted the definition of "practice of professional clinical mental health counseling" in former Subsection EE; deleted the definition of "practice of professional mental health counseling" in former Subsection FF; deleted the definition of "practice of registered mental health counseling" and "practice of licensed mental health counseling" in former Subsection GG; deleted the definition of "practice of registered independent mental health counseling" in former Subsection HH; provided in Subsection W that "practicum" includes the development of basic counselor or therapist skills and that practicum may be completed concurrent with an internship; deleted the definition of "professional art therapist" in former Subsection KK; deleted the definition of "professional clinical mental health counselor" in former Subsection LL; deleted the definition of "professional mental health counselor" in former Subsection MM; deleted the definition of "registered

independent mental health counselor" in former Subsection PP; deleted the definition of "substance abuse counselor" in former Subsection RR; deleted the definition of "substance abuse trainee" in former Subsection SS; deleted the definition of "supervision" in former Subsection TT; and added the definition of "substance abuse-related field" in Subsection BB.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "a person" and "a licensed person" for "an individual" throughout the section; substituted "regional" for "nationally recognized" and deleted "or an approved institution or program as determined by the board" in Subsection A; inserted "alcohol and drug abuse counselor or independent" and deleted "psychiatric nurse or other similar supervision approved by the board" following "social worker" in Subsection E; added Subsections G, N, Y, and EE and redesignated the remaining subsections accordingly; inserted "assessing and" in Subsection H; inserted "licensed or registered" preceding "practice of" and inserted "independent mental health counseling" preceding "marriage" in Subsection K; inserted "assessment" in Subsection P; substituted "a person who is licensed for independent" for "an individual who engages in the" in Subsection Q; substituted "or" for "and" in Subsection S; substituted "licensed practice" for "rendering" in Subsections U, V, and W; substituted "licensed practice of counseling services" for "rendering" and deleted "but are not limited to" following "include" in Subsection T; deleted "married" preceding "couples" in Subsection U; inserted "clinical", deleted "including psychopathology" following "disorders" and "but is not limited to" following "includes" in Subsection V; deleted "but not limited to" following "including" in Subsections W and X; substituted "licensed" for "registered" in Subsections DD and GG; substituted "licensed by" for "registered with" in Subsection DD; and substituted "direct observation" for "appropriate supervision" in Subsection GG.

The 1996 amendment, effective July 1, 1996, added Subsections B, C, M, Q, BB and CC and redesignated the remaining subsections accordingly, substituted "counseling and therapy practice" for "counselor and therapist practice" at the beginning of Subsection J, added "alcohol abuse counseling, drug abuse counseling and alcohol and drug abuse counseling" at the end of Subsection J, inserted "registered mental health counselors, registered independent mental health counselors, alcohol abuse counselors, drug abuse counselors and alcohol and drug abuse counselors" near the end of Subsection K, substituted "marriage" for "marital" in Subsections N and S, added "as defined by regulation of the board" at the end of Subsection R and in the second sentence of Subsection S, substituted "married" for "marital" in the second sentence of Subsection S, substituted "registered with" for "certified by" in Subsection AA, and made stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2005 amendment, effective June 17, 2005, deleted "registered independent mental health counselor" in Subsection A(6); changed "registered mental health counselor" to "registered independent mental health counselor" in Subsection A(7); and changed "trainee" to "associate" in Subsection B(4).

The 2003 amendment, effective June 20, 2003, deleted "the practice of" at the end of Subsections A and B; added "the practice of" at the beginning of Paragraphs A(1), (2),

B(1) to (3); added Paragraph A(7); and substituted "trainee" for "intern" at the end of Paragraph B(4).

The 1999 amendment, effective July 1, 1999, deleted "After July 1, 1994" at the beginning of Subsection A, substituted "licensed" for "registered" in Subsection A(5), added Subsection A(6), deleted "After January 1, 1998" at the beginning of Subsection B and deleted "or registered" preceding "to practice".

The 1996 amendment, effective July 1, 1996, substituted "registration" for "certificate" in the section heading, designated the former introductory paragraph as Subsection A, substituted "registered" for "certified" near the beginning of Subsection A, redesignated former Subsections A through E as Paragraphs A(1) through A(5), and added Subsection B.

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 associate 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 associate 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2007 amendment, effective June 15, 2007, permitted a drug and alcohol abuse counselor to provide therapeutic services to clients with co-occurring disorders or dual diagnosis and requires that treatment of a mental health disorder be supervised by a licensed counselor or therapist.

The 2005 amendment, effective June 17, 2005, in Subsection A, added "licensed associate marriage and family therapist", changed "substance abuse trainee" to "substance abuse associate" and deleted "registered mental health counselor"; in Subsection B, deleted "professional art therapist or marriage and family therapist"; in Subsection C, added the definition of "practice of professional art therapy"; in Subsection D, added the definition of "practice of marriage and family therapy"; in Subsection E, deleted from the defined terms "registered mental health counselor" and the word "supervision" and changed "regulation" to "rule"; in former Subsection D, deleted the definition of "practice of licensed professional mental health counselor"; in

Subsection F, deleted "alcohol abuse counselors" and "drug abuse counselors"; and in Subsection G, changed "trainee" to "associate" and provided that a substance abuse associate shall not practice independently as a private practitioner.

The 2003 amendment, effective June 20, 2003, substituted the present heading for "scope of practice"; in Subsection A, inserted "registered mental health counselor, licensed mental health counselor" near the beginning, substituted "trainee" for "intern" near the middle, "counselor trainee" for "intern" near the end, inserted "a counselor or therapist enumerated in this section" near the end; rewrote Subsection B; added Subsections C, D, E, and F.

The 1999 amendment, effective July 1, 1999, inserted "registered independent mental health counselor" twice in Subsection A and inserted "independent" preceding "drug abuse".

The 1996 amendment, effective July 1, 1996, designated the existing provisions as Subsection A, substituted "registered mental health counselor, alcohol and drug abuse counselor, alcohol abuse counselor, drug abuse counselor or substance abuse intern" for "or registered mental health counselor," following "professional art therapist" twice in Subsection A, substituted "registered to practice as such" for "certified to practice as such" near the end of Subsection A, and added Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, deleted lay pastoral-care assistants from the list of persons who are exempt from the act in Subsection B(3)

The 2003 amendment, effective July 1, 2003, added Paragraph B(6) and Subsection C. The section was also amended by Laws 2003, ch. 422, § 4. The section is set out as amended by Laws 2003, ch. 423, § 1. *See* 12-1-8 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "a person" for "any individual" in Subsection A(1), deleted "organized training program to qualify for licensure as a counselor or therapist and is under direct supervision of a licensed counselor or therapist or other appropriate supervision, as approved by the board" in Subsection B(4), deleted Subsections B(5), B(6) and B(8) which read: "(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 from July 1, 1994 to June 30, 1998"; "(8) state employees at the discretion of the head of the employing agency" and redesignated the remaining subsections accordingly.

The 1996 amendment, effective July 1, 1996, in Subsection B, substituted "the Counseling and Therapy Practice Act" for "this act" in the introductory paragraph, deleted Paragraph (2) exempting alcohol or drug abuse counselors working under nonprofit corporations, associations or similar entities, deleted Paragraph (5) exempting students enrolled in a graduate level counselor and therapist training program, added Paragraph (4) and redesignated the existing paragraphs accordingly, and substituted "head of the employing agency" for "department secretary" at the end of Paragraph (8).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the composition of the counseling and therapy practice board, required board members to maintain New Mexico residency during their appointment, and reduced the number of times the board is required to meet annually; in Subsection B, after "consists of", changed "nine" to "seven", after "appointment", added "and maintain New Mexico residency during their appointment", and after "Of the", changed "nine" to "seven", and in Paragraph B(2), changed "four" to "two"; and in Subsection G, after "shall meet", changed "at least twice" to "once".

The 2003 amendment, effective June 20, 2003, in Paragraph B(1), deleted the former third sentence that read "These members shall not hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the board, nor shall they be school owners"; and added Subsection H.

The 1999 amendment, effective July 1, 1999, in Subsection B(2) deleted the third sentence, which read: "The initial professional members shall meet requirements for licensure and be licensed within one year after the effective date of the licensure requirements" and inserted "independent and licensed" in the last sentence, and rewrote Subsection C which read: "All members of the board shall be appointed by the governor for staggered terms of four years, except that the initial board shall be appointed so that the terms of one professional and one public member expire June 30, 1994, the terms of one professional and one public member expire June 30, 1995, the

terms of one professional and one public member expire on June 30, 1996 and the terms of one professional and one public member expire June 30, 1997. The alcohol and drug abuse counselor shall be appointed to a four-year term beginning July 1, 1996. Each member shall hold office until his successor is appointed. Vacancies shall be filled in the same manner as original appointments. No appointee shall serve more than two terms".

The 1996 amendment, effective July 1, 1996, substituted "nine members" for "eight members" twice in Subsection B, substituted "five members" for "four members" at the beginning of Paragraph B(1), inserted "and an alcohol and drug abuse counselor" in the first sentence of Paragraph B(1), deleted "four" preceding "professional members" near the beginning of the third sentence of Paragraph B(1), substituted "licensure requirements" for "Counseling and Therapy Practice Act" at the end of the third sentence of Paragraph B(1), added the second sentence in Subsection C, added "and the alcohol and drug directors association" at the end of Paragraph D, and made stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

Effective dates. — Laws 2005, ch. 210 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed former Subsection A into Subsections A and B.

The 2003 amendment, effective June 20, 2003, rewrote Subsection D.

The 1996 amendment, effective July 1, 1996, substituted "that" for "which" preceding "may violate" in Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, authorized the counseling and therapy practice board to take any disciplinary action necessary to carry out the provisions of the Counseling and Therapy Practice Act, and authorized the application of technology to supervision; in Subsection A, Paragraph A(1), after "adopt", deleted "in accordance with the Uniform Licensing Act", in Paragraph A(4), after "Uniform Licensing Act", added "and necessary to carry out the provisions of the Counseling and Therapy Practice Act", and in Paragraph A(13), after "supervisory requirements,", added "including the appropriate application of technology"; and in Subsection B, Paragraph B(3), after "supervision,", added "including the appropriate application of technology".

The 2020 amendment, effective July 1, 2020, authorized the counseling and therapy practice board to authorize all disbursements necessary to carry out the provisions of the Counseling and Therapy Practice Act, and provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added a new Paragraph A(12) and redesignated the succeeding paragraphs accordingly.

The 2003 amendment, effective June 20, 2003, deleted "for a period not to exceed one year" in Paragraph A(5); deleted "and certificates of registration" in Paragraph A(9); deleted the former last sentence of Subsection C, that read "These members shall not

hold any elected or appointed office in any professional organization of counseling, psychology or closely related field during their tenure on the standards committees."

The 1999 amendment, effective July 1, 1999, substituted "may" for "shall have the power to" in Subsection A, deleted "and regulations" following "rules" in Subsection A(1), added Subsection A(14), and inserted "or other committees" at the beginning of Subsection C.

The 1996 amendment, effective July 1, 1996, deleted "by rule" following "establish" in Paragraph A(3), rewrote Paragraph A(4), substituted "registration" for "certification" in Paragraphs A(8) and A(10), deleted "certificates of" preceding "registration" in Paragraph A(11), rewrote Paragraph A(12), deleted former Paragraph A(13) adopting rules implementing an impaired counselor and therapist practitioner treatment program, deleted former Paragraph A(14) relating to approving certain registered mental health supervisors, redesignated Paragraph A(15) as Paragraph A(13) and rewrote that paragraph, rewrote Paragraph B(1), deleted Paragraphs B(5) and B(6) relating to creating long-term professional development goals and periodically reviewing the professional code of ethics, and made stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, in Subsection B, provided that the applicant must have a total of not less that forty-eight graduate semester hours or seventy-two quarter hours in the mental health clinical core curriculum; and in Subsection D, changed "supervision" to "clinical supervision".

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "a counseling-related field, as defined by rule" for "an allied mental health field"; in Subsection C, substituted "the required examinations" for "an examination as".

The 1999 amendment, effective July 1, 1999, deleted "The board may approve, on a case-by-case basis, applicants who have a master's degree or doctoral degree from non-accredited institutions" at the end of Subsection B, deleted "satisfactorily" preceding "passing" in Subsection C, and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a professional clinical mental health counselor; in Subsection D, after "one hundred hours of", deleted "face-to-face" and added "appropriate"; and in Subsection E, deleted "is of good moral character with conduct consistent with" and added "observes".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; in the introductory clause, after "completed application", deleted "accompanied by the" and added "and, except as provided in Section 61-1-34 NMSA 1978, pays any"; and in Subsection B, after "The applicant", deleted "must" and added "shall".

The 2005 amendment, effective June 17, 2005, provided that the applicant's degree may include a degree in counseling and deleted the requirement that the applicant's degree be from a regionally accredited institution.

The 2003 amendment, effective June 20, 2003, rewrote Subsection B and inserted "the required" in Subsection C.

The 1999 amendment, effective July 1, 1999, substituted "no less that forty-eight graduate hours in the mental health clinical core curriculum" for "sixty graduate hours or more" and deleted "The board may approve applicants who have a master's degree or doctoral degree from nonaccredited or foreign institutions on a case-by-case basis" in Subsection B, and deleted "postgraduate" preceding "professional clinical" in Subsection D, and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed the dates of the period within which an application must be filed; changed "grandfathered professional mental health counselor license" to "current professional mental health counselor license" and deleted the former requirement that the license be applied for prior to July 1, 1994 in Subsection B; deleted the former requirement that the applicant have a total of forty-eight graduate semester or more or seventy-two quarter hours from a regionally accredited institution in Subsection C; deleted the former option to provide documentation of ten thousand hours of client contact experience, including at least three hundred hours of face-to-face supervision of which at least one hundred hours are individual in Subsection D; and decreased the number of hours of client contact experience from five thousand to three thousand hours, decreased the number of hours of face-to-face supervision from two hundred to one hundred hours and added the alternative that experience and supervision may consist of a minimum of ten thousand hours of client contact experience, including at least two hundred hours of face-to-face supervision in Subsection E.

The 2003 amendment, effective June 20, 2003, rewrote Subsection C that formerly read "holds a master's or doctoral degree and a total of sixty graduate hours or more".

61-9A-11.2. Repealed.

History: Laws 2003, ch. 422, § 11; repealed Laws 2005, ch. 210, § 21.

ANNOTATIONS

Repeals. — Laws 2005, ch. 210, § 21 repealed 61-9A-11.2 NMSA 1978, as enacted by Laws 2003, ch. 422, § 11, relating to professional clinical mental health counselor requirements for licensing, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.* For provisions of comparable present law, *see* 61-9A-4 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a marriage and family therapist; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, added the requirement in Subsection B that an applicant must meet the requirements of the marriage and family therapy core curriculum and changed "supervision" to "clinical supervision" in Subsection D.

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "and" for "or" following "family therapy" and inserted "as defined by rule".

The 1999 amendment, effective July 1, 1999, inserted "or meets the requirements of the core curriculum in marriage and family therapy" in Subsection B, deleted "satisfactorily" preceding "passing" in Subsection C, and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as an associate marriage and family therapist or counselor; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a professional art therapist; redesignated former Paragraphs A(1) through A(6) as Subsections A through F, respectively; in Subsection E, after "post-graduate", deleted "face-to-face", and after "requirements in", changed "Paragraph (3)" to "Subsection C"; in Subsection F, deleted "is of good moral character with conduct consistent with" and added "observes"; and deleted former Subsection B, which related to applicants meeting the art therapy core curriculum.

The 2007 amendment, effective June 15, 2007, eliminated educational and experience qualifications and added new qualifications in Paragraphs (3) through (5) of Subsection A.

The 2005 amendment, effective June 17, 2005, changed "either" to "one of the following" in Subsection A(3); changed "regionally accredited institution" to "accredited institution" in Subsections A(3)(a) and (c); added a master's degree in counseling in Subsections A(3)(b) and (c); and added Subsection B to provide that effective July 1, 2005, applicants must meet the art therapy core curriculum, as defined by rule.

The 2003 amendment, effective June 20, 2003, in Paragraph C(1), inserted "from a regionally accredited institution or nationally approved art therapy program", substituted "seven hundred hours" for "six hundred hours"; in Paragraph C(2), inserted "as defined by rule", substituted "twenty-four semester hours" for "twenty-one semester hours" and

"seven hundred hours" for "six hundred hours"; added Paragraph C(3); and rewrote Subsection D.

The 1999 amendment, effective July 1, 1999, substituted "six hundred" for "seven hundred" in Subsection C(1) and C(2); deleted "satisfactorily" preceding "passing" in Subsection B, deleted "The board may, on a case-by-case basis, approve applicants who hold a master's degree or a doctoral degree from non-accredited institutions" in Subsection C(1); substituted "shall" for "must" and "licensed or American art therapy association-certified" for "registered" in Subsection D; and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a mental health associate; and in Subsection E deleted "is of good moral character with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, added the provisions in Subsection B that the applicant's degree may be in counseling and that the applicant have a total of not less than forty-eight graduate semester hours or seventy two quarter hours in the core curriculum; changed "supervision" to "clinical supervision" in Subsection C and deleted marriage and family therapist from the list of licensing requirements in Subsection C.

The 2003 amendment, effective June 20, 2003, rewrote Subsections B and C.

The 1999 amendment, effective July 1, 1999, substituted "licensed" for "registered" in the section heading, substituted "license" for "certificate of registration" in the introductory paragraph, substituted "marriage and family therapy or art therapy or meets the educational requirements for the terminal license" for "or an allied mental health field. The board may approve on a case-by-case basis applicants who have a master's degree or a doctoral degree from non-accredited institutions; and" in Subsection B, and added Subsections D and E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as a substance abuse associate; and in Subsection A, Paragraph A(1), deleted "is of good moral character, with conduct consistent with" and added "observes".

The 2005 amendment, effective June 17, 2005, deleted former Subsection A which provided for the licensure of substance abuse trainees; changed "trainee" to "associate" in Subsections A and A(4); added a degree in counseling or substance abuse-related field and deleted the former requirement that the degree must be from a regionally accredited institution in Subsection A(3); and deleted the former requirement in Subsection B that one letter be from a current supervisor and one letter from a current employer or one letter from a professional substance abuse colleague.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, substituted "has reached the age of twenty-one" for "is at least eighteen years of age" in Subsection A(2), substituted "has a total of ninety clock hours of education and training in the fields of alcohol and drug abuse" for "demonstrates knowlege of a working definition of substance abuse treatment and recovery" in Subsection A(5), deleted former Subsections B, C, and D, relating to the licensing of alcohol and drug abuse counselors, alcohol abuse counselors and drug abuse counselors, and added present Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2021 amendment, effective June 18, 2021, revised the qualifications for an applicant for licensure as an alcohol and drug abuse counselor; in Subsection A, deleted "is of good moral character with conduct consistent with" and added "observes"; and in Subsection D, Paragraph D(1), after "three thousand client", deleted "contract" and added "contact", and changed "face-to-face" to "appropriate" throughout.

The 2007 amendment, effective June 15, 2007, deleted former Subsection D to eliminate the requirement that applicants provide three letters of recommendation.

The 2005 amendment, effective June 17, 2005, deleted former Subsection A, which provided for the licensure of alcohol and drug abuse counselors; added Subsection E(1) to provide for a combination of an associate degree and a minimum number of hours of education and training; added a degree in counseling and a substance abuse-related field in Subsection E(2); added a degree in a substance abuse-related field in Subsection E(3); and changed "regionally accredited institution" to "accredited institution" in Subsections E(2) and (3).

The 2003 amendment, effective June 20, 2003, rewrote the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

Effective dates. — Laws 2007, ch. 166 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Compiler's notes. — Laws 2019, ch. 92, § 1 was not enacted as part of the Counseling and Therapy Act, but was compiled there for the convenience of the user.

Effective dates. — Laws 2019, ch. 92 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added a licensed associate marriage and family therapist and an alcohol and drug abuse counselor in Subsection B.

The 2003 amendment, effective June 20, 2003, substituted "examinations" for "examination" throughout the section; deleted "by rule" following "establish" and inserted "board-approved examinations"; and in Subsection B, inserted "a licensed mental health counselor".

The 1996 amendment, effective July 1, 1996, added "or a substance abuse counselor" at the end of Subsection B and made a related stylistic change.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2006 amendment, effective May 17, 2006, added statutory references to Sections 61-9A-11.1, 61-9A-12.1, 61-9A-14.1 and 61-9A-14.2 in Subsection A and added Subsection B to permit the board to issue temporary licenses pending a determination of an applicant’s qualifications.

The 2003 amendment, effective June 20, 2003, updated the internal references and substituted "sixty days" for "thirty days" and added "and the applicant will not be reissued a temporary license" at the end.

61-9A-17 to 61-9A-21.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 161, § 21 repealed 61-9A-17 to 61-9A-21.1 NMSA 1978, as enacted by Laws 1993, ch. 49, §§ 17 to 21 and Laws 1996, ch. 61, § 9, relating to

licensure without examination, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-9A-22 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by credentials, provided that the counseling and therapy practice board shall issue an expedited license to a person who holds a valid, unrestricted license in a counseling-related field issued by another licensing jurisdiction and the applicant has practiced in New Mexico for at least two years immediately prior to application, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "shall issue", deleted "a" and added "an expedited", in Paragraph A(2), after "the applicant holds", deleted "and has held for a minimum of two years a current" and added "a valid, unrestricted", after the next occurrence of "license", added "in a counseling-related field", deleted "the appropriate examining board under the law of any other state or territory of the United States, the District of Columbia or any foreign nation" and added "another licensing jurisdiction", in Paragraph A(3), after "in good standing", added "with that licensing jurisdiction", and added a new Paragraph A(4) and redesignated former Paragraph A(4) as Paragraph A(5); added new Subsections B through D and redesignated former Subsection B as Subsection E; and in Subsection E, after "current licensure requirements", added "for a regular license".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the counseling and therapy practice board's power to issue a license to a person who furnishes evidence to the board that the person has been licensed by another state, territory of the United States, the District of Columbia or another country for two years, and revised qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "credentials", deleted "reciprocity"; and in Subsection A, after "The board", changed "may" to "shall", and in Paragraph A(2), after "submits", deleted "satisfactory", and changed "five" to "two", throughout.

The 2006 amendment, effective May 17, 2006, provided for the licensure of an applicant in the same licensure level as the applicant is licensed in another jurisdiction in Subsection A; required that an applicant have held for a minimum of five years a current license from another licensing jurisdiction in Paragraph (2) of Subsection A; deleted former Subsections A through E, which required an applicant to be a nationally certified counselor, certified clinical mental health counselor or therapist, clinical member of the American association for marriage and family therapy, a registered art therapist or an alcohol and drug abuse counselor; added Paragraph (3) of Subsection A to require an applicant to be in good standing with no disciplinary action within five years; and added Paragraph (4) of Subsection A to require that an applicant possess a master's or doctoral degree in counseling or a counseling-related field.

The 2005 amendment, effective June 17, 2005, added "therapist" in Subsection B; deleted "(ATR-BC)" in Subsection D; deleted the former requirement in Subsection D that the counselor has taken and passed the required examination prescribed by the board and added that the counselor must be a national certified addiction counselor level I.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, added the second and third sentences.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed the grace period from ninety days to thirty days and changed "ceu" to "continuing education unit" in Subsection B; changed "registrant" to "registration" and provided that the licensee or registrant shall refrain from practicing if the continuing education requirement is not met within the period in Subsection C; deleted the former provision in Subsection D that a license or registration is automatically suspended if the holder fails to apply for renewal within ninety days after the renewal deadline and that a license or registration could be renewed after the grace period upon payment of an additional fee; and changed the grace period within which to renew a license or registration from ninety days to thirty days after expiration and provides that a license or registration may be renewed upon submission of all necessary documentation and meeting all standards for licensure in Subsection D.

The 2003 amendment, effective June 20, 2003, rewrote the section.

The 1999 amendment, effective July 1, 1999, substituted "registration" for "certificate" throughout the section, deleted "certificate" following "license or" one time in Subsection A and four times in Subsection C, substituted "registrations" for "certificates" and "and" for "the" in Subsection B, inserted "or registration" preceding "so suspended" in Subsection C, substituted "registered" for "certified", inserted "or registrant", and substituted "rule" for "regulation" in Subsection D.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added licensed associate marriage and family therapist in Subsection D and changed "intern" to "associate" in Subsection I.

The 2003 amendment, effective June 20, 2003, in Subsection B, inserted "or registered independent mental health counselor" and in Subsection D, inserted "licensed mental health counselor".

The 1999 amendment, effective July 1, 1999, inserted "professional" preceding "mental" in Subsection C.

The 1996 amendment, effective July 1, 1996, substituted "registration" for "certification" in the introductory paragraph and in Subsections A and D, inserted "professional" preceding "art therapist" in Subsection C, inserted "or registered independent mental health counselor" in Subsection D, substituted "registration" for "certificate" in Subsections F and G, and added Subsection I and made related stylistic changes.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the counseling and therapy practice board may deny, revoke or suspend the license issued by the board if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, Paragraph A(5), after "manner dangerous to", deleted "himself" and added "the licensee, registrant or applicant", and after "the use impairs", deleted "his" and added "the licensee's, registrant's or applicant's", and added Paragraph A(12); and added Subsection E.

The 2005 amendment, effective June 17, 2005, provided in Subsection A(5) that disciplinary action may be taken if the licensee, registrant or applicant has illicitly used a controlled substance or has used a mood-altering substance.

The 1999 amendment, effective July 1, 1999, added "fines and reprimand" to the section heading, substituted "a" for "any" and inserted "may fine or reprimand a license or registrant" in Subsection A, and deleted "as a professional counselor or therapist practitioner" at the end of Subsections (7) and (9).

The 1996 amendment, effective July 1, 1996, in Subsection A, substituted "registration" for "certificate" in the introductory paragraph and in Paragraphs (1) and (10), inserted

"or take any other action provided for in the Uniform Licensing Act," in the introductory paragraph, substituted "a counselor or therapist practitioner" for "a professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, professional art therapist or registered mental health counselor safely to the public" at the end of Paragraph (5), added "adopted by the board" at the end of Paragraph (6), substituted "counselor, therapist or other mental health practitioner" for "professional mental health counselor, professional clinical mental health counselor, marriage and family therapist, art therapist or registered mental health counselor" in Paragraph (10), and added Paragraph (11); and made stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

Applicability of privilege in a child abuse and neglect case was not required to be addressed because the clear language of Rule 11-504 NMRA, this section, and Section 61-31-24 NMSA 1978 permits disclosure. *State ex rel. Children, Youth & Families Dep't*, 2000-NMCA-035, 128 N.M. 813, 999 P.2d 1045, cert. denied, 129 N.M. 207, 4 P.3d 35.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-9A-30 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the counseling and therapy practice board and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

Laws 2021, ch. 50, § 5 and Laws 2021, ch. 99, § 2, both effective June 18, 2021, enacted identical amendments to this section. The section was set out as amended by Laws 2021, ch. 99, § 2. *See* 12-1-8 NMSA 1978.

The 2015 amendment, effective June 19, 2015, extended the termination date for the counseling and therapy practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10-1 NMSA 1978, as enacted by Laws 1955, ch. 42, § 1, relating to the definition of osteopathic medicine and surgery, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10-1.1. Repealed.

History: Laws 2016, ch. 90, § 1; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-1.1 NMSA 1978, as enacted by Laws 2016, ch. 90, § 1, relating to short title, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-1.2. Repealed.

History: Laws 2016, ch. 90, § 2; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-1.2 NMSA 1978, as enacted by Laws 2016, ch. 90, § 2, relating to definitions, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-2 NMSA 1978, as enacted by Laws 1974, ch. 78, § 16, relating to criminal offender's character evaluation, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-3 NMSA 1978, as enacted by Laws 1933, ch. 117, § 2, relating to license, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-4 NMSA 1978, as enacted by Laws 1933, ch. 117, § 3, relating to other schools not affected, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-5 NMSA 1978, as enacted by Laws 1933, ch. 117, § 4, relating to board of osteopathic medicine, appointment, terms, meetings, membership, examinations, duties, powers, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-5.1. Repealed.

History: Laws 2016, ch. 90, § 21; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-5.1 NMSA 1978, as enacted by Laws 2016, ch. 90, § 21, relating to board communication, protected actions, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-6 NMSA 1978, as enacted by Laws 1933, ch. 117, § 5, relating to licensure, requirements, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-6.1 NMSA 1978, as enacted by Laws 1989, ch. 371, § 3, relating to fees, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-7 NMSA 1978, as enacted by Laws 1977, ch. 155, § 1, relating to temporary license, qualifications, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-7.1. Repealed.

History: Laws 2019, ch. 184, § 2; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-7.1 NMSA 1978, as enacted by Laws 2019, ch. 184, § 2, relating to temporary licensure exemption, out-of-state osteopathic physicians, out-of-state sports teams, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-8 NMSA 1978, as enacted by Laws 1933, ch. 117, § 6, relating to professional education, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 371, § 9 repealed 61-10-9 NMSA 1978, as amended by Laws 1975, ch. 296, § 6, relating to standards for colleges of osteopathic medicine and surgery, effective June 16, 1989.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-10 NMSA 1978, as enacted by Laws 1933, ch. 117, § 8, relating to examination, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11 NMSA 1978, as enacted by Laws 1933, ch. 117, § 9, relating to license issued, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.1. Repealed.

History: Laws 2016, ch. 90, § 19; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.1 NMSA 1978, as enacted by Laws 2016, ch. 90, § 19, relating to telemedicine license, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.2. Repealed.

History: Laws 2016, ch. 90, § 22; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.2 NMSA 1978, as enacted by Laws 2016, ch. 90, § 22, relating to osteopathic physician assistant, licensure, scope of authority, registration of supervision, change of supervision, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.3. Repealed.

History: Laws 2016, ch. 90, § 23; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.3 NMSA 1978, as enacted by Laws 2016, ch. 90, § 23, relating to osteopathic physician assistants, inactive license, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.4. Repealed.

History: Laws 2016, ch. 90, § 24; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.4 NMSA 1978, as enacted by Laws 2016, ch. 90, § 24, relating to osteopathic physician assistants, exemption from licensure, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.5. Repealed.

History: Laws 2016, ch. 90, § 25; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.5 NMSA 1978, as enacted by Laws 2016, ch. 90, § 25, relating to responsibility, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-11.6. Repealed.

History: Laws 2019, ch. 19, § 9; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-11.6 NMSA 1978, as enacted by Laws 2019, ch. 19, § 9, relating to supervision of psychologist in the prescribing of psychotropic medication by osteopathic physician, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-12 NMSA 1978, as enacted by Laws 1933, ch. 117, § 10, relating to license without examination, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10-13 NMSA 1978, as enacted by Laws 1933, ch. 117, § 11, relating to display of licenses and renewal thereof, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-14 NMSA 1978, as enacted by Laws 1933, ch. 117, § 12, relating to privileges and obligations, presence on hospital staffs, intent of act, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-15 NMSA 1978, as enacted by Laws 1933, ch. 117, § 13, relating to refusal and revocation of license, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-15.1. Repealed.

History: Laws 2016, ch. 90, § 20; 2017, ch. 132, § 6; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-15.1 NMSA 1978, as enacted by Laws 2016, ch. 90, § 20, relating to licensure, summary suspension, summary restriction, grounds, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-16 NMSA 1978, as enacted by Laws 1933, ch. 117, § 14, relating to penalties, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-10-16.1. Repealed.

History: Laws 2016, ch. 90, § 18; repealed by Laws 2021, ch. 54, § 49.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-16.1 NMSA 1978, as enacted by Laws 2016, ch. 90, § 18, relating to practicing without license, penalty, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-17 NMSA 1978, as enacted by Laws 1933, ch. 117, § 15, relating to records, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-18 NMSA 1978, as enacted by Laws 1933, ch. 117, § 16, relating to no additional power conferred on prior licensees, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-19 NMSA 1978, as enacted by Laws 1971, ch. 140, § 1, relating to renewal of license, certificate, fee, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-20 NMSA 1978, as enacted by Laws 1971, ch. 140, § 2, relating to post-graduate educational requirements, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-21 NMSA 1978, as enacted by Laws 1945, ch. 79, § 7, relating to failure to comply, cancellation of license, reinstatement, temporary cancellation at licensee's request, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2021, ch. 54, § 49 repealed 61-10-22 NMSA 1978, as enacted by Laws 1979, ch. 36, § 2, relating to termination of agency life, delayed repeal, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

ARTICLE 10A
Osteopathic Physicians' Assistants (Repealed.)

61-10A-1. Repealed.

History: Laws 1979, ch. 26, § 1; repealed by Laws 2016, ch. 90, § 29.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-1 NMSA 1978, as enacted by Laws 1979, ch. 26, § 1, relating to the short title, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-2. Repealed.

History: Laws 1979, ch. 26, § 2; 1989, ch. 9, § 6; repealed by Laws 2016, ch. 90, § 29.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-2 NMSA 1978, as enacted by Laws 1979, ch. 26, § 2, relating to definitions, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-3. Repealed.

History: Laws 1979, ch. 26, § 3; repealed by Laws 2016, ch. 90, § 29.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-3 NMSA 1978, as enacted by Laws 1979, ch. 26, § 3, relating to administration of act, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4 NMSA 1978, as enacted by Laws 1979, ch. 26, § 4, relating to licensure as osteopathic physician assistant, scope of authority, annual registration of employment, and employment change, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.1 NMSA 1978, as enacted by Laws 1989, ch. 9, § 8, relating to fees, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.2 NMSA 1978, as enacted by Laws 1997, ch. 187, § 12, relating to inactive license, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-4.3 NMSA 1978, as enacted by Laws 1997, ch. 187, § 13, relating to exemption from licensure, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-5. Repealed.

History: Laws 1979, ch. 26, § 5; repealed by Laws 2016, ch. 90, § 29.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-5 NMSA 1978, as enacted by Laws 1979, ch. 26, § 5, relating to denial, suspension or revocation, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-6 NMSA 1978, as enacted by Laws 1979, ch. 26, § 6, relating to rules and regulations, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

61-10A-7. Repealed.

History: Laws 1979, ch. 26, § 7; 2007, ch. 250, § 2; repealed by Laws 2016, ch. 90, § 29.

ANNOTATIONS

Repeals. — Laws 2016, ch. 90, § 29 repealed 61-10A-7 NMSA 1978, as enacted by Laws 1979, ch. 26, § 7, relating to responsibility, effective July 1, 2016. For provisions of former section, *see* the 2015 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "Chapter 61, Article 11 NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of pharmacist who accurately fills prescription for harm resulting to user, 44 A.L.R.5th 393.

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.

ANNOTATIONS

Standard of care required of retail pharmacists in filling prescriptions for controlled substances. — Where the personal representative of decedent's estate brought a lawsuit, asserting claims of negligence and negligence per se, against the pharmacy that dispensed certain Schedule II drugs to decedent, who died from an overdose of physician-prescribed medications, the district court erred in granting the pharmacy's motion for summary judgment, because the pharmacy's motion did not establish a prima facie case of entitlement to judgment as a matter of law as to the standard of care or the pharmacy's compliance with the standard, and even if the pharmacy had met that burden, plaintiff's expert affidavit sufficed to establish a genuine dispute of material fact concerning these material issues, and dismissal of the pharmacy from the case was improper because the motion did not demonstrate the pharmacy's entitlement to summary judgment on the separate claim of negligence per se. *Oakey v. May Maple Pharmacy, Inc.*, 2017-NMCA-054, cert. denied.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised the definition of "practice of pharmacy"; and in Subsection CC, after "dangerous drug therapy", added "devices or supplies for prescribed drug therapy for health conditions, including diabetes", after "drugs and devices", added "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 after "proper records", added "consistent with the standard of care in general medical practice".

The 2019 amendment, effective June 14, 2019, defined "outsourcing facility", "repackager", and "third-party logistics provider" as used in the Pharmacy Act, and made certain technical amendments; added a new Subsection T and redesignated former Subsections T through CC as Subsections U through DD, respectively; in Subsection Z, after "place of business", added "licensed by the board"; added a new Subsection EE and redesignated former Subsection DD as Subsection FF; added a new Subsection GG and redesignated former Subsection EE as Subsection HH; and in Subsection HH, after "including", deleted "manufacturers, repackers".

The 2001 amendment, effective June 15, 2001, inserted "the administering or prescribing of dangerous drug therapy" in Subsection BB.

The 1999 amendment, effective June 18, 1999, added Subsection G(3).

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

The 1992 amendment, effective May 20, 1992, added all of the present language of Subsection C following "dosage form"; deleted "holding a current active certificate" following "a pharmacist" in Subsection D; substituted "department of health" for "health and environment department" in Subsection I; deleted "and includes doctors of medicine, osteopathy, dentistry, podiatry and veterinary medicine" at the end of Subsection K; added present Subsections L, M, and N; redesignated former Subsections L through P as present Subsections O through S; substituted "license" for "certificate of registration" in present Subsection P; deleted former Subsection Q defining "proprietary preparation" or "patent medicine"; substituted "distributor" for "dealer" near the end of present Subsection Q; redesignated former Subsection R as present Subsection T; inserted "manufacturing, repackaging" and "the reconstitution or preparation of intravenous admixtures" in present Subsection S; added Subsections U and V; and made minor stylistic changes throughout the section.

The 1988 amendment, effective May 18, 1988, inserted "Device" near the end of Subsection E; substituted "Paragraph (1), (2) or (3) of this subsection" for "Paragraphs (1), (2) or (3)" and corrected a misspelling in Subsection G(4); substituted "licensed by any state, territory or possession of the United States" for "licensed by the state" in Subsection K; and made minor stylistic changes.

Duty of consulting pharmacist to a nursing facility. — Where the nurse of a nursing home improperly transcribed a doctor’s prescription, which resulted in the death of the decedent; defendant had a pharmacy consultant agreement with the nursing home in which defendant agreed to be responsible for the general supervision of the pharmaceutical products and pharmacy services provided by the nursing home and a pharmacy services agreement to purchase pharmacy products and services for the

nursing home; both agreements expressly provided that the agreements did not confer any benefits on third parties and that a failure to perform by defendant created imminent jeopardy to patient safety; the nursing home did not notify defendant of the change in the decedent's prescription; the decedent was not a third-party beneficiary of the agreements between defendant and the nursing home; and defendant had no duty to control the nurse or to monitor patients outside a monthly review which defendant had conducted prior to the change in the decedent's prescription, defendant was not liable to the decedent for breach of contract or for negligence. *Thompson v. Potter*, 2012-NMCA-014, 268 P.3d 57.

Defendants did not meet the definition of "custodial care facilities," and therefore did not require a pharmacy license. — Where the board of pharmacy notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department (CYFD) licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because defendants did not meet the definition of "custodial care facilities." Defendants' purpose is to provide safe care for certain children, not medical or health care, and the children which defendants care for are not placed there for health care purposes; defendants do not retain nurses or doctors on staff, and do not provide the children with extended health care or prescribe them medications. Defendants are not "custodial care facilities" as contemplated by the Pharmacy Act, but are "community homes," as defined by CYFD regulations, which are not required to obtain a pharmacy license to operate. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

Pharmacy board exceeded its regulatory authority by expanding the statutory definition of "custodial care facility". — Where the board of pharmacy (board) notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because the board acted outside its statutory authority in defining "custodial care facility" by regulation in a manner that excessively expanded upon the legislature's definition of "custodial care facility" in the Pharmacy Act. The board's definition is therefore void. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

"Licensed practitioner". — In view of the specific exception from licensing requirements granted to students, interns and residents, Subsection K (now *see* Subsection P) should be viewed as allowing prescriptions written by residents or interns to be filled by pharmacists outside the hospital in which the resident or intern is serving. 1971 Op. Att'y Gen. No. 71-93.

Nature of outlet. — Whether an outlet is wholesale or retail depends on the manner in which it does business. 1958 Op. Att'y Gen. No. 58-219.

"Person". — The health and environment department (now department of health) is not a "person" within the meaning of Subsection L (now *see* Subsection U) and is therefore not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 1, 2, 8, 9, 10, 14, 15, 98, 100.

28 C.J.S. Drugs and Narcotics § 8 et seq.

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.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A; and deleted "One of the pharmacist members shall be appointed for a term ending July 1, 1970 and one pharmacist member shall be appointed for a term ending on July 1 of each of the following four years. Thereafter," following "five pharmacy districts" near the middle of Subsection B.

The 1997 amendment, effective June 20, 1997, substituted "One pharmacist member shall be appointed from each" for "Not more than one pharmacist member shall come from a" in the fourth sentence of Subsection B; in Subsection C, inserted "be appointed by the governor to" in the first sentence, substituted "profession" for "occupation" in the second sentence, made stylistic changes in the third sentence, and substituted "public" for "board" in the fourth sentence; in Subsection D, in the first sentence, substituted "a pharmacist appointed" for "a hospital pharmacist selected" and substituted "health systems" for "hospital", in the second sentence, substituted "The" for "On July 1, 1985, the governor shall appoint a hospital pharmacist member to the board for at term expiring July 1, 1990 and successors to the hospital pharmacist" and substituted "a term" for "terms", and, in the third sentence, substituted "member's" for "hospital pharmacist member" and "health systems" for "hospital"; and deleted former Subsection I relating to appointment of a board member in the event of a vacancy on the board.

The 1991 amendment, effective June 14, 1991, substituted "nine members" for "seven members" in Subsection A; in Subsection C, substituted "Three members" for "One member" at the beginning of the first sentence, deleted the former third sentence which read "On July 1, 1979, the governor shall appoint a public member to the board for a term expiring July 1, 1984, and successors to the public member shall be appointed by the governor to terms of five years" and added the final sentence; and made related and minor stylistic changes in Subsections B and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, deleted former Subsection D relating to the execution of a bond by members and employees of the board, and redesignated Subsection E as Subsection D.

Board of pharmacy may select whomever it chooses as secretary, as there is no compulsion that the secretary so chosen be required to have only that job; the state pharmaceutical association can appoint the same man or woman if it so chooses. 1953 Op. Att'y Gen. No. 53-5776.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the board of pharmacy is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, Paragraph A(1), deleted "adopt, amend or repeal rules and regulations necessary" and added "promulgate rules in accordance with the provisions of the State Rules Act", in Paragraph A(18), deleted "adopt" and added "promulgate", and after "rules", deleted "and regulations", and in Paragraph A(19), deleted "adopt" and added "promulgate"; and in Subsection B, Paragraph B(2), after "provide by", deleted "regulation" and added "rule".

The 2005 amendment, effective June 17, 2005, provided in Subsection A(18) that the board shall adopt rules and regulations concerning the provision of emergency prescription dispensing; added Subsection A(20) to permit the board to authorize emergency prescription dispensing; and added Subsection B(3) to permit the board to delegate its authority to the executive director to authorize emergency prescription dispensing procedures during emergencies.

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted "annual" preceding "renewal" in Paragraphs (4) and (5), and added Paragraph (19).

The 1997 amendment, effective June 20, 1997, rewrote Subsection A; redesignated former Subsections B through H as Paragraphs A(2) through A(8), respectively; deleted former Subsection I relating to minor violations of the Pharmacy Act; redesignated former Subsections J through P as Paragraphs A(9) through A(15), respectively; deleted former Subsection Q relating to rules and regulations regarding supportive personnel; redesignated former Subsection R as Paragraph A(18); and added Subsection B.

The 1992 amendment, effective May 20, 1992, substituted "nonresident pharmacies, wholesale drug distributors" for "wholesale drug dealers" near the beginning of Subsection F and inserted "or administered" near the end of that subsection; inserted "Device" in Subsection J; added Subsections Q and R; and made minor stylistic changes throughout the section.

Defendants did not meet the definition of "custodial care facilities," and therefore did not require a pharmacy license. — Where the board of pharmacy notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department (CYFD) licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because defendants did not meet the definition of "custodial care facilities." Defendants' purpose is to provide safe care for certain children, not medical or health care, and the children which defendants care for are not placed there for health care purposes; defendants do not retain nurses or doctors on staff, and do not provide the children with extended health care or prescribe them medications. Defendants are not "custodial care facilities" as contemplated by the Pharmacy Act, but are "community homes," as defined by CYFD regulations, which are not required to obtain a pharmacy license to operate. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

Pharmacy board exceeded its regulatory authority by expanding the statutory definition of "custodial care facility". — Where the board of pharmacy (board) notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their

licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because the board acted outside its statutory authority in defining "custodial care facility" by regulation in a manner that excessively expanded upon the legislature's definition of "custodial care facility" in the Pharmacy Act. The board's definition is therefore void. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

Board constitutional. — The board is well founded in the police power of the state and cannot be attacked as being unconstitutional. 1960 Op. Att'y Gen. No. 60-126.

Constitutionality of regulating nonresident dealers. — This provision gives the board power to license, regulate and impose a reasonable license fee on resident and nonresident wholesale drug dealers and manufacturers distributing their products in the state, and such action will not violate the United States constitution. 1971 Op. Att'y Gen. No. 71-49.

Powers of board. — The board of pharmacy has power to make bylaws, rules and regulations necessary for the protection of the public in the field of pharmacy and may employ chemists, inspectors, agents and clerical administrative help for the proper conduct of its business. 1953 Op. Att'y Gen. No. 53-5776.

Jurisdiction over hospital pharmacies. — The board of pharmacy exercises the same powers over pharmacies or drug dispensaries operated by a hospital as it does over any other drug store or pharmacy, etc., operated within the state. 1960 Op. Att'y Gen. No. 60-126.

Presence of pharmacist. — Under broad grant of authority given the board for the protection of public health and welfare, it may promulgate a regulation requiring that a registered pharmacist must be on duty in a drug store from the opening hour of the drug store until the closing hour. 1961 Op. Att'y Gen. No. 61-85.

Sharing office space. — The pharmaceutical association and the state board of pharmacy could maintain offices under the same roof and within the same office space, but they would be required to separate their expenditures for rent and clerical help. 1953 Op. Att'y Gen. No. 53-5776.

Inspector. — Inspector appointed under former law, in the performance of duties, was empowered with all of the powers and duties of law enforcement officers of the state, within which powers was the right to carry such weapons as the occasion appeared to require. 1965 Op. Att'y Gen. No. 65-93.

An inspector has all of the authority granted to municipal, county and state law enforcement officers, including the power to obtain search warrants in all cases concerning the violation or violations of the pharmacy laws of the state of New Mexico. 1953 Op. Att'y Gen. No. 53-5865 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 28 C.J.S. Drugs and Narcotics § 8 et seq.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 79, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Effective dates. — Laws 2013, ch. 170 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Cross references. — For provisions of the New Mexico Drug, Device and Cosmetic Act, 26-1-1 NMSA 1978 et seq.

For provisions of the Controlled Substances Act, *see* 30-31-1 NMSA 1978 et seq.

The 2016 amendment, effective March 4, 2016, amended the Pharmacy Act to allow the possession, storage, distribution, dispensing, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978; in Subsection A, Paragraph (1), deleted "any" and added "a", after "in its possession", deleted "any" and added "a", after "the withdrawal of", deleted "any" and added "a", and after "treatment of", deleted "his" and added "a", in Paragraph (4), after "provided that if", deleted "such" and added "the", in Paragraph (5), after "for the use of", deleted "such" and added "the"; in Paragraph (6), after "for the use of", deleted "such" and added "the", in Paragraph (8), after "New Mexico", added "medical", after "board", deleted "of medical examiners", and after the semicolon, deleted "or", in Paragraph (9), in the introductory sentence, after "exercising", deleted "his" and added "the pharmacist's", and added Paragraph (10).

Laws 2016, ch. 45, § 2 and Laws 2016, ch. 47, § 2 enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 47, § 2. *See* 12-1-8 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted the former designation for Paragraph (2), thereby making those provisions a part of Paragraph (1), added Paragraph A(8), and renumbered the remaining paragraphs accordingly.

The 1997 amendment, effective June 20, 1997, in Subsection A, in Paragraph (1), substituted "if" for "provided" and substituted "if" for "provided that", substituted "pharmacy technicians" for "supportive personnel" in Paragraph (8), and added Paragraph (9) and made related stylistic changes; and substituted "requiring" for "necessitating" in Subsection B.

The 1995 amendment, effective July 1, 1995, deleted "diagnostic" preceding "pharmaceutical" in Paragraph A(6), added Paragraph A(7), and redesignated former Paragraph A(7) as Paragraph A(8).

The 1992 amendment, effective May 20, 1992, substituted "nonprescription medicines" for "patent or proprietary medicines" in Subsection A(4), made statutory reference substitutions in Subsection A(5), added Subsection A(7), and made minor stylistic changes throughout the section.

Hospital or clinic pharmacy must be licensed and registered, and except in limited situations prescriptions must be filled by a registered pharmacist. 1961 Op. Att'y Gen. No. 61-52.

Hospital in which a pharmacy dispenses drugs must be licensed and registered. 1960 Op. Att'y Gen. No. 60-126.

The health and environment department (now department of health) is not a "person" within the meaning of Section 61-11-2 NMSA 1978 and is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 23.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

Original unbroken package, what constitutes, 113 A.L.R. 964.

61-11-8. Drug records to be kept.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "persons licensed pursuant to the Pharmacy Act" for "hospitals, institutions or clinics" in the first sentence and substituted "the licensee" for "both the pharmacist in charge and the hospital, institution or clinic" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 69, 229.

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.

ANNOTATIONS

Cross references. — For age of majority, *see* 28-6-1 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading and in the introductory language of Subsection A; in Subsection A, substituted "alcohol" for "alcoholic liquors" in Paragraph (1), rewrote Paragraph (2), in Paragraph (4), substituted "approved" for "prepared and administered" and deleted "which examination shall be based on the subjects and minimum grading standards as set forth in the bylaws of the national association of boards of pharmacy" following "board", and substituted "approved" for "prepared and administered" in Paragraph (5); in Subsection B, substituted "approved by the board" for "and an examination on New Mexico laws and board regulations" and deleted the second sentence, which read: "The board shall adopt regulations that define the content of the examinations"; and rewrote Subsection C.

The 1992 amendment, effective May 20, 1992, substituted "be a graduate of" for "hold a degree in pharmacy from" in Subsection A(2), made minor stylistic changes in Subsection A(4), added Subsection A(5), added present Subsection B, redesignated former Subsection B as present Subsection C, and substituted "issue a license" for "issue him a certificate of registration" and "passed the required examinations" for "passed an examination" in Subsection C.

No "right" exists in anyone to be licensed by the board of pharmacy unless the applicant complies with applicable statutes, rules and regulations. 1958 Op. Att'y Gen. No. 58-219.

Proof of qualifications. — Since under former law the applicant was to "submit to the board of pharmacy proof of his qualifications," the board could set the type of proof required in order to determine whether there was compliance with the law, and it could investigate the proof submitted for that purpose. 1955 Op. Att'y Gen. No. 55-6188.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 75.

28 C.J.S. Drugs and Narcotics § 29 et seq.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, added new license categories for which surety bonds are required, subject to the existing provision that multiple locations or affiliated companies do not need to provide separate surety bonds; in Subsection B, after "maintaining licensure as a", added "drug manufacturer", after "wholesale drug distributor", added "outsourcing facility, repackager or third-party logistics provider"; and in Subsection F, after "renew their", added "drug manufacturer, nonresident pharmacy", and after "wholesale", added "drug", and after "distributor", added "outsourcing facility, repackager or third-party logistics provider".

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading and throughout the section; substituted "licensed" for "registered" throughout the section; substituted "license" for "certificate of registration" in the introductory language; and made a stylistic change in Subsection A.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, changed certain licensure requirements for pharmacist interns; and in Subsection B, after "satisfactorily completed", deleted "not less than thirty semester hours or the equivalent thereof" and added "educational requirements established by rules of the board".

The 1997 amendment, effective June 20, 1997, substituted "licensure" for "registration" in the section heading and throughout the section; rewrote the introductory language; added the language beginning "and not be" in Subsection A; and in Subsection B, inserted "school or" and substituted "approved by the board" for "accredited by the American council on pharmaceutical education".

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.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, added Subsection B(5) to provide that a pharmacy technician perform tasks assigned by the supervising pharmacist that do not require professional judgment.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent a detailed comparison is impracticable.

The 1989 amendment, effective June 16, 1989, substituted "two hundred dollars ($200)" for "one hundred dollars ($100)" in Subsection A(1), and substituted "not to exceed twenty-five dollars ($25.00)" for "of ten dollars ($10.00)" in Subsection A(3).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 75.

28 C.J.S. Drugs and Narcotics § 29 et seq.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A,

after "prior to that date and", added "except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective June 15, 2001, in Subsection A, deleted "annual" preceding "renewal date" and inserted "as set by rule of the board" in the first sentence; inserted "prior to that date" following "application for renewal", substituted "($150) per year" for "($150) prior to that date", and substituted "less than a full year" for "less than one year" in the second sentence; and substituted "before the date set by the board shall" for "before that date will", and substituted "the license shall" for "it shall" in the last sentence.

The 1997 amendment, effective June 20, 1997, deleted "Registration" preceding "Renewal" in the section heading; in Subsection A, in the first sentence, deleted "All annual licenses for pharmacists shall expire on June 30, and commencing July 1, 1984" at the beginning of the sentence, substituted "licensee" for "registrant", and substituted "licensee's" for "registrant's", and in the third sentence, substituted "a" for "any", inserted "reapplication and" and substituted "one hundred dollar ($100)" for "twenty-five dollar ($25.00)" in Subsection B, substituted "A" for "Any" in the first sentence, and inserted "in an approved school or college of pharmacy" in the third sentence; in the first sentence of Subsection C, substituted "a pharmacist's license" for "pharmacists' licenses" and substituted "license" for "registration"; substituted "a pharmacist's license" for "pharmacists' licenses" in Subsection D; and in Subsection E, substituted "An application" for "Applications", inserted "as a pharmacy technician or license", and added "per year" at the end of the subsection.

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "last day of the registrant's birth month" for "registrant's birthdate" in the first sentence, substituted "than" for "then" near the end of the second sentence, and substituted all of the present language of the last sentence preceding "and it shall not be reinstated" for "Any pharmacist failing to renew his license on or before that date shall have his license revoked".

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "one hundred fifty dollars ($150)" for "one hundred dollars ($100)" in the second sentence; and substituted "not to exceed twenty-five dollars ($25.00)" for "of five dollars ($5.00)" in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

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

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

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotics or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Drugs and Narcotics § 29 et seq.

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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

For the federal Prescription Drug Marketing Act of 1987, *see* 21 U.S.C. § 301, et seq.

The 2019 amendment, effective June 14, 2019, established additional classes of licenses that are regulated by the board of pharmacy, and added contact lens sellers and medicinal gas sellers to the list of licensees that are required to pay a fee not more than two hundred dollars for each license application or renewal; in the section heading, deleted "wholesale drug distribution business licensure" and added "classes of licenses"; in Subsection A, after "pharmacy or who engages in", deleted "a wholesale drug distribution business" and added "an activity", and after "in this state", added "requiring licensure by the board"; in Subsection B, Paragraph B(13), after "pharmacy license", added "outsourcing facility license, repackager license", and added Paragraphs B(20) through B(22); in Subsection C, Paragraph C(2), after "drug warehouse", added "outsourcing facility, repackager or third-party logistics provider", and in Paragraph C(4), added "contact lens sellers; or medicinal gas sellers"; and in Subsection G, after "(10) through", deleted "(19)" and added "(22)".

The 2007 amendment, effective June 15, 2007, amended Subsection C to lower the fee for issuance or renewal of a wholesale drug distributor, drug manufacturer or drug warehouse license to $1,000; and amended Subsection F to require all applicants for licenses to submit a criminal background check and financial history except manufacturers who distribute their own products and who are licensed or approved by the food and drug administration.

The 2005 amendment, effective June 17, 2005, added Subsections B(17) through (19) to provide for the issuance of license to contact lens sellers, medical gas repackagers and medical gas sellers respectively; provided for the biennial renewal of licenses in Subsection C; and the expiration date of licenses shall be set by the board.

The 2004 amendment, effective May 19, 2004, amended Subsection C to delete "wholesale drug distributor", "drug manufacturer" and "drug warehouse" from Paragraph (1), added new Paragraph (2) and redesignated Paragraphs (2) and (3) as Paragraphs (3) and (4) and amended Subsection K to delete the fifty dollar registration fee and add "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."

The 2001 amendment, effective June 15, 2001, added Paragraphs (14), (15) and (16) in Paragraph B, substituted "hospital pharmacy, drug research facility or drug warehouse" for "or hospital pharmacy" in Paragraph C(1); inserted "or a returned drugs processor business" in Paragraph C(2); substituted the specific references to Subsection B for "new retail pharmacy, hospital pharmacy, wholesale drug distributor or drug manufacturer" in Subsections F and G, inserted "except temporary licenses provided pursuant to Subsection H of this section" in Subsection I; and in Subsection K, rewrote the second sentence which formerly read "The board may charge a fee not to exceed fifty dollars ($50.00) for registration and annual renewal."

The 1997 amendment, effective June 20, 1997, deleted "permit or" preceding "license" in two places in Subsection A; rewrote Subsection B; rewrote Subsection C; deleted "or permit" following "license" in Subsection D; deleted "permit or" preceding "license" in Subsection E; substituted "drug distributor or drug manufacturer" for "drug business or drug manufacturing" in Subsection F; designated the former undesignated last paragraph of Subsection F as Subsection G; added Subsection H and redesignated the remaining subsections accordingly; in Subsection I, deleted "and permits" following "licenses", substituted "pursuant to" for "under", deleted "or permit" following "license" in two places, and inserted "reapplication and"; in Subsection J, substituted "may" for "is authorized to", deleted "or permit" following "license" in two places, and substituted "the operation" for "such place"; and added Subsection K.

The 1993 amendment, effective July 1, 1993, added present Paragraph (11) to Subsection B, renumbering former Paragraph (11) as Paragraph (12) and making a related grammatical change; and in Paragraph (3) of Subsection C, inserted "a limited drug permit issued pursuant to the provisions of Paragraph (11) of Subsection B of this section" and substituted "Paragraph (12)" for "Paragraph (11)".

The 1992 amendment, effective May 20, 1992, inserted "wholesale" in the section heading; inserted "who engages in a wholesale" in Subsection A; rewrote Subsection B(2), which formerly read: "wholesale drug dealer's license"; added present Subsection B(3); redesignated former Subsections B(3) to B(7) as present Subsections B(4) to B(8);

added present Subsection B(9); redesignated former Subsections B(8) and B(9) as present Subsections B(10) and B(11); substituted "distributor's" for "dealer's" in the second sentence of Subsection B(11); substituted "distributor, nonresident pharmacy, pharmaceutical sales representative" for "dealer" in Subsection C(1); added the second sentence of Subsection G; substituted "department of health" for "health and environment department" several times throughout the section; and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, substituted "three hundred dollars ($300)" for "two hundred dollars ($200)" in Subsection C(1); substituted "one hundred dollars ($100)" for "fifty dollars ($50.00)" in Subsection C(2); substituted "two hundred dollars ($200)" for "one hundred dollars ($100)" in Subsections C(3) and C(4); and substituted "an inspection fee not to exceed two hundred dollars ($200)" for "a one hundred dollar ($100) inspection fee" in Subsection F(7).

Defendants did not meet the definition of "custodial care facilities," and therefore did not require a pharmacy license. — Where the board of pharmacy notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department (CYFD) licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because defendants did not meet the definition of "custodial care facilities." Defendants' purpose is to provide safe care for certain children, not medical or health care, and the children which defendants care for are not placed there for health care purposes; defendants do not retain nurses or doctors on staff, and do not provide the children with extended health care or prescribe them medications. Defendants are not "custodial care facilities" as contemplated by the Pharmacy Act, but are "community homes," as defined by CYFD regulations, which are not required to obtain a pharmacy license to operate. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

Pharmacy board exceeded its regulatory authority by expanding the statutory definition of "custodial care facility". — Where the board of pharmacy (board) notified defendants, two community care homes that provide full-time care, supervision and support to children, that they needed a pharmacy license to maintain their children, youth and families department licenses, claiming that defendants were considered "custodial care facilities" under the Pharmacy Act, §§ 61-11-1 through 61-11-29 NMSA 1978, and where defendants responded that they were not required to hold a pharmacy license because they were not "custodial care facilities," and where defendants filed a complaint in district court seeking declaratory and injunctive relief to prevent their licenses from being revoked, the district court did not abuse its discretion in granting declaratory and injunctive relief in defendants' favor, because the board acted outside

its statutory authority in defining "custodial care facility" by regulation in a manner that excessively expanded upon the legislature's definition of "custodial care facility" in the Pharmacy Act. The board's definition is therefore void. *N.M. Boys & Girls Ranch v. N.M. Bd. of Pharmacy*, 2022-NMCA-047, cert. denied.

Drug manufacturer or wholesaler is required to have separate license for that particular operation; license to operate a drugstore does not extend to manufacturing or wholesaling activities. 1955 Op. Att'y Gen. No. 55-6211.

Hospital or clinic pharmacy must be licensed and registered, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961 Op. Att'y Gen. No. 61-52.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

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

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

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

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

28 C.J.S. Drugs and Narcotics § 29 et seq.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, purported to amend this section but made no change.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, added Subsections B and D.

The 1997 amendment, effective June 20, 1997, designated the former introductory language as Subsection A; in Subsection A, redesignated former Subsections A through E as Paragraphs (1) through (5); deleted "of the pharmacy; provided that his restriction shall not apply to any person possessing only a limited license issued under Subsection

B of Section 67-9-45 NMSA 1978" following "charge" in Paragraph (1), inserted "or" in Paragraph (2), in Paragraph (3), deleted "or poisons" following "drugs", deleted "or a" preceding "pharmacist intern", and added "or pharmacy technician; in Paragraph (4), added "by himself or through any other person" at the beginning of the paragraph, deleted "or poisons" following "drugs", inserted "pharmacist intern or pharmacy technician", deleted "limited" following "holding a", substituted "pursuant to" for "under", and substituted "61-11-14 NMSA 1978" for "67-9-45 NMSA 1978"; and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 69.

Constitutionality of statute regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Constitutionality of statute regulating sale or dispensation of medicines or drugs in original package, 54 A.L.R. 744.

Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

Mistake as to chemical or product furnished or misdescription thereof by label or otherwise as basis of liability for personal injury or death resulting from combination with other chemical, 123 A.L.R. 939.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

Alteration of product after it leaves hands of manufacturer or seller as affecting liability for product-caused harm, 41 A.L.R.3d 1251.

Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-forming drug to another, 97 A.L.R.3d 528, 62 A.L.R.4th 16.

State and local administrative inspection of and administrative warrants to search pharmacies, 29 A.L.R.4th 264.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

28 C.J.S. Drugs and Narcotics § 45 et seq.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, inserted "review or" and substituted "such references and equipment as the board" for "modern prescription balances with weights, the necessary graduates, mortars and pestles, all in good condition, for compounding prescriptions, and such books and other equipment the board".

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, rewrote this section to the extent a detailed comparison is impracticable.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, rewrote the introductory language and deleted former Subsections A, B, and C, relating to the acquisition and repackaging of dangerous drugs, the receipt, possession, and storing of dangerous drugs, and the dispensing of dangerous drugs, respectively.

Employment of licensed pharmacists. — The health and environment department (now department of health) is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

61-11-18.1. 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.

ANNOTATIONS

The 2001 amendment, effective June 15, 2001, substituted "Any person licensed under Article 61, Chapter 11 NMSA 1978" for "A licensee" in the introductory language of the section; and substituted "events" for "reactions" in Subsection F.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised the pharmacy audit process, excepted certain audit findings from forming the basis for recoupment, and added a pharmacy benefits manager or its subcontractor as an auditing entity; deleted former Subsection A and redesignated former Subsections B through E as Subsections A through D, respectively; in Subsection A, Paragraph A(3), in the introductory clause, after "fraud", deleted "but such a claim" and added "and that error", in Subparagraph A(3)(a), deleted "may be subject to recoupment" and added "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", in Paragraph A(5), after "underpayment shall", deleted "not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs and recoupment of claims shall", and after "overpayment or underpayment", deleted "unless the entity demonstrates a statistically justifiable method of projection or the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy" and added "of a specific individual claim", in Paragraph A(8), after "two years", deleted "unless otherwise provided by contractual agreement", in Paragraph A(9), after "days of a month", deleted "due to the high volume of prescriptions filled during that time unless otherwise consented to by the pharmacy", deleted former Paragraph A(11) and redesignated former Paragraph A(12) as Paragraph A(11), and added new Paragraphs A(12) through A(20); in Subsection B, after "Subsection", deleted "D" and added "C"; in Subsection D, after "fraud", added "waste, abuse or"; and added Subsections E and F.

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.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, in Subsection D, appropriated amounts paid into the pharmacy fund to the board for a prescription drug program serving persons pursuant to the Medical Insurance Pool Act and deleted the former provision that the program serve persons over the age of sixty-five.

The 2007 amendment, effective June 15, 2007, amended Subsection D to provide October 1, 2005 as the applicability date for payments into the fund.

The 2004 amendment, effective May 19, 2004, added new Subsection D and redesignated Subsections D and E as Subsections E and F.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was added by the compiler and is not part of the law.

The 2019 amendment, effective June 14, 2019, authorized the board of pharmacy to deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant is guilty of a violation of the Drug Product Selection Act, the Imitation Controlled Substance Act or the Drug Precursor Act, the licensee or applicant has had a nonresident pharmacy, returned drugs processor, outsourcing facility, repackager or third-party logistics provider license or federal registration suspended or revoked, or is a manufacturer, outsourcing facility or repackager other than a pharmacy and dispenses or distributes drugs or devices directly to a patient; and in Subsection A, Paragraph A(3), added "the Drug Product Selection Act, the Imitation Controlled Substance Act", and after "Cosmetic Act", added "or the Drug Precursor Act", in Paragraph A(12), after "has had", deleted "any" and added "a nonresident pharmacy", after "wholesale drug distributor", added "returned drugs processor, outsourcing facility, repackager or third-party logistics provider", and after "license", added "or federal registration", and in Paragraph A(16), after "wholesale drug distributor", added "manufacturer, outsourcing facility or repackager".

The 1997 amendment, effective June 20, 1997, in Subsection A, deleted "certificate of" preceding "registration" in the introductory language, in Paragraph (7), substituted "licensure" for "registration" and inserted "registration as a pharmacy technician", and added Paragraphs (10) through (18) and made related stylistic changes; substituted

"license of a pharmacist or a pharmacist intern or registration of a pharmacy technician" for "license or certificate of registration of a pharmacist or a pharmacist intern"; and deleted former Subsection D, relating to minor violations of the Pharmacy Act.

Authority of the pharmacy board over violations. — Section 61-1-3L NMSA 1978 grants the board of pharmacy authority to fine pharmacist licensees up to $1,000 for any violation of the Pharmacy Act or for a violation of provisions of the board's rules and regulations for which the Pharmacy Act authorizes disciplinary action. Additionally, Section 61-1-3L NMSA 1978 grants the board authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the board lacks such disciplinary powers under the Pharmacy Act, the Uniform Licensing Act does not grant the power to impose fines. 1995 Op. Att'y Gen. No. 95-01.

Commission of crime. — Board of pharmacy has authority to revoke license of a pharmacist involved in a crime. 1958 Op. Att'y Gen. No. 58-214.

Moral turpitude. — Board of pharmacy has jurisdiction to suspend or revoke a licensee's certificate when said board determines the fact of any undesirable conduct based on moral turpitude. 1958 Op. Att'y Gen. No. 58-214.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 76.

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

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

Revocation or suspension of license or permit to practice pharmacy or operate drugstore because of improper sale or distribution of narcotic or stimulant drugs, 17 A.L.R.3d 1408.

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

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 A.L.R.5th 390.

28 C.J.S. Drugs and Narcotics § 101 et seq.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, removed the prohibition against non-pharmacists' use of certain pharmacy-related words on signs or advertisements; and in Subsection B, after "'pharmacy'", deleted "'apothecary', 'apothecary shop'", and after "combination of these", deleted "or any other words of similar import or by an insignia or device" throughout.

The 1997 amendment, effective June 20, 1997, deleted "or poison" following "drug" in Subsection A; in Subsection B, substituted "of these" for "thereof", deleted the Paragraph (1) designation, deleted former Paragraph (2), which read: "the business being conducted on the licensed premises constantly employs, on a regular basis, a pharmacist", and made related stylistic changes; in Subsection C, deleted "or a" following "except a pharmacist" and inserted "or pharmacy technician"; in Subsection D, substituted "possessing a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978" for "possessing a limited license issued under Subsection B of Section 67-9-45 NMSA 1978", inserted "apothecary shop" and substituted "of these" for "thereof".

Constitutionality of former law. — Former law requiring employment of registered pharmacist in business using such terms as "pharmacist," "pharmacy" or "drugstore" was not monopolistic, discriminatory nor an illegal restraint of trade. *State v. Collins*, 1956-NMSC-046, 61 N.M. 184, 297 P.2d 325.

Miners' hospital of New Mexico may not sell or dispense medicine and drugs while operating as a public institution which is not licensed as required. 1957 Op. Att'y Gen. No. 57-254.

Hospital or clinic pharmacy must be licensed and registered, and, except in limited situations, prescriptions must be filled by a registered pharmacist. 1961 Op. Att'y Gen. No. 61-52.

Drug dispensing clinic to be licensed. — A drug dispensing clinic which orders dangerous drugs and controlled substances from state wholesale outlets, and which is operated by a private firm on contract to the federal government, must be licensed by the board of pharmacy and must obtain board registration if required. 1976 Op. Att'y Gen. No. 76-19.

The health and environment department is not required to employ licensed pharmacists to dispense drugs to patients at the department's public health clinics. 1988 Op. Att'y Gen. No. 88-76.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d 290, Drugs, Narcotics and Poisons § 75.

Failure of druggist or apothecary to procure license as affecting validity of contracts, 30 A.L.R. 862, 42 A.L.R. 1226, 118 A.L.R. 646.

Constitutionality of statutes regulating sale of poisons, drugs or medicines, 54 A.L.R. 730.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

28 C.J.S. Drugs and Narcotics § 29 et seq.

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.

ANNOTATIONS

The 2016 amendment, effective March 4, 2016, provided an exemption in the Pharmacy Act for the possession, storage, dispensing, distribution, administration or prescribing of an opioid antagonist in accordance with the provisions of Section 24-23-1 NMSA 1978; in Subsection A, after "practicing", deleted "his" and added "the licensed practitioner's"; in Subsection B, Paragraph (1), after "immediate needs of", deleted "his" and added "the licensed practitioner's", and added Paragraph (3).

Laws 2016, ch. 45, § 3 and Laws 2016, ch. 47, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2016, ch. 47, § 3. *See* 12-1-8 NMSA 1978.

The 1997 amendment, effective June 20, 1997, deleted "or poisons" following "drugs" in Subsection A.

Physicians providing drugs to patients. — A physician may keep a supply of drugs without obtaining a pharmacy license, but only to provide to his or her patients. The physician may provide drugs to his or her patients only in connection with his or her treatment of them. A physician may assess a reasonable charge for his services, including a charge for the drugs he or she supplies to his or her patients. 1988 Op. Att'y Gen. No. 88-49.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 69.

"Proprietary or patent medicine," what substances or commodities are within provision as to, in statute or ordinance, 76 A.L.R. 1207.

61-11-23. Construction of laws relating to drugs.

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.

ANNOTATIONS

Cross references. — For Controlled Substances Act, *see* 30-31-1 NMSA 1978 et seq.

The 1997 amendment, effective June 20, 1997, substituted "that" for "which" in Subsection A; deleted former Subsection B, which read: "The Pharmacy Act does not prevent or apply to the sale or use of economic poisons as defined under the New Mexico Economic Poisons Act of 1951"; redesignated former Subsection C as Subsection B and inserted "Device" in Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons § 36.

Construction of statutes in relation to operation of drugstore, pharmacy or chemical store, without registered pharmacist, 74 A.L.R. 1084.

Construction of provision of Uniform Narcotic Drug Act requiring a physician's prescription as a prerequisite to a pharmacist's sale of narcotics, 10 A.L.R.3d 560.

28 C.J.S. Drugs and Narcotics § 8 et seq.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, designated the former introductory language as Subsection A and redesignated former Subsections A through E as Paragraphs A(1) through A(5); in Subsection A, deleted "petty" preceding "misdemeanor" in the introductory language, deleted "certificate of registration and a" preceding "current" in Paragraph (1), substituted "pursuant to" for "under" in Paragraph (2), substituted "licensure" for "registration" in Paragraph (3), in Paragraph (4), deleted "or sell or compound poisons" following "prescriptions", deleted "or registered as a" preceding "pharmacist", and inserted "or pharmacy technician", substituted "pursuant to" for "under" in Paragraph (5); added Subsection B; and made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Construction and effect of statutes in relation to operation of drugstore, pharmacy or chemical store without a registered pharmacist, 74 A.L.R. 1084.

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

Criminal responsibility of druggist for injury in consequence of mistake, 55 A.L.R.2d 714.

Criminal liability for death resulting from unlawfully furnishing intoxicating liquor or drugs to another, 32 A.L.R.3d 589.

28 C.J.S. Drugs and Narcotics § 101 et seq.

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.

ANNOTATIONS

Cross references. — For injunctions, *see* Rules 1-065 and 1-066 NMRA.

The 1997 amendment, effective June 20, 1997, substituted "may" for "of pharmacy is hereby authorized to" and deleted "and such court shall have jurisdiction upon hearing and for good cause shown to grant" preceding "a temporary".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 25 Am. Jur. 2d Drugs, Narcotics and Poisons §§ 229, 245.

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.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of the Pharmacy Act" refers to the effective date of Laws 1969, ch. 29, which took effect July 1, 1969.

61-11-27. Transfer of funds.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "money that has" for "funds which have".

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, substituted "is" for "of Pharmacy shall be".

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 15, § 8 repealed 61-11-29 NMSA 1978, as enacted by Laws 1979, ch. 266, § 2, relating to termination of agency life, delayed repeal, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 95, § 3 made Laws 2023, ch. 95, § 2 effective July 1, 2023.

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.

ANNOTATIONS

Bracketed material. — The word "a" in Subsection C appears in the session laws, and was placed in brackets by the compiler as apparent surplusage.

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability of pharmacist who accurately fills prescription for harm resulting to user, 44 A.L.R.5th 393.

Construction and application of learned-intermediary doctrine, 57 A.L.R.5th 1.

Civil liability of pharmacist or druggist for failure to warn of potential drug interactions in use of prescription drug, 79 A.L.R.5th 409.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was insulted by the compiler and is not part of the law.

The 1999 amendment, effective June 18, 1999, added "or 'RX only'" at the end of Subsection C and deleted "of pharmacy" following "board" in Subsection F.

The 1995 amendment, effective July 1, 1995, added Subsection A, redesignated the remaining subsections accordingly, made minor stylistic changes in Subsection E, and inserted "administer" in Subsection I.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, in Subsection F, after "New Mexico medical board", deleted "and the board of osteopathic medicine".

The 2016 amendment, effective July 1, 2016, required the board of osteopathic medicine to adopt rules concerning the guidelines and protocol for osteopathic practitioners; in Subsection A, after "prescriptive authority in", deleted "his", after "shall have on file at", deleted "his" and added "the", and after "prescriptive authority that", deleted "he" and added "the practitioner"; in Subsection D, after "prescriptive authority in", deleted "his"; in Subsection F, after "Pharmacist Prescriptive Authority Act, the", added "New Mexico medical", after "board", deleted "of medical examiners" and added "and the board of osteopathic medicine", after "shall adopt", deleted "regulations" and added "rules", after "protocol for", added "their respective", after "Subsection", deleted "C" and added "D", and after "Section", deleted "2 of that act" and added "61-11B-2 NMSA 1978".

ARTICLE 12
Physical Therapy (Repealed.)

61-12-1 to 61-12-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 89, § 21 repealed 61-12-1 to 61-12-21 NMSA 1978, relating to physical therapy, effective July 1, 1997. For provisions of former sections, *see* the 1996 NMSA on *NMOneSource.com.* For present comparable provisions, *see* 61-12D-1 NMSA 1978 et seq.

Compiler's notes. — Section 61-12-21 NMSA 1978 was amended by Laws 1997, ch. 46, § 12 to extend the sunset dates of Chapter 61, Article 12 NMSA 1978. However, due to the repeal of the article by Laws 1997, ch. 89, § 21, the amendment was not set out.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-1 NMSA 1978, as enacted by Laws 1983, ch. 267, § 1, and § 1 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, added the statutory reference to the act.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-2 NMSA 1978, as enacted by Laws 1983, ch. 267, § 2, relating to definitions, and § 2 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, changed "registered occupational therapists" to "occupational therapists" and changed "certified occupational therapy assistants" to "occupational therapy assistants".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-3 NMSA 1978, as enacted by Laws 1983, ch. 267, § 3, relating to licensing provisions, and § 3 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the definition of "occupational therapy" as used in the Occupational Therapy Act; in Subsection E, after "New Mexico", added "in accordance with board rules"; in Subsection F, after "therapeutic use of", added "occupations, including", after "activities with persons", deleted "or" and added "across the life span, including", after "groups", added "populations or organizations", after the next occurrence of "to", deleted "participate" and added "enhance or enable participation, performance or function", after "roles", deleted "and situations" and added "habits and routines", after "settings", deleted "to promote", and added "Occupational therapy services are provided for habilitation, rehabilitation and the promotion of", after "psychosocial", deleted "sensory" and added "sensory-perceptual", after "contexts", added "and environments", after "engagement in", deleted "everyday life activities" and added "occupations", and after "affect", added "physical and mental"; added the language from former Subsection G to Subsection F; after "Occupational therapy", deleted "aide or technician means an unlicensed person who assists in occupational therapy, who works under direct supervision of an occupational therapist or occupational therapy assistant" and added the remainder of Subsection F; redesignated former Subsections H through M as Subsections G through L, respectively; and in Subsection G, after "who assists", deleted "an" and added "in the practice of", and after "occupational therapist", added "in accordance with board rules".

The 2005 amendment, effective July 1, 2005, deleted former Subsection C, which defined "certified occupational therapy assistant"; added the definition of "occupational therapist" in Subsection E; redefined "occupational therapy" in Subsection F; added the definition of "occupational therapy assistant" in Subsection H; and deleted former Subsection J which defined "registered occupational therapist".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 45 to 47, 58 to 62, 72.

53 C.J.S. Licenses §§ 5, 7, 30, 37 to 41, 47, 50 to 66, 82.

61-12A-4. 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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the scope of practice of occupational therapy; deleted former Subsection A, which related to strategies to direct the process of interventions, and redesignated former Subsection B as Subsection A; in Subsection A, after "affecting", added "all areas of occupation, including", after "daily living", added "rest and sleep", and after "work", added "productivity", in Paragraph A(1), after "visual", deleted "perceptual and" and added "mental", after "cognitive", deleted "functions", after the next occurrence of "and", added "pain factors and body structures, including", and after "genitourinary systems", added "and structures related to movement"; added new Subsections B and C, and redesignated former Subsection C as Paragraph C(6) and redesignated former Paragraphs C(1) through C(10) as Subparagraphs C(6)(a) through C(6)(j), respectively; in Paragraph C(6), after "performance in", deleted "activities of daily living, instrumental activities of daily living, education, work, play, leisure and social participation" and added "areas of occupation"; in Subparagraph C(6)(b), after "self-management", added "health management and maintenance", and after "community-work reintegration", added "school activities and work performance"; in Subparagraph C(6)(c), after "compensation of", deleted "physical" and added "neuromusculoskeletal, sensory-perceptual, sensory-integrative and modulation, visual, mental and", after "cognitive", deleted "neuromuscular and sensory", and after "functions", added "pain tolerance and management, developmental skills"; in Subparagraph C(6)(e), after "caregivers", added "groups, populations"; in Subparagraph C(6)(h), after "modification of", added "home, work, school and community"; in Subparagraph C(6)(i), after "training in", added "seating and positioning"; in Subparagraph C(6)(j), after "including", deleted "wheelchair", and after "management", added "of wheelchairs and other mobility devices"; added Subparagraph C(6)(k) and redesignated former Paragraphs C(11) through C(13) as Subparagraphs C(6)(l) through C(6)(n), respectively; in Subparagraph C(6)(m), after "swallowing", deleted "to enable eating and feeding performance"; added Subparagraphs C(6)(o) and C(6)(p); and added Subsection D.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-5 NMSA 1978, as amended by Laws 1989, ch. 58 § 1, relating to the board of occupational therapy practice, and § 5 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2019 amendment, effective June 14, 2019, revised the provision requiring occupational assistants or any person practicing on a provisional permit to be supervised by an occupational therapist; deleted subsection designation "A"; after "occupational therapy assistant", deleted "occupational therapy aide or technician", after "unless", deleted "such" and added "the occupational", and after "defining supervision", deleted "which definitions may include various categories such as 'close supervision', 'routine supervision' and 'general supervision'"; and deleted Subsection B.

The 2005 amendment, effective July 1, 2005, added Subsection B to describe an occupational therapy aide or technician.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-6 NMSA 1978, as enacted by Laws 1983, ch. 267, § 6, relating to powers and duties of the board, and § 6 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, deleted "certified" and "registered" as qualifications to the terms "occupational therapy assistant" and "occupational therapist" respectively.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-7 NMSA 1978, as enacted by Laws 1983, ch. 267, § 7, relating to administrative provisions of the board, and § 7 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-8 NMSA 1978, as enacted by Laws 1983, ch. 267, § 8, relating to board officers, and § 8 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, provided in Subsection B that one professional member may be an occupational therapy assistant who has been retired for no more than five years at the time of appointment.

The 2003 amendment, effective July 1, 2003, added present Subsection B and redesignated the subsequent subsections accordingly; and added "Two members shall represent the public." at the beginning of present Subsection E.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-9 NMSA 1978, as enacted by Laws 1983, ch. 267, § 9, relating to the registrar, and § 9 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for occupational therapy is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters, and required the board to remit money collected in fines to the current school fund; in Subsection A, Paragraph A(1), deleted "adopt, file, amend or repeal" and added "promulgate", after "rules", deleted "and regulations", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules", in Paragraph A(4), after "revocation of a license", added "in accordance with the Uniform Licensing Act", and in Paragraph A(7), after "collect", added "and remit", and after "Occupational Therapy Act", added "to the current school fund".

The 2003 amendment, effective July 1, 2003, deleted former Paragraph B(1), concerning hire of attorney, and redesignated the subsequent paragraphs accordingly.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-10 NMSA 1978, as enacted by Laws 1983, ch. 267, § 10, relating to issuance of license, and § 10 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2003 amendment, effective July 1, 2003, deleted former Subsection A, concerning employment and discharge; deleted the Subsection B designation; deleted "the board or" following "is an employee of" near the end of the first sentence; and deleted "and, if he is an employee, such compensation as the board may set" following "carrying out his duties" at the end of the second sentence.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-11 NMSA 1978, as enacted by Laws 1983, ch. 267, § 11, relating to suspension and revocation of license, and § 11 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2005 amendment, effective July 1, 2005, deleted the former provision in Subsection A that a license to practice shall be issued to a person who files a completed application and who submits satisfactory evidence of completion of the listed requirements; deleted references to the American occupational therapy certification board in Subsections A(1)(b) and (3); and added Subsection A(2)(a) and (b) to provide minimum time for supervised fieldwork experience.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-12 NMSA 1978, as enacted by Laws 1983, ch. 267, § 12, relating to renewal of license, and § 12 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, deleted reference to the American occupational therapy certification board and deleted reference to regulations that pertain to the practice of occupational therapy.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-13 NMSA 1978, as enacted by Laws 1983, ch. 267, § 13, relating to requirements for licensure, and § 13 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2005 amendment, effective July 1, 2005, changed "a registered occupational therapist" to "an occupational therapist".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-14 NMSA 1978, as enacted by Laws 1983, ch. 267, § 14, relating to waiver of requirements for licensure, and § 14 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by endorsement, provided that the board of examiners for occupational therapy shall issue an expedited license to a person who holds a valid, unrestricted license as an occupational therapist or an occupational therapy assistant issued by another licensing jurisdiction and is in good standing with the licensing board of that jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that if 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 to continue to be licensed in New Mexico, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "The board", deleted "may" and added "shall", after "applicant who presents a", deleted "current" and added "valid, unrestricted", after "license", deleted "in good standing", after "an occupational therapy assistant in another", deleted "state the District of Columbia or a territory of the United States that meets the requirements of Section 61-12A-11 NMSA 1978" and added the remainder of the subsection; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2005 amendment, effective July 1, 2005, changed "a registered occupational therapist" to "an occupational therapist" and changed "a certified occupational therapy assistant" to "an occupational therapy assistant".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-15 NMSA 1978, as enacted by Laws 1983, ch. 267, § 15, relating to denial of application, and § 15 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-16 NMSA 1978, as enacted by Laws 1983, ch. 267, § 16, relating to right of review, and § 16 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-17 NMSA 1978, as amended by Laws 1989, ch. 58, § 2, relating to board funds, and § 17 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-18 NMSA 1978, as enacted by Laws 1983, ch. 267, § 18, relating to powers of the board, and § 18 of that act enacted a new section, effective July 1, 1996.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-19 NMSA 1978, as enacted by Laws 1983, ch. 267, § 19, relating to license registration fees, and § 19 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 55, § 27 repealed 61-12A-20 NMSA 1978, as amended by Laws 1989, ch. 58, § 3, relating to termination of agency life, and § 20 of that act enacted a new section, effective July 1, 1996.

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the board of examiners for occupational therapy, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of examiners for occupational therapy to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination date of the board of examiners from July 1, 2005 to July 1, 2015, changed the date to which the board shall continue to operate from July 1, 2006 to July 1, 2016 and changed the effective repeal date from July 1, 2006 to July 1, 2016.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-12A-24 NMSA 1978.

Effective dates. — Laws 2019, ch. 5, § 4, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "Chapter 61, Article 12B NMSA 1978" for "This act".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, inserted the first sentence and "primary" in the second sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection D, inserted "or other person authorized by law to prescribe," in Paragraph (5), substituted "assessment and evaluation" for "diagnosis" in Paragraph (6), in Paragraph (7), deleted "of respiratory care" following "practice", substituted "department" for "board"; in Subsection E, substituted "been prepared through a formal training program" for "completed a recognized program of study", inserted "as defined by rule of the department"; in Subsection F, deleted the last sentence, which read "The respiratory care practitioner may transcribe and implement a physician's written and verbal orders pertaining to the practice of respiratory care and"; redesignated the language formerly in Subsection F beginning "'respiratory care protocols'" as Subsection G; redesignated the former Subsections G and H as Subsections H and I; in present Subsection H, substituted "an education course of study as defined by rule of the department" for "a program accredited or recognized by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education".

The 1993 amendment, effective June 18, 1993, substituted "cardiopulmonary" for "pulmonary" or "respiratory" in Paragraphs (1), (2) and (4) of Subsection D; added "and baromedical therapy" at the end of Paragraph (2) of Subsection D; inserted "and venous" near the end of Paragraph (3) of Subsection D; deleted "under the laws of New

Mexico" following "practice medicine" in Paragraph (5) of Subsection D; added current Subsection E; and redesignated former Subsections E to G as Subsections F to H.

61-12B-4. License required; exceptions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

For the federal Clinical Laboratories Improvement Act of 1967, *see* 42 U.S.C.S. § 263a.

The 2001 amendment, effective June 15, 2001, added Subsection B and redesignated the remaining subsections accordingly; in Subsection C, added the paragraph designations (1) to (4); inserted "rendered" in Paragraph (4); in present Subsection D, substituted language beginning "provided that the examining body" for "so long as the testing body offering the examination is certified by the national commission for health certifying agencies"; and in present Subsection E, substituted "pursuant to the provisions of" for "by" and "healthcare organizations" for "hospitals".

The 1993 amendment, effective June 18, 1993, in Subsection D, inserted "as amended" following "Act of 1967" and substituted "commission on accreditation" for "commission for accreditation".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31 to 33, 51 to 61, 63 to 65, 67, 68, 74 to 120, 125.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 11 to 13, 19 to 28, 35 to 52.

61-12B-5. Advisory board created. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added present Subsection B and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective June 15, 2001, inserted "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" in Paragraph A(2); deleted the last sentence of Subsection C, which read, "Three members, including at least one public member, constitute a quorum"; in Subsection D, deleted "after proper notice" following "failing" and inserted "regular and properly noticed" following "three consecutive"; and added Subsections E to H.

The 1996 amendment, effective March 5, 1996, substituted "eight" for "five" in Subsection A, "two" for "three" in Paragraph A(2) and "two" for "four" in Paragraph A(3), rewrote Subsection B, and added the last sentence in Subsection C.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "eight" for "five" in the introductory paragraph, substituted the present language of the first sentence of Paragraph (3) for "one public member who is a resident of New Mexico", and made minor stylistic changes in the second sentence of Paragraph (3); substituted the present language of Subsection B(1) for "one member for a one-year term"; and added Subsection D.

61-12B-6. Department; duties 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the advisory board of respiratory care practitioners is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in Subsection A, Paragraph A(2), after "promulgate rules", deleted "as may be necessary" and added "in accordance with the State Rules Act", and in Paragraph A(4), after "the provisions of that act", added "in accordance with the Uniform Licensing Act"; and in Subsection B, Paragraph B(4), after "promulgate rules", deleted "pursuant to" and added "to implement provisions of", and after "that act", added "as it relates to respiratory care practitioners".

The 2001 amendment, effective June 15, 2001, rewrote Paragraph A(2) which formerly read "collect and review data and statistics with respect to respiratory care, treatment, services or facilities for the purpose of granting, suspending or revoking respiratory care licenses"; in Paragraph A(3) inserted "and renew" following "issue" and "qualified" preceding "applicants"; deleted Paragraph A(5) which read "adopt rules and regulations to allow the interstate transport of patients"; in Paragraph B(1), deleted "any required" following "conduct" and inserted "as required by rules of the department"; inserted "reprimand, fine" in Paragraph B(2); and added Paragraphs B(3) to (7).

The 1993 amendment, effective June 18, 1993, in Subsection A, added Paragraph (5) and made minor stylistic changes.

61-12B-7. Licensing by training and examination. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a respiratory care practitioner; deleted Subsection C, which provided "is of good moral character"; and redesignated former Subsection D as Subsection C.

The 2001 amendment, effective June 15, 2001, deleted the former Subsection A designation and redesignated former Paragraphs A(1) to (4) as Subsections A to D; and deleted former Subsection B which read "The department, in consultation with the board, shall develop rules and regulations that describe the scope and qualifications for expanded practice roles of respiratory care practitioners".

The 1993 amendment, effective June 18, 1993, substituted the language beginning "the national board" for "a nationally recognized organization for respiratory care" at the end of Paragraph (2) of Subsection A and added Subsection B.

61-12B-8. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the advisory board of respiratory care practitioners shall issue an expedited license without examination to a person who holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, deleted "he 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 Respiratory Care Act" and added "the applicant holds a valid, unrestricted license in another licensing jurisdiction and is in good standing with that licensing jurisdiction"; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2001 amendment, effective June 15, 2001, substituted "that he is currently licensed in good standing" for "of current licensure", substituted "jurisdiction" for "state", and inserted "for licensure that are" following "standards".

The 1993 amendment, effective June 18, 1993, inserted "training and" in the section heading; deleted the subsection designation "A" at the beginning of the section; substituted "required by the Respiratory Care Act" for "determined by the department" at the end of the section; and deleted former Subsection B, pertaining to the conditions for issuance of a license to a practitioner without the education and examination requirements.

61-12B-9. Other licensing provisions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsections A and B, deleted "and regulations" following "rules"; in Subsection B, deleted "for the purposes of the Respiratory Care Act" following "defining"; deleted "and shall be displayed in the licensee's place of business" from the end of Subsection C; in Subsection E, substituted "kept on file" for "displayed" and inserted "or temporary permittee's"; and rewrote Subsection F, which formerly read "Licenses, including initial licenses, shall be issued for a period of two years".

The 1996 amendment, effective March 5, 1996, made stylistic changes in Subsections A and D, added "and shall be displayed in the licensee's place of business" at the end of Subsection B, and substituted "displayed" for "kept on file" in Subsection E.

The 1993 amendment, effective June 18, 1993, in Subsection E, inserted "copy of the" preceding "valid" and substituted "kept on file" for "displayed".

61-12B-10. Licensure; date required. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, rewrote the section which formerly read "No person shall be required to be licensed as a respiratory care practitioner until October 1, 1984."

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective June 15, 2001, in Subsection A, inserted "by rule" preceding "establish"; and in Subsection C, deleted "biennial" preceding "license".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, rewrote Subsection A, which formerly read "The superintendent may refuse to issue or may suspend or revoke any license in accordance with the procedures set forth in the Uniform Licensing Act for the following causes:"; rewrote Paragraph A(1), which formerly read "fraud in the procurement of any license under that act"; rewrote Paragraph A(2) which formerly read "imposition of any disciplinary action upon a person by an agency of another state which regulates respiratory care but not to exceed the period or extent of such action"; substituted "pursuant to provisions of the Respiratory Care Act" for "under that act" in Paragraph A(4); rewrote Paragraph A(6), which formerly read "gross negligence in practice as a respiratory care practitioner"; inserted "as defined by rules set forth by the department" in Paragraph A(8); added Paragraphs A(10) to A(16); rewrote Subsection B, which formerly provided for applications for reinstatement one year after a license was revoked, and gave the superintendent the power to accept, reject or require an examination of the applicant; and deleted Subsection C, regarding the reinstatement of licenses revoked due to the abuse of drugs.

The 1993 amendment, effective June 18, 1993, added Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund" for "All money unused at the end of the fiscal year shall remain in the respiratory care fund for use in accordance with the provisions of the Respiratory Care Act" in Subsection C.

The 1989 amendment, effective June 16, 1989, in Subsection C, substituted all of the language of the first sentence beginning with "expended" for "subject to the order of the superintendent and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act".

61-12B-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2001, ch. 188, § 17 repealed 61-12B-14 NMSA 1978, as enacted by Laws 1984, ch. 103, § 14, regarding the creation of rules to implement the Respiratory Care Act, effective June 15, 2001. For provisions of former section, *see* the 2000 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

The 2001 amendment, effective June 15, 2001, in Subsection A, substituted "A person who violates a" for "Violation of any" and inserted "guilty of" and "and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978".

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the advisory board of respiratory care practitioners, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the advisory board of respiratory care practitioners to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "advisory board of respiratory care practitioners" for "board" and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004" and inserted "according to the provisions of the Respiratory Care Act" in the last sentence.

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997" in the first sentence, and substituted "2004" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

The 1989 amendment, effective June 16, 1989, substituted "1995" for "1989" in the first sentence, and substituted "1996" for "1990" in the second and third sentences.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12B-16 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, purported to amend this section but made no change.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 12C NMSA 1978" for "Sections 1 through 25 of this act".

61-12C-2. Legislative purpose. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, rewrote the section, which formerly read: "The legislature recognizes that the practice of massage therapy is potentially dangerous to the public. Therefore, it is necessary and in the interest of public health, safety and welfare to regulate the practice of massage therapy".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, defined "continuing education" and "continuation education provider" as used in the Massage Therapy Practice Act; added new Subsections B and C, and redesignated former Subsections B through F as Subsections D through H, respectively.

The 1999 amendment, effective July 1, 1999, deleted former Subsection A which defined "approved massage therapy school"; redesignated former Subsections B and C as Subsections A and B; added Subsection C; in Subsection D, substituted "a person licensed to practice massage therapy pursuant to the Massage Therapy Practice Act" for "a person who uses the title of massage therapist, is licensed pursuant to the Massage Therapy Practice Act and administers massage therapy for compensation"; in Subsection E, substituted the language beginning "primarily comfort and relief of pain" for "as defined in Section 61-12C-4 NMSA 1978"; deleted former Subsection F, which defined "jurisprudence"; and added Subsection F.

The 1993 amendment, effective June 18, 1993, substituted "registered with" for "certified by" in Subsection A; inserted "therapy" preceding "for compensation" in Subsection D; substituted "Section 61-12C-4 NMSA 1978" for "Section 4 of the Massage Therapy Practice Act" in Subsection E; added Subsection F; and made minor stylistic changes throughout the section.

61-12C-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 240, § 20 repealed 61-12C-4 NMSA 1978, as enacted by Laws 1991, ch. 147, § 4, defining "massage therapy", effective July 1, 1999. For

provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-12C-3 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; and deleted former Subsections C and D, which related to massage therapy instructors and massage therapy schools.

The 1999 amendment, effective July 1, 1999, in Subsection A, substituted "A person shall not provide or offer to provide massage therapy for compensation unless that person is a massage therapist" for "it is unlawful for any person to practice massage therapy for compensation to offer services as a massage therapist for compensation or to purport to be a massage therapist unless that person possesses a license to practice massage therapy under the provisions of the Massage Therapy Practice Act and"; in Subsection B, substituted "unless he is a massage therapist" for "unless he is licensed to practice massage therapy pursuant to the provisions of the Massage Therapy Practice Act"; and added Subsections C and D.

The 1993 amendment, effective June 18, 1993, deleted "licensed" preceding "massage" in two places in Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; and deleted former Subsection C, which related to visiting massage therapy instructors, and redesignated former Subsection D as Subsection C.

The 2007 amendment, effective June 15, 2007, exempted practitioners of polarity, Trager approach, Feldenkrais method, craniosacral therapy, Rolfing structural integration, reiki, ortho-bionomy or ch’i gung and other practitioners of healing modalities who do not manipulate the soft tissues.

61-12C-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 240, § 20 repealed 61-12C-6 NMSA 1978, as enacted by Laws 1991, ch. 147, § 6, relating to exemptions, effective July 1, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "massage therapy board" for "board of massage therapy" in Subsection A; in Subsection B, inserted "to terms of four years" in the second sentence, inserted the third sentence, substituted "massage therapy practice and who are actively engaged in the practice of massage therapy during their tenure as members" for "massage therapy practice in New Mexico" in the fourth sentence, deleted the former sixth sentence relating to the initial three professional members appointed to the board and their licensure, and made stylistic changes; in Subsection C, deleted "until the expiration of the term for which appointed or" preceding "until a successor"; in Subsection D, substituted "two full consecutive terms" for "two consecutive terms"; in Subsection E, rewrote the third sentence, which formerly read "Meetings shall be called by the chairman or upon the written request of three or more members of the board", and substituted "is a public member" for "must be a public member" in the fourth sentence.

The 1993 amendment, effective June 18, 1993, inserted "each" in the third sentence of Subsection B; deleted former Subsection C, pertaining to initial appointments to the board; redesignated former Subsections D to F as Subsections C to E; added "and qualified" at the end of Subsection C; and added current Subsection F.

61-12C-8. Board 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, expanded the powers of the massage therapy board, including the power to establish minimum curricula for massage therapy schools, to provide for the issuance and revocation of massage therapy school registrations, and to establish instructor qualifications within the minimum curricula, and removed references to "massage therapy instructors"; and added new Subsections D and E, and redesignated former Subsections D through L as Subsections F through N, respectively.

The 1999 amendment, effective July 1, 1999, substituted "Board powers" for "Board duties" in the section heading, and "The board has the power to" for "The board shall have the power to" in the first sentence; in Subsection D, substituted "any licensee or registrant" for "any licensee"; in Subsection E, inserted "as a massage therapist or registration as a massage therapy instructor"; rewrote Subsections F to H; in Subsection J, substituted "a code of professional conduct" for "a code of ethics and"; in Subsection K, deleted "The board may issue investigation subpoenas prior to the issuance of a notice of contemplated action as set forth in Section 61-1-4 NMSA 1978"; and added Subsection L.

The 1993 amendment, effective June 18, 1993, inserted "have the power to" in the introductory paragraph; added current Subsection A; redesignated former Subsections A to I as Subsections B to J; substituted "provide for the evaluation of" for "evaluate" at the beginning and inserted "or registration" in Subsection B; substituted "provide for the issuance of" for "issue", inserted "or registrations" and substituted "who meet" for "to meet" in Subsection C; substituted "provide for the inspection" for "inspect" and inserted "of" in Subsection D; substituted "provide for the investigation of" for "investigate" in Subsection G; inserted "or registration" in Subsection H; deleted former Subsections J and K, pertaining to establishment of policies regarding continuing education and the adoption of rules and regulations; added current Subsection K; and made a minor stylistic change.

61-12C-9. Requirements for licensure 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; in the heading, deleted "and registration of massage therapy instructors"; and deleted Subsection B, which related to the registration of massage therapy instructors, and redesignated former Subsection C as Subsection B.

The 1999 amendment, effective July 1, 1999, substituted "licensure of massage therapists and registration of massage therapy instructors" for "licensure registered instructors" in the section heading; rewrote Subsection A(3); deleted former Subsections A(4) and B; redesignated former Subsection C as Subsection B; deleted former Subsection B(2); and added Subsections B(2) and C.

The 1993 amendment, effective June 18, 1993, deleted "and registered with the commission on higher education" following "by the board" and substituted "shall provide" for "must provide" in Paragraph (3) of Subsection A; deleted "satisfactorily" preceding "passing" and "and a practical" preceding "examination" in Paragraph (4) of Subsection A; substituted the current provision of Subsection B for "Every massage therapy instructor must be currently licensed as a massage therapist"; designated the former second sentence of Subsection B as current Subsection C and deleted "documents a minimum of two years of experience in his area of instruction" at the end of the introductory paragraph and added Paragraphs (1) and (2) therein.

61-12C-10. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, substituted "Requirements for registration of massage therapy schools" for "Approved massage therapy schools registration" in the section heading; in Subsection A, substituted "procedures for the registration" for "procedures for approval", and added "and rules adopted by the board pursuant to that act"; in Subsection B, deleted "approved training programs and for approved" in the first sentence, deleted "At a minimum, approved" and substituted "Massage therapy schools shall provide an educational program that includes a minimum of six hundred fifty hours of training and" for "At a minimum, approved massage therapy schools shall provide training programs that include a minimum of three hundred hours of training. This"; and deleted former Subsections C and D, relating to board establishment of a list of approved massage therapy schools and annual registration with the board.

The 1993 amendment, effective June 18, 1993, added current Subsection A; redesignated former Subsection A as Subsection B and inserted the paragraph designations in that subsection; rewrote the first and second sentences of former Subsection B as present Subsection C and designated the final sentence of former Subsection B as Subsection D; and deleted "and the commission on higher education" at the end of Subsection D.

61-12C-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added "or registration" to the section heading.

The 1993 amendment, effective June 18, 1993, inserted "or registration" and "holder's" and deleted "of the licensee" at the end.

61-12C-12. Assignability of license. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "or registration".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, in Subsection A, after "required examinations", added "for licensure as a massage therapist".

The 1999 amendment, effective July 1, 1999, in Subsection A, deleted the former first and second sentences, substituted "the required examinations and the procedures for taking and retaking them" for "the examination application deadline and other rules relating to taking and retaking licensure examinations"; and deleted Subsections C and D, relating to testing in the practical application of massage therapy techniques, anonymous grading, and retention of records of the exams.

The 1993 amendment, effective June 18, 1993, deleted "Written and practical" at the beginning of Subsection A; substituted "examinations" for "written exam" at the end of Subsection B; substituted "may be tested" for "shall be tested" in Subsection C; deleted former Subsection D, pertaining to compliance with state and federal equal opportunity guidelines; and designated former Subsection E as Subsection D.

61-12C-14. Temporary license. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 1999 amendment, effective July 1, 1999, in Subsection B, deleted the last sentence which read "If approved, the applicant shall be issued the initial license for the remainder of the year".

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "Provisional Licensure"; substituted "temporary license" for "provisional license" throughout the section; deleted former Subsection B, which read "Each recipient of a provisional license shall practice under the direct supervision of a licensed massage therapist"; redesignated former Subsections C and D as Subsections B and C; added "and a license is issued or denied" at the end of the first sentence and added the second sentence of Subsection B; and substituted "failed the examinations" for "failed either the written or the practical examination" at the end of Subsection C.

61-12C-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 173, § 22 repealed 61-12C-15 NMSA 1978, as enacted by Laws 1991, ch. 147, § 15, concerning licensure without examination, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure by credentials, provided that the massage therapy board shall issue an expedited license to an applicant who holds a valid, unrestricted license to practice massage therapy in another licensing jurisdiction and pays required fees, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, provided that 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; deleted "After successful completion of jurisprudence examination"; in Subsection A, after "The board", changed "may" to "shall", after "license an", added "out-of-state", after "applicant", deleted "provided that he" and added "in accordance with Section 61-1-31.1 NMSA 1978 if the applicant", and

after "possesses a valid", added "unrestricted", and deleted "issued by the appropriate examining board under the laws of any other state or territory of the United States, the District of Columbia or any foreign nation and has met educational and examination requirements equal to or exceeding those established pursuant to the Massage Therapy Practice Act", and added the remainder of the subsection; and added Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1999 amendment, effective July 1, 1999, substituted "has met educational and examination requirements equal to" for "has met educational requirements substantially equivalent to".

The 1993 amendment, effective June 18, 1993, added "After successful completion of a jurisprudence examination" at the beginning of the section; deleted "without examination" following "applicant"; inserted "or registration"; and substituted "and has met educational requirements" for "that, in the judgment of the board, has requirements".

61-12C-17. License 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors" and "massage therapy schools", and expanded continuing education provisions; in the heading, deleted "or registration"; in Subsection A, added "Except as provided for initial licensure in Subsection B of Section 61-12C-9 NMSA 1978"; and added new Subsections C through E, and redesignated former Subsections C and D as Subsections F and G, respectively.

The 1999 amendment, effective July 1, 1999, in Subsection A, inserted "and massage therapy instructor registrations", and substituted "Expiration dates shall be established by rule" for "on a date established by rule"; deleted former Subsections B and D, relating to submitting renewal applications on forms provided by the board and renewal by massage therapy schools, redesignated former Subsection C as Subsection B; in Subsection B, substituted "renewal of massage therapy licenses" for "renewal of licenses"; added Subsection C, and redesignated former Subsection E as Subsection D.

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "License Renewal"; added current Subsection A and added Subsections C and D; redesignated former Subsections A and B as Subsections B and E; deleted "biennially" following "license" in the first sentence and substituted "rule" for "regulations" in the second sentence of Subsection B; and substituted "each license or registration holder" for "each licensee", "renewal period" for "licensing period", and "a license or registration" for "licenses" in Subsection E.

61-12C-18. Inactive status. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors"; in Subsection A, after "massage therapy license", deleted "or massage therapy instructor registration"; and in Subsection B, after "inactive status the", deleted "massage therapist or massage therapy instructor" and added "licensee".

The 1999 amendment, effective July 1, 1999, in Subsection A, added "A massage therapy license or massage therapy instructor registration" to the first sentence; in Subsection B, substituted "the license or registration was placed on inactive status the massage therapist or massage therapy instructor" for "the license was placed on inactive status the massage therapist".

61-12C-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 173, § 22 repealed 61-12C-19 NMSA 1978, as enacted by Laws 1991, ch. 147, § 19, concerning massage therapy schools, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 1999 amendment, effective July 1, 1999, deleted Subsections B through I, deleted the Subsection A designation, in the first sentence inserted "by rule", "examinations", "inspections", and "penalties, reactivation", deleted "placement on inactive service" following "renewals", and added "but no single fee shall exceed five hundred dollars ($500)" at the end, and added the second sentence.

The 1993 amendment, effective June 18, 1993, substituted "registrations, renewals" for "renewal of licenses" in Subsection A; inserted "licensure" in Subsection B; deleted "first year" following "initial" in Subsection C; substituted "four hundred dollars ($400)" for "two hundred dollars ($200)" in Subsection D; deleted "annually" at the end of Subsection H; and added Subsection I.

61-12C-21. Advertising. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors".

The 1999 amendment, effective July 1, 1999, substituted "A massage therapist, massage therapist instructor or massage therapy school licensed or registered pursuant to the Massage Therapy Practice Act" for "Each massage therapist, licensed under the provisions of the Massage Therapy Practice Act", "a 'massage therapist', 'registered massage therapy instructor' or 'registered massage therapy school'" for "a license or registration", and "massage therapy services as established by board rule" for "massage therapy services appearing in any newspaper, airwave transmission, telephone directory or other advertising medium".

The 1993 amendment, effective June 18, 1993, inserted "or registration, and the designation as either a license or registration," and inserted "therapy" preceding "services".

61-12C-22. Power of county or municipality to regulate massage. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, changed the criminal standard for the massage therapy board to impose disciplinary action on a massage therapy licensee, required the board to establish guidelines for the disposition of disciplinary cases; in the heading, deleted "denial"; in Paragraph B(5), after "convicted of", deleted "any offense punishable by incarceration in a state penitentiary or federal prison" and added "a crime that substantially relates to the qualifications, functions or duties of a massage therapist"; and in Subsection D, after "The board", deleted "may" and added "shall".

The 1999 amendment, effective July 1, 1999, rewrote Subsection A; added the present Subsection B designation and redesignated former Subsections B through D as Subsections C through E; substituted "The board has authority to take an action set forth in Section 61-1-3 NMSA 1978" for "set forth in the Uniform Licensing Act"; in Subsection B(1), deleted "in procuring or attempting to procure a license or registration provided for in the Massage Therapy Practice Act" following "deceit or misrepresentation"; in Subsection B(5), substituted "has been convicted of any offense punishable by incarceration in a state penitentiary or federal prison" for "has been convicted or found guilty, regardless of adjudication, of a crime, in any jurisdiction, that directly relates to the practice of massage therapy or to the ability to practice massage therapy. Any plea of nolo contendere shall be considered a conviction for the purposes of this section", and added the last sentence; and added Subsection B(12).

The 1993 amendment, effective June 18, 1993, in Subsection A, inserted "impose a fine not to exceed one thousand dollars ($1,000), place on probation as specified by the board or" near the beginning, "temporary license or registration" near the middle and "registrant" near the end of the introductory paragraph, substituted "a license" for "any license" in Paragraph (1), inserted "or registration" following "license" in Paragraphs (1) to (3) and (11), added "or a violation of the code of ethics" at the end of Paragraph (6), inserted "or unregistered" in Paragraph (9), inserted "or registrant" near the middle and substituted the language beginning "conviction shall" for "the juridiction making such revocation, suspension or denial shall be conclusive evidence thereof" at the end of Paragraph (11); rewrote Subsection C, which made violation of the Massage Therapy Practice Act a petty misdemeanor and provided a fine not exceeding $500 or imprisonment up to six months in jail or both; and added Subsection D.

61-12C-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

Emergency clauses. — Laws 2019, ch. 40, § 15 contained an emergency clause and was approved February 4, 2019.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12C-28 NMSA 1978.

The 2019 amendment, effective February 4, 2019, removed references to "massage therapy instructors" and "massage therapy school"; in Subsection B, after "massage therapy services", deleted "instruction as a massage therapy instructor or instruction as a massage therapy school"; and in Subsection C, after "massage therapist", deleted "massage therapy instructor".

The 1999 amendment, effective July 1, 1999, inserted "Offenses; criminal" in the section heading, and rewrote the section, which formerly read: "Any person who violates any provision of the Massage Therapy Practice Act is guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed one thousand dollars ($1,000) or imprisonment for a period not to exceed one year or both".

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the massage therapy board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the massage therapy board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "massage therapy board" for "board of massage therapy" and substituted "2005" for "1999" in the first sentence; substituted "the Massage Therapy Practice Act" for "Chapter 61, Article 12C NMSA 1978"and substituted "2006" for "2000" in the second sentence; and substituted "2006, Chapter 61, Article 12C" for "2000, Article 12C of" in the last sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 31, 50.

Licensing and regulation of practice of physical therapy, 8 A.L.R.5th 825.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 7, 12.

61-12D-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

Cross references. — For transfer from physical therapists' licensing board, *see* 61-12D-19 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

Cross references. — For effect of rules by prior board, *see* 61-12D-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the physical therapy board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in Subsection B, after "Physical Therapy Act", deleted "including taking disciplinary action"; in Subsection C, after "may", deleted "adopt, file, amend or repeal" and added "promulgate", after "rules", deleted "and regulations", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules"; and added a new Subsection K and redesignated former Subsections K through M as Subsections L through N, respectively.

The 2003 amendment, effective July 1, 2003, deleted former Subsections I and J, concerning employment of director and personnel and hire of an attorney, and redesignated the subsequent subsections accordingly.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a physical therapist and physical therapist assistant, provided for an expedited license for physical therapists or physical therapist assistants who have a valid unrestricted license from another United States licensing jurisdiction, and revised the definition of "licensed health care provider", as used in this section; in the section heading, added "licensure from foreign schools; temporary licenses; reinstatement"; in Subsection A, deleted former Paragraph A(1), which provided "be of good moral character", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3), respectively; in Subsection B, after "those required in", deleted "Paragraphs (1), (3) and (4) of", and deleted former Paragraph B(5), which related to English proficiency, and redesignated former Paragraph B(6) as Paragraph B(5); in Subsection E, deleted former Paragraph E(1), which provided "be of good moral character", and redesignated former Paragraphs E(2) and E(3) as Paragraphs E(1) and E(2), respectively, and deleted former Paragraph E(4); in Subsection H, after "shall issue", deleted "a" and added "an expedited", after "United States", added "licensing", and after "jurisdiction", deleted "and who meets all requirements for licensure in New Mexico"; and in Subsection P, Paragraph P(1), after "a", deleted "physician" and added "medical doctor or an osteopathic physician", deleted former Paragraph P(2) and redesignated former Paragraphs P(3) through P(10) as Paragraphs P(2) through P(9), respectively.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, removed proof of legal authorization to reside and seek employment in the United States or its territories as a requirement for licensure as a physical therapist, and made technical amendments; in Subsection B, deleted Paragraph B(4) and redesignated former Paragraphs B(5) through B(7) as Paragraphs B(4) through B(6), respectively, in Subsection D, after "Paragraphs (1), (2)", changed "(5)" to "(4)", and after the next occurrence of "and", changed "(7)" to "(6)"; and in Subsection P, Paragraph P(2), after "pursuant to", deleted "Chapter 61, Article 10 NMSA 1978" and added "the Osteopathic Medicine Act".

The 2015 amendment, effective June 19, 2015, removed the requirement of a prior primary care medical diagnosis prior to physical therapy treatment, required a physical therapist to refer a patient to the patient's licensed health care provider upon certain conditions, and defined "licensed health care provider"; in Paragraph (1) of Subsection B, after "evidence that", deleted "his" and added "the applicant's"; in Paragraph (2) of Subsection B, after "provide evidence that", deleted "he" and added "the applicant"; in Paragraph (5) of Subsection B, after "have", deleted "his" and added "the applicant's"; in Paragraph (6) of Subsection B, after "English is not", deleted "his" and added "the applicant's"; in Subsection I, after "the Physical", deleted "Therapist" and added "Therapy"; in Subsection K, after "Act shall renew", deleted "his" and added "the physical therapist's or physical therapist assistant's", and after "fails to renew", deleted "his" and added "the person's"; and deleted former Subsection O and added new Subsections O and P.

Continuing education. — Absent authorization by the legislature, physical therapist licensing board could not require continuing education as a prerequisite for licensure renewal. 1975 Op. Att'y Gen. No. 75-40.

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

"Supervision". — Term "immediate personal supervision," as used in this section, calls for close, direct supervision by a licensed practitioner of the healing arts. 1957 Op. Att'y Gen. No. 57-316 (rendered under prior law).

Holding self out as physical therapist. — Even without an appropriate title or set of initials, an individual could still be publicly professing to be a physical therapist. 1957 Op. Att'y Gen. No. 57-316.

Masseur. — Masseur who merely massaged other persons without professing to do so to relieve disease or pain did not come within the provisions of former licensing act, but when he held himself as being able to heal or cure diseases, he was subject to prosecution. 1941 Op. Att'y Gen. No. 41-3956; 1950 Op. Att'y Gen. No. 50-5275.

Violation of act. — While unlicensed individual might not be guilty of unprofessional conduct since he works for physicians on a prescription basis, his want of a license plus lack of knowledge of his activities by the orthopedic surgeon under whose control he ostensibly works, and lack of close, direct and personal supervision of such activities by any licensed practitioner, clearly indicates a lack of compliance with this act. 1957 Op. Att'y Gen. No. 57-316.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the physical therapy board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the physical therapy board to July 1, 2021, and the repeal date to July 1, 2022.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

ARTICLE 12E
Naprapathic Practice (Repealed.)

61-12E-1. Repealed.

History: Laws 2003, ch. 60, § 1; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-1 NMSA 1978, as enacted by Laws 2003, ch. 60, § 1, relating to the short title of the Naprapathic Practice Act, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-12D-17 NMSA 1978.

61-12E-2. Repealed.

History: Laws 2003, ch. 60, § 2; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-2 NMSA 1978, as enacted by Laws 2003, ch. 60, § 2, relating to definitions, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-3. Repealed.

History: Laws 2003, ch. 60, § 3; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-3 NMSA 1978, as enacted by Laws 2003, ch. 60, § 3, relating to licensure, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-4. Repealed.

History: Laws 2003, ch. 60, § 4; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-4 NMSA 1978, as enacted by Laws 2003, ch. 60, § 4, relating to practice of naprapathy, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-5. Repealed.

History: Laws 2003, ch. 60, § 5; 2009, ch. 176, § 1; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-5 NMSA 1978, as enacted by Laws 2003, ch. 60, § 5, relating to education and professional qualifications, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-6. Repealed.

History: Laws 2003, ch. 60, § 6; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-6 NMSA 1978, as enacted by Laws 2003, ch. 60, § 6, relating to license applications, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-7. Repealed.

History: Laws 2003, ch. 60, § 7; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-7 NMSA 1978, as enacted by Laws 2003, ch. 60, § 7, relating to designation as naprapath, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-8. Repealed.

History: Laws 2003, ch. 60, § 8; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-8 NMSA 1978, as enacted by Laws 2003, ch. 60, § 8, relating to license display, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-9. Repealed.

History: Laws 2003, ch. 60, § 9; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-9 NMSA 1978, as enacted by Laws 2003, ch. 60, § 9, relating to the naprapathic practice board, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-10. Repealed.

History: Laws 2003, ch. 60, § 10; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-10 NMSA 1978, as enacted by Laws 2003, ch. 60, § 10, relating to duties of the board, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-11. Repealed.

History: Laws 2003, ch. 60, § 11; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-11 NMSA 1978, as enacted by Laws 2003, ch. 60, § 11, relating to license renewal, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-12. Repealed.

History: Laws 2003, ch. 60, § 12; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-12 NMSA 1978, as enacted by Laws 2003, ch. 60, § 12, relating to license fees, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-13. Repealed.

History: Laws 2003, ch. 60, § 13; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-13 NMSA 1978, as enacted by Laws 2003, ch. 60, § 13, relating to the naprapathy fund, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-14. Repealed.

History: Laws 2003, ch. 60, § 14; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-14 NMSA 1978, as enacted by Laws 2003, ch. 60, § 14, relating to administrative hearings, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-15. Repealed.

History: Laws 2003, ch. 60, § 15; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-15 NMSA 1978, as enacted by Laws 2003, ch. 60, § 15, relating to offenses and criminal penalties, effective July 1,

2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-16. Repealed.

History: Laws 2003, ch. 60, § 16; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-16 NMSA 1978, as enacted by Laws 2003, ch. 60, § 16, relating to violations of act and civil penalties, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

61-12E-17. Repealed.

History: Laws 2003, ch. 60, § 17; repealed by Laws 2011, ch. 31, § 16.

ANNOTATIONS

Repeals. — Laws 2011, ch. 31, § 16 repealed 61-12E-17 NMSA 1978, as enacted by Laws 2003, ch. 60, § 17, relating to termination of agency life, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, Paragraph A(2), added "except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

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.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 31, § 17 made Laws 2011, ch. 31, §§ 4 through 14, the Naprapathic Practice Act, effective July 1, 2011.

Temporary provisions. — Laws 2011, ch. 31, § 15, provided:

A. On July 1, 2011, all functions, appropriations, money, records, furniture, equipment and other property of the naprapathic practice board shall be transferred to the New Mexico medical board.

B. On the effective date of this act, contractual obligations of the naprapathic practice board are binding on the New Mexico medical board.

C. On the effective date of this act, all references in law to the naprapathic practice board shall be deemed to be references in law to the New Mexico medical board.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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 orificial 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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection B, Paragraph B(2), added "except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, removed a reference to the Osteopathic Medicine Act; and in Subsection A, Paragraph A(1), after "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, after "Medical Practice Act", deleted "or the Osteopathic Medicine Act".

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 244 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Nursing Home Administrators Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 61, Article 13 NMSA 1978".

Law reviews. — For article, "Heart of Stone: What is Revealed About the Attitude of Compassionate Conservatives Toward Nursing Home Practices, Tort Reform, and Noneconomic Damages", see 35 N.M.L. Rev. 337 (2005).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Licensing and regulation of nursing or rest homes, 53 A.L.R.4th 689.

Liability of nursing home for violating statutory duty to notify third party concerning patient's medical condition, 46 A.L.R.5th 821.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, made stylistic changes in Subsection B, and substituted "facility by the public health division of the department of health" for "home by the health and social services department" and deleted "extended care facilities" before "skilled nursing home facilities" in Subsection C.

Intermediate care facility for mentally retarded properly licensed by the health and social services department (now health care authority department) as an intermediate care facility is not a nursing home as defined by this section; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums § 3.

7 C.J.S. Asylums § 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Bracketed material. — The bracketed word "Administrators" was inserted by the compiler and is not part of the law.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Cross references. — For the Uniform Licensing Act, *see* 61-1-1 NMSA 1978 et seq.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall consist" for "consisting" following "nursing home administrators" near the beginning of Subsection A.

The 1997 amendment, effective June 20, 1997, rewrote the section to such an extent that a detailed comparison would be impracticable.

The 1993 amendment, effective June 18, 1993, deleted the former third and fourth sentences of Subsection B, which related to the qualifications of the three members of the board initially appointed as nursing home or hospital administrators.

The 1991 amendment, effective June 14, 1991, deleted "of examiners" following "Board" in the section heading; in Subsection A, substituted "created the" for "created a state" and "seven members" for "five members" in the first sentence, substituted "one member" for "two members" and added "and three members shall be from the public" at the end of the second sentence and made related stylistic changes; in Subsection B, deleted the former first sentence relating to appointment of members of the original board, divided the former second sentence into two sentences and rewrote the provision which read "Thereafter all appointments to the board shall be for a term of three years or less so that the term of each member expires on June 30 in the third year after his appointment", substituted "three members" for "four members" in the fourth and fifth sentences, substituted "health services division of the health and environment department" for "health facilities service division of the health and social services department" in the fifth sentence and made related and minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Asylums § 5.

61-13-4.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1991, ch. 189, § 25 repealed 61-13-4.1 NMSA 1978, as enacted by Laws 1978, ch. 206, § 2, relating to lay membership, effective June 14, 1991. For provisions of former section, *see* the 1990 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Quorum. — Four members of the board of nursing home administrators is a quorum. 1989 Op. Att'y Gen. No. 89-08.

The expiration of a board member's term of office or a member's resignation does not create a corporeal "vacancy". Until successors are appointed who duly qualify for office, the current six members continue to serve in office, and accordingly, the quorum requirement remains at four. 1989 Op. Att'y Gen. No. 89-08.

61-13-6. Duties of the board. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of nursing home administrators is required to follow the provisions of the State Rules Act when promulgating rules; in the introductory clause, deleted "it is the duty of", and after "The board", deleted "to" and added "shall"; and in Subsection A, deleted "formulate, adopt and regularly revise such" and added "promulgate", and after "rules", deleted "and regulations not inconsistent with law as may be necessary" and added "in accordance with the State Rules Act".

The 2003 amendment, effective July 1, 2003, deleted former Subsection E, employment of personnel, and redesignated former Subsection F as present Subsection E.

The 1993 amendment, effective June 18, 1993, made a stylistic change in the introductory language and in Subsection A, and rewrote Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 C.J.S. Asylums § 5.

61-13-7. Compensation of board members. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Cross references. — For age of majority, *see* 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2022 amendment, effective May 18, 2022, revised qualifications for licensure as a nursing home administrator; and deleted former Subsection A, which provided "is of

good moral character", and redesignated former Subsections B through E as Subsections A through D, respectively.

The 1997 amendment, effective June 20, 1997, deleted the subsection designation "A" at the beginning of the section; redesignated former Paragraphs (1) through (5) as Subsections A through E; and inserted "including a criminal records check," in the introductory paragraph.

The 1993 amendment, effective June 18, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 40A Am. Jur. 2d Hospitals and Asylums §§ 5, 6; 51 Am. Jur. 2d Licenses and Permits § 4.

7 C.J.S. Asylums § 7; 53 C.J.S. Licenses §§ 34, 39.

61-13-9. Educational programs. (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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, deleted "Provisional license" from the beginning of the section heading; deleted former Subsection A, which provided for the issuance of a provisional license, expiring June 20, 1972, to certain applicants; and rewrote former Subsection B as present Subsection A, renumbering former Subsection C as present Subsection B.

61-13-10. Licensure by examinations by board. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure without examination, provided that the board of nursing home administrators shall issue an expedited license to an out-of-state applicant in accordance with Section 61-1-31.1 NMSA 1978 within thirty days after the applicant files an application with the

required fees and demonstrates that the applicant holds a valid, unrestricted license and is in good standing with the licensing board in another licensing jurisdiction, provided that 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "Expedited"; in Subsection A, after "The board shall issue", deleted "a nursing home administrator's" and added "an expedited", after "license", deleted "temporary or regular", and deleted "to any person who holds a nursing home administrator's license current and in good standing in another jurisdiction; provided that the board finds that the standards of licensure in the other jurisdiction are at least the substantial equivalent of those prevailing in this state and that the applicant meets the qualifications of the Nursing Home Administrators Act", and added the remainder of the subsection; and added Subsection B.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment, effective June 20, 1997, inserted "temporary or regular," near the beginning of the section.

The 1993 amendment, effective June 18, 1993, substituted "nursing home administrator's license current and in good standing, in" for "current license as a nursing home administrator from".

61-13-12. License and renewal fees; board expenditures. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "shall" for "may", deleted "or applicants for annual renewal" following "administrators", substituted "two hundred fifty dollars ($250)" for "one hundred twenty-five dollars ($125.00)", and substituted "two hundred dollars ($200)" for "fifty dollars ($50.00)".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 39 to 41.

53 C.J.S. Licenses §§ 64 to 73.

61-13-13. Refusal, suspension or revocation of license. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Cross references. — For Mental Health and Developmental Disabilities Code, *see* 43-1-1 NMSA 1978 et seq.

The 1997 amendment, effective June 20, 1997, inserted "or renew" in the introductory paragraph and Subsection A; rewrote the introductory paragraph of Subsection G; and made stylistic changes.

The 1993 amendment, effective June 18, 1993, added Subsection G and made related grammatical changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

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

53 C.J.S. Licenses §§ 50 to 53.

61-13-14. Penalties. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Cross references. — For penalties for misdemeanors, *see* 31-19-1 NMSA 1978.

Intermediate care facility for mentally retarded properly licensed by the health and social services (now human services) department as an intermediate care facility is not a nursing home as defined by Section 61-13-2C NMSA 1978; its administrator is not, therefore, required to be licensed as a nursing home administrator. 1988 Op. Att'y Gen. No. 88-48.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 72.

53 C.J.S. Licenses §§ 82 to 84.

61-13-15. Injunctive proceedings. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Cross references. — For injunctions, *see* Rules 1-065 and 1-066 NMRA.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 70.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-13-17 NMSA 1978.

Severability. — Laws 1970, ch. 61, § 16 provided for the severability of the Nursing Home Administrators Act if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38.

53 C.J.S. Licenses §§ 35, 36.

61-13-17. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of nursing; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997", substituted "2006" for "1998", and substituted "July 1, 2004, Chapter 61, Article 13 NMSA 1978" for "July 1, 1998 Article 13 of Chapter 61, NMSA 1978".

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

ARTICLE 14
Veterinary Medicine

61-14-1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2011 amendment, effective June 17, 2011, changed the statutory reference to the act.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statutes or regulations relating to practice of veterinary medicine, 8 A.L.R.4th 223.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

61-14-2. Definitions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, defined "animal shelter", "euthanasia", "euthanasia agency", and "sheltering committee" as used in the Veterinary Practice Act; added new Subsections B through D and redesignated former Subsections B through I as Subsections E through L, respectively; and added a new Subsection M and redesignated former Subsections J and K as Subsections N and O, respectively.

The 1993 amendment, effective June 18, 1993, rewrote Subsection C; substituted "veterinary medicine" for "veterinary examiners" in Subsection F; added Subsections I to K; and made minor stylistic changes in Paragraph (3) of Subsection B and Subsection G.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 1.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 2, 5.

61-14-3. Criminal offender's character evaluation. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "shall" for "must" in the second sentence in Subsection A, deleted "in New Mexico" following "licensed veterinarians" in the second sentence in Subsection B, inserted "after proper notice" in Subsection F, and made minor stylistic changes throughout the section.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A, which formerly read "The 'board of veterinary examiners' is created. The board shall consist of seven members" and rewrote Subsection C to the extent that a detailed comparison is impracticable.

The 1991 amendment, effective June 14, 1991, substituted "seven members" for "six members" in Subsection A; in the second sentence in Subsection B, substituted "Two members" for "One member" and "veterinarians or" for "a veterinarian nor shall such public member"; rewrote Subsection C; and made a minor stylistic change in Subsection F.

Costs of hearings. — Per diem and mileage costs of board members to attend a disciplinary hearing cannot be assessed as costs against the veterinarian who is disciplined. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947, *aff'g in part, rev'g in part*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Effective dates. — Laws 1999, ch. 243 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 18, 1999, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of veterinary medicine is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection A, after "revoke licenses", added "in accordance with the Uniform Licensing Act"; in Subsection D, after "found in violation", added "in accordance with the Uniform Licensing Act"; and in Subsection F, added "in accordance with the State Rules Act".

The 2017 amendment, effective July 1, 2018, provided additional duties for the board of veterinary medicine; in Subsection F, replaced each occurrence of "regulations" with "rules"; in Subsection I, after "adopt", deleted "regulations" and added "rules"; and added new Subsections K and L.

Temporary provisions. — Laws 2017, ch. 44, § 15 provided that on July 1, 2018:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the animal sheltering board shall be transferred to the board of veterinary medicine;

B. all contracts of the animal sheltering board shall be binding and effective on the board of veterinary medicine; and

C. all references in law to the animal sheltering board shall be deemed to be references to the board of veterinary medicine.

The 1999 amendment, effective June 18, 1999, deleted "annually" following "establish" in Subsection C, and rewrote Subsection J, which formerly read "adopt regulations for

the inspection and operation of facilities in accordance with recognized standards for the practice of veterinary medicine as a condition for licensure".

The 1995 amendment, effective June 16, 1995, added Subsection J and made minor stylistic changes in Subsections H and I.

The 1993 amendment, effective June 18, 1993, substituted "persons" for "licensed veterinarians" in Subsection D and substituted "education requirements as a condition for license renewal" for "educational requirements for veterinarians as a condition for the license renewal" in Subsection I.

Licensing duties not usurped by regulation and licensing department. — Neither the Regulation and Licensing Department Act, Sections 9-16-1 to 9-16-13 NMSA 1978, nor any rules and regulations that it has promulgated pursuant to that act, supersede the specific statutory powers and licensing duties that the legislature has given to the board of veterinary examiners pursuant to this article: The regulation and licensing department is to provide general administrative services to the board. 1987 Op. Att'y Gen. No. 87-58.

61-14-5.1. Impaired veterinarian. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote Subsections A and B to the extent that a detailed comparison is impracticable.

61-14-7. Duties of the veterinary technician examining committee. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2020 amendment, effective July 1, 2020, established a household income level for assistance for dog and cat spaying and neutering from the animal care and facility fund; in Subsection B, after "dog and cat", deleted "sterilization" and added "spaying and neutering", and after "animal care and facility fund", added "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".

Temporary provisions. — Laws 2017, ch. 44, § 14 provided that animal sheltering board members serving as of July 1, 2018, shall continue to serve on the animal sheltering committee for a period of at least one year.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Cross references. — For the Uniform Licensing Act, *see* 61-1-1 NMSA 1978 et seq.

For age of majority, *see* 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in Subsection A, Paragraph A(2), after "the board and", added "except as provided in Section 61-1-34 NMSA 1978".

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "person" for "veterinarian" in the introductory paragraph, deleted former Paragraph (2), which read "is a citizen of the United States or an applicant for citizenship; and", and redesignated former Paragraph (3) as Paragraph (2), making a related grammatical change; and in Subsection B, deleted "or, if the applicant is eligible for license without examination, it shall forthwith grant him a license" at the end of the first sentence and deleted "or to receive a license without examination" preceding "the board" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 3.

Failure to procure license as affecting recovery for services, 30 A.L.R. 900, 42 A.L.R. 1226, 118 A.L.R. 646.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

61-14-9. Examination. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 4.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 20, 23.

61-14-10. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2023 amendment, effective July 1, 2023, struck provisions related to license by endorsement, added provisions related to expedited licensure, and clarified language in the section; in the section heading, deleted "License by endorsement" and added "Expedited and temporary licenses"; deleted former Subsections A through C and added new Subsections A through C; in Subsection D, Paragraph D(2), after "territory", added "of the United States, the", and deleted "or commonwealth of the United States provided that" and added "of Columbia or a foreign country"; and deleted former Subparagraph D(2)(a) and former subparagraph designation "(b)", and after "issued to any one", deleted "individual" and added "veterinarian".

The 2022 amendment, effective May 18, 2022, authorized the board of veterinary medicine to issue temporary permits to practice veterinary medicine to certain nonresident veterinarians employed by or contracted with the state, a municipality or a county to provide veterinary services at nationally accredited zoos or aquariums located in New Mexico; and in Subsection D, Subparagraph D(2)(a), added "except as otherwise provided in Subparagraph (b) of this paragraph", and after "no more than two", added "sixty-day", and added Subparagraph D(2)(b).

The 1995 amendment, effective June 16, 1995, deleted "the privilege of obtaining" following "examination" in Subsection D, inserted "a graduate veterinarian and" following "applicant is" in Paragraph (1) of Subsection D, added Subparagraph D(1)(b), redesignated former Subparagraph D(1)(b) as Subparagraph D(1)(c), and made a minor stylistic change in Subparagraph D(1)(a).

The 1993 amendment, effective June 18, 1993, rewrote the section heading, which formerly read "License without examination"; in Subsection A, added "Pursuant to its regulations" at the beginning, inserted "except an examination on state laws and other

state and federal regulations related to the practice of veterinary medicine", and deleted former Paragraph (2), which read "within the three years next prior to filing his application, successfully completed the examination conducted by the national board of veterinary examiners"; in Subsections A and B, made minor stylistic changes; and added Subsections D and E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 4.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 19, 20, 23.

61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted "of veterinary medicine" following "board" in Subsections A and C and in the first sentence of Subsection D; deleted "of fifty dollars ($50.00)" following "pay a fee" in Subsection C; deleted the former second sentence of Subsection C, pertaining to enrollment on a roster of veterinary technicians; and deleted "in amounts not to exceed twenty dollars ($20.00)" following "by the board" in the second sentence of Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

61-14-12. License, permit and registration renewal. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, after "renewal fee", added "except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2018, made technical changes to the section; in Subsection A, after "licenses, permits and registrations", added "issued pursuant to the Veterinary Practice Act"; in Subsection B, after "license, registration or permit", added "issued pursuant to the Veterinary Practice Act"; in Subsection C, after "the person's license", added "issued pursuant to the Veterinary Practice Act", after "during the time period", deleted "his" and added "in which the person's", after "license", deleted "to practice in New Mexico was", and after "lapsed", deleted "his" and added "the person's"; in Subsection D, after "time period", deleted "his" and added "in which the person's", after "license", deleted "to practice in New Mexico was" and added "issued pursuant to the Veterinary Practice Act", and after "at the discretion of the board, have", deleted "his" and added "the person's"; and in Subsection E, after "any period when", deleted "he" and added "the veterinarian".

The 1995 amendment, effective June 16, 1995, in Subsection B, added "Except as provided in Subsections C and D of this section" at the beginning, inserted "and late fees" following "renewal fees", and substituted "shall" for "must" in the last sentence; added Subsections C and D; and redesignated former Subsection C as Subsection E.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "expire on December 31 each year and" following "registrations" and "annual" preceding "renewal" in the first sentence and substituted "thirty days prior to expiration" for "December 1 each year", deleted "on December 31" following "expire", and made stylistic changes in the second sentence; and in Subsection C, substituted "for the duration of a national emergency" for "not to exceed three years or for the duration of a national emergency, whichever is longer" at the end.

61-14-13. Denial, suspension or revocation of license. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Cross references. — For appeal of final decisions by agencies to district court, *see* 39-3-1.1 NMSA 1978.

The 1999 amendment, effective June 18, 1999, rewrote the introductory language to Subsection A, which formerly read "The board may place a licensee on probation; impose on a licensee an administrative penalty in an amount not to exceed two thousand five hundred dollars ($2,500); reprimand a licensee; deny, suspend for a definite period or revoke a license, certificate or permit of a licensee; or take any other

reasonable action as established by the board if the board determines after receiving a complaint and providing notice and a hearing pursuant to the Uniform Licensing Act that a licensee"; added Subsections A(22) and B; and redesignated former Subsection B as Subsection C.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective June 16, 1995, inserted "facility permit" preceding "regulations" in Paragraph (8) of Subsection A, and substituted "pursuant to provisions of" for "under" in Paragraph (12) of Subsection A and in Subsection B.

The 1993 amendment, effective June 18, 1993, in Subsection A, rewrote the introductory paragraph and Paragraph (9); added "or manifest incapacity" at the end of Paragraph (2); inserted "dishonesty" at the beginning of Paragraph (5); inserted "or permit" near the end of Paragraph (11); and added Paragraphs (13) to (21); in Subsection B, inserted "certificate or permit" near the beginning; and deleted former Subsection C, which listed the grounds for denial or suspension of registration or denial or revocation of any certificate of qualification.

Section is not too vague to enable establishment by board of reasonable guidelines for revocation or suspension of license. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Board need not specify acts deemed unprofessional by rule or regulation, as these acts usually reflect general standards of ethics and practice which are adhered to in a profession. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Presence at hearing. — Absent evidence of prejudice or bias on part of board, fact that one member was not present for part of suspension hearing, while he was attempting to locate a witness, was excusable. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Ordinary negligence. — The board of veterinary medicine cannot sanction its licensees for acts of ordinary negligence committed in a single episode of treatment. The phrase "other malpractice" does not include a single episode of ordinary negligence. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'g in part, rev'g in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 5.

Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers §§ 35 to 42, 53 to 57.

61-14-14. Exemptions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, removed employees of local governments from the exemption provisions of the Veterinary Practice Act; in Subsection A, after "employees of federal", added "or", and after "state", deleted "or local"; in Subsection D, deleted "any" and added "a"; in Subsection E, deleted "any" and

added "a", and after "selling at", deleted "his" and added "the merchant's or manufacturer's"; in Subsection F, after "owner of the animal", deleted "his" and added "and the owner's"; and in Subsection G, after "veterinary school performing", deleted "his" and added "the member's".

The 1999 amendment, effective June 18, 1999, deleted former Subsections J and K, relating to persons who artificially inseminate or diagnose pregnancy, and acts performed by veterinary technicians under the direct supervision of a licensed or license-exempt veterinarian, respectively.

The 1993 amendment, effective June 18, 1993, substituted "a valid permit issued by the board" for "written consent of the New Mexico livestock board" at the end of Subsection J; substituted "under the direct supervision of a licensed or license-exempt" for "at the direction of and under the supervision of a licensed" in the introductory paragraph of Subsection K; deleted "at the direction of and under the supervision of a licensed veterinarian" following "performed" in Paragraph (2) of Subsection K; and made minor stylistic changes in Subsections I and K.

State personnel board may not require New Mexico license for veterinarians in addition to what the veterinarian statutes indicate as acceptable qualifications; however, the board can require qualifications, other than licensure in the state, of its professional employees. 1974 Op. Att'y Gen. No. 74-20.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

70 C.J.S. Physicians, Surgeons, and other Health-Care Providers § 13.

61-14-15. Persons previously licensed. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of statutes or regulations governing practice of veterinary medicine, 8 A.L.R.4th 223.

61-14-16. Responsibility. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 1995 amendment, effective June 16, 1995, deleted the former last sentence which read "No veterinarian may have under his supervision more than two currently registered veterinarian technicians."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 8.

Veterinarian's liability for malpractice, 71 A.L.R.4th 811.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 83 to 86.

61-14-17. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

Repeals. — Laws 1993, ch. 163, § 13 repealed former 61-14-17 NMSA 1978, as enacted by Laws 1967, ch. 62, § 12, concerning qualifications for permits, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 2017 amendment, effective July 1, 2018, provided additional penalties for practicing veterinary medicine without a license; added new subsection designation "A."; in Subsection A, after "misdemeanor", added "punishable pursuant to Section 31-19-1 NMSA 1978", after "for", deleted "any" and added "a", and after "a license entitling", deleted "him" and added "the person"; and added Subsection B.

The 1999 amendment, effective June 18, 1999, rewrote the section which formerly read: "It is a misdemeanor for any person to engage in the practice of veterinary medicine in this state unless he is a licensed veterinarian".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14-20 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "violation" for "violating without regard to any criminal provisions of the Veterinary Practice Act" in the second sentence, and added the last two sentences.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 78 Am. Jur. 2d Veterinarians § 6.

61-14-20. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed "July 1, 2023" to "July 1, 2029" and changed "July 1, 2024" to "July 1, 2030".

The 2017 amendment, effective July 1, 2017, changed "July 1, 2017" to "July 1, 2023", changed "July 1, 2018" to "July 1, 2024", and added "and Chapter 77, Article 1B".

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1993 amendment, effective June 18, 1993, substituted "medicine" for "examiners" in the first sentence and made a minor stylistic change in the second sentence.

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

ARTICLE 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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 9 repeals former 61-14A-1 NMSA 1978, as enacted by Laws 1981, ch. 62, § 1, and enacted the above section, effective June 18, 1993.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

For freedom of choice in selection of doctor of oriental medicine, *see* 59A-32-22 NMSA 1978.

For prohibition of discrimination against oriental medical doctors, *see* 59A-47-28.2 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "Chapter 61, Article 14A" for "Sections 61-14A-1 through 61-14A-21".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Regulation of practice of acupuncture, 17 A.L.R.4th 964.

61-14A-2. Purpose.

In the interest of the public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of acupuncture and oriental medicine, it is necessary to provide laws and regulations to govern the practice of acupuncture and oriental medicine. The primary responsibility and obligation of the board of acupuncture and oriental medicine is to protect the public.

History: 1978 Comp., § 61-14A-2, enacted by Laws 1993, ch. 158, § 10.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 10 repealed former 61-14A-2 NMSA 1978, as amended by Laws 1989, ch. 96, § 4, defining certain terms, and enacted the above section, effective June 18, 1993.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 11 repealed former 61-14A-3 NMSA 1978, as enacted by Laws 1981, ch. 62, § 3, relating to the requirement of a license, and enacted the above section, effective June 18, 1993.

The 2007 amendment, effective June 15, 2007, defined "techniques of oriental medicine" to include prescribing, administering, combining or providing medicines, including natural medicines and cosmetics as defined in the New Mexico Drug, Device and Cosmetic Act and nonprescription drugs as defined in the Pharmacy Act and the prescribing, administering and providing devices as defined in the New Mexico Drug, Device and Cosmetic Act.

The 2001 amendment, effective July 1, 2001, in Subsection F, substituted "health care practitioner" for "health care professional"; and inserted "initiates referrals to other health care practitioners and maintains the continuity of care when appropriate" at the end of the subsection.

The 2000 amendment, effective May 17, 2000, in Subsection A, inserted "surgical" and deleted "human" preceding "body"; substituted "function" for "functioning of the person" in Subsections A and E; deleted Subsection C, which read "'department' means the regulation and licensing department" and redesignated the remaining subsections accordingly; substituted "a person's health" for "an individual's health" in Subsection F; inserted "natural substances, protomorphogens, live cell products, gerovital" in Subsection G(2); inserted "biological products, including" in the beginning of Subsection G(4); in Subsection G(5), inserted "or controlled substances", "or the Controlled Substances Act", and "extended or expanded" in the introductory paragraph; added Subsection G(5)(d) through (g) and (i), deleted former G(5)(e) which read "topical

application of naturally occurring hormones" and redesignated the remaining subsections accordingly; added "or controlled substances; and" to the end of Subsection G(5)(j); and added Subsection H.

The 1997 amendment, effective June 20, 1997, in Subsection A, inserted "and removed from" following "inserted into" and "devices" following "other" near the beginning, rewrote Subsection D, deleted "as defined in Subsection G of this section" following "prescribe" in Subsection F, added Subsection G and redesignated the following subsection accordingly, in Subsection H designated the existing language as Paragraphs H(1) and H(2), in Paragraph H(1), deleted "but are not limited to" following "include" near the beginning, and inserted "other physical medicine modalities and therapeutic procedures" following the first semicolon, rewrote the language in Paragraph H(2), and added Paragraphs H(3) through H(5), and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 3, 42.

61-14A-4. License required.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 12 repealed former 61-14A-4 NMSA 1978, as enacted by Laws 1981, ch. 62, § 4, relating to exemptions, and enacted the above section, effective June 18, 1993.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 31, 132.

61-14A-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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, deleted Subsection H to eliminate the provision for renewal of registration of doctors of oriental medicine who are registered to supervise certified auricular detoxification specialists and eliminates the fee for renewal of the registration.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 13 repealed former 61-14A-5 NMSA 1978, as enacted by Laws 1981, ch. 62, § 5, relating to criminal offender's character evaluation, and enacted the above section, effective June 18, 1993.

The 1997 amendment, effective June 20, 1997, substituted "pursuant to provisions" for "under" in the first sentence, and in the last sentence, deleted "Effective July 1, 1994" at the beginning, and inserted "other" following "of all" and "provisions of" following "pursuant to".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 14 repealed former 61-14A-6 NMSA 1978, as enacted by Laws 1981, ch. 62, § 6, creating the board and relating to officers and compensation, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, in Subsection A, substituted "licenses," for "license as defined by each profession's New Mexico licensing statutes" and substituted "term acupuncture" for "terms acupuncture"; deleted former Subsection B allowing students to practice acupuncture and oriental medicine under supervision, and redesignated former Subsection C as present Subsection B; in present Subsection B, substituted "person" for "individual" in the introductory language, substituted "a person" for "any individual" and substituted "a church" for "any church" in Paragraph (5).

The 1997 amendment, effective June 20, 1997, inserted "approved by the board" near the beginning of Subsection B, substituted "if" for "provided that" in Subsection C, and added Paragraph C(7).

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 15 repealed former 61-14A-7 NMSA 1978, as enacted by Laws 1981, ch. 62, § 7, relating to powers and duties of the board, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, inserted "regulation and licensing" in Subsection B; in Subsection C, changed the requirements of board members by adding a residency requirement and increasing the years of practice required immediately before appointment, added "No board member shall be the owner, principal, or director of an institute offering educational programs in acupuncture and oriental medicine", and rewrote the distribution of board members; in Subsection D, substituted "A board member" for "When a board member's term has expired, he" and inserted "and qualified".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 16 repealed former 61-14A-8 NMSA 1978, as enacted by Laws 1981, ch. 62, § 8, relating to funds and fees, and enacted the above section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, clarified that the board of acupuncture and oriental medicine is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, deleted "adopt, publish and file" and added "promulgate", and after "in accordance with", deleted "Uniform Licensing Act and"; and in Subsection G, added "in accordance with the Uniform Licensing Act", and

redesignated former Subsections H through J as Paragraphs G(2) through G(4), respectively, in Paragraph G(3), after "revocation of a license", deleted "in accordance with the Uniform Licensing Act", and in Paragraph G(4), after "extern programs", deleted "in accordance with the provisions of the Uniform Licensing Act".

The 2003 amendment, effective July 1, 2003, deleted "In addition to any authority provided by law" at the beginning of the first paragraph; and deleted former Subsection G, concerning employment of professional and clerical assistance, and redesignated the subsequent subsections accordingly.

The 2000 amendment, effective May 17, 2000, deleted "and regulations" following "rules" in Subsections B and K, substituted "facilities of approved educational programs, extern programs" for "institutes, tutorships" in Subsection E, substituted "such professional and clerical assistance as necessary to carry out the powers and duties of the board" for "agents and attorneys" in Subsection G, and inserted "or grant, deny, renew, suspend or revoke approvals of educational programs and extern programs" in Subsection K.

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, redefined the scope of certificates for expanded practice and prescriptive authority and added Subsections B through D.

Regulation of fees. — Where the board adopted regulations that imposed new application and renewal fees for expanded practice certification and an administrative

fee for approval of an expanded practice educational program; the application and renewal fees did not exceed the maximum set forth in the statutory schedule of application and renewal fees; the board discussed the reasons for the additional fees at a hearing before the regulations were adopted; and the new administrative fee covered the additional administrative work required to certify and approve continuing education for expanded practice, the new fees were authorized by statute and the board adequately justified its reasons for imposing the fees. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Regulation of the administration of substances. — The board has the power to determine how the substances listed in Section 61-14A-8.1 NMSA 1978 are to be administered. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Authority to define terms. — Where the board issued new regulations that redefined the terms "bioidentical hormones" and "natural substances" which had different definitions in prior regulations; the terms were not defined in the Acupuncture and Oriental Medicine Practice Act; the new definitions were developed by a joint committee of the board and the Board of Pharmacy; the definitions were informed by the Endocrine Society's characterization of such hormones; and the Attorney General advised the board that the prior definition of "natural substances" was so broad as to render the term meaningless, the board had the statutory authority to define the terms and the definitions were based on substantial evidence. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

Regulations were lawful. — Where the board held hearings on proposed regulations to establish a formulary to guide extended prescriptive authority, admitted numerous exhibits, heard testimony and public comment, sifted through testimony and records and weighed evidence compiled during the prior three-year period when the board considered the same regulations, and issued more than one hundred findings of fact and conclusions of law before the board adopted the regulations, the board's adoption of the regulations was not willful, arbitrary, or capricious. *Wilcox v. N.M. Bd. of Acupuncture & Oriental Med.*, 2012-NMCA-106, 288 P.3d 902.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 17 repealed former 61-14A-9 NMSA 1978, as enacted by Laws 1981, ch. 62, § 9, relating to qualifications for examination, and enacted the above section, effective June 18, 1993.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 18 repealed former 61-14A-10 NMSA 1978, as enacted by Laws 1981, ch. 62, § 10, relating to requirements for institutes and private tutorships, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, redesignated the existing provisions of the section as Subsection A with Paragraphs (1) to (6) and added Subsection B.

The 1997 amendment, effective June 20, 1997, in Subsection E, substituted "a board-approved" for "an" following "completed" and deleted "and regulations" following "rules", and in Subsection F, substituted "the examinations" for "an examination".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 19 repealed former 61-14A-11 NMSA 1978, as enacted by Laws 1981, ch. 62, § 11, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, deleted "by rule" following "shall establish" in Subsections B and C; in Subsection D, deleted "by rule" following "approve" and added the proviso that examinations may be used as a basis for licensure; in Subsection E, inserted "validated, objective" and substituted "covers areas that are not included in other examinations approved by the board, including" for "includes"; in Subsection F, substituted "a validated, objective practical examination that covers areas that are not included in other examinations approved by the board and that" for "a practical examination that"; and added Subsection I.

The 1997 amendment, effective June 20, 1997, added Paragraph E(4) and redesignated the following paragraph accordingly, in Subsection H, substituted "rules" for "regulations", and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 56 to 60.

61-14A-12. Requirements for temporary licensing.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 20 repealed former 61-14A-12 NMSA 1978, as enacted by Laws 1981, ch. 62, § 12, relating to reciprocal licensure requirements, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, deleted "by rule" following "establish" in Subsection A, substituted "a person" for "any person" in Subsection B, and rewrote Subsection B(1).

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 21 repealed former 61-14A-13 NMSA 1978, as enacted by Laws 1981, ch. 62, § 13, relating to continuing education, and enacted the above section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited licensure, provided that the board of acupuncture and oriental medicine shall issue a license to practice acupuncture and oriental medicine without an 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 completes an application, submits the required documentation and fee, and 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, provided that the board shall issue the expedited license within thirty days after the person files an application 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, provided that 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, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, deleted "reciprocal" and added "expedited"; redesignated former Subsections A through C as Paragraphs A(1) through A(3), respectively; in Subsection A, after "The board", deleted "may" and added "shall", after "to practice acupuncture and oriental medicine", added "without examination", and after "another", deleted "state, District or territory of the United States or foreign country" and added "licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978", and in Paragraph A(3), after "application for", deleted "reciprocal" and added "expedited"; deleted former Subsections D and E and redesignated former Subsection F as Paragraph A(4), and in Paragraph A(4), deleted "has passed" and added "passes"; and deleted former Subsections G and H and added new Subsections B and C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment, effective June 20, 1997, in Subsection E, inserted "if the board requires regular applicants to pass a practical examination" near the middle, added Subsection F, and redesignated the following subsections accordingly.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 67, 68.

61-14A-14. Approval of educational programs.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 22 repealed former 61-14A-14 NMSA 1978, as enacted by Laws 1981, ch. 62, § 14, relating to refusal, suspension or revocation of license, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, in the introductory language of Subsection A, deleted "in acupuncture and oriental medicine" preceding "to meet board approval" and inserted "as a minimum"; in Subsection A(2), substituted "nine hundred hours" for "seven hundred fifty hours"; substituted "tutors" for "a qualified private tutor" in Subsection A(3); deleted "traditional and modern acupuncture and" preceding "oriental" in Subsection A(4)(f); inserted "qi or" in Subsection A(4)(i); and rewrote the introductory language in Subsections B through G.

The 1997 amendment, effective June 20, 1997, added Subparagraph A(4)(d) and redesignated the following subparagraphs accordingly, and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 23 repealed former 61-14A-15 NMSA 1978, as enacted by Laws 1981, ch. 62, § 15, relating to penalties, and enacted the above section, effective June 18, 1993.

The 2000 amendment, effective May 17, 2000, changed the requirement that licenses be renewed biennially to annually; added "prior to the date established by the board" in Subsection A; substituted "late fee" for "fee for late license renewal" in Subsection C(3); in Subsection D, substituted "reinstatement" for "renewal", inserted "within one year of the date of renewal", and deleted "by rule" following "establish".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 158, § 24 repealed former 61-14A-16 NMSA 1978, as enacted by Laws 1987, ch. 124, § 5, providing for termination of agency life and delayed repeal, and enacted the above section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, included "expedited licensing" in the list of fees; and in Subsection B, after "application for", deleted "reciprocal" and added "expedited".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2001 amendment, effective July 1, 2001, substituted "$800" for "$500" in Subsection A; substituted "$500" for $300" in Subsection C; substituted "$700" for "$350" in Subsection D; substituted "annual" for "biennial" in Subsection E; deleted former Subsection K, which read "expired renewal of approval of an educational program. 400"; redesignated former Subsection L as K; added Subsections L, M and N; and redesignated former Subsection M as O.

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.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, in Paragraph A(3), added "as defined by board rule" at the end, substituted "promulgated" for "and regulations adopted" in Paragraph A(7), deleted "and regulations" following "rules" in Paragraph A(15), added Paragraph A(17) and Subsection D, and made a minor stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Physicians, Surgeons and Other Healers, §§ 74 to 120.

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

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 24, 35 to 42.

61-14A-18. Fund created.

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.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, provided additional penalties for engaging in acupuncture or oriental medicine without a license, directed that money collected from fines be deposited to the credit of the current school fund; added the subsection designation "A." preceding the first sentence of the section; in Subsection A, after the subsection designation, deleted "Any" and added "A", and after "who violates", deleted "any" and added "a"; and added new Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 125 to 130.

61-14A-20. Criminal Offender Employment Act.

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 15, § 8 repealed 61-14A-22 NMSA 1978, as enacted by Laws 1993, ch. 158, § 30, relating to termination of agency life, delayed repeal, effective June 16, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27, repealed 61-14B-1 NMSA 1978, as enacted by Laws 1981, ch. 249, § 1, and § 1 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 1999 amendment, effective June 18, 1999, updated statutory references.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-2 NMSA 1978, as enacted by Laws 1981, ch. 249, § 2, and Laws 1996, ch. 57, § 2 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended certain definitions and defined "bilingual-multicultural endorsement" and "certification by a national professional association" in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing

Practices Act; added new Subsection E, which defined "bilingual-multicultural endorsement", and redesignated former Subsections E and F as Subsections F and G; added new Subsection H, which defined "certification by a national professional association", and redesignated former Subsections G through V as Subsections I through X, respectively; and in Subsection J, after "working toward", deleted "a certificate of clinical competence from a nationally recognized speech-language or hearing association or the equivalent" and added "certification by a national professional association".

The 2013 amendment, effective June 14, 2013, defined "appropriate supervisor"; added Subsection B; in Subsection G, after "speech-language pathology", deleted "or audiology or both"; in Subsection H, after "speech-language pathology", deleted "or audiology or both"; and deleted former Subsection H which defined "CFY" as a person licensed to oversee clinical fellows.

The 1999 amendment, effective June 18, 1999, added present Subsection A, and redesignated former Subsections A to C as Subsections B to D; added present Subsection E, and redesignated former Subsections D to G as Subsections F to I; deleted former Subsection H, which provided a definition for "dispensing audiologist", and redesignated former Subsections I and J as Subsections J and K; deleted former Subsection K, which defined "nondispensing audiologist"; in present Subsection K, deleted "dispensing" preceding "audiologist"; added present Subsection O, and redesignated former Subsections O and P as Subsections P and R; in present Subsection P, inserted "communications" preceding "disorders of"; added present Subsection Q, redesignated former Subsection Q as Subsection S, and rewrote it; added Subsections T and U; redesignated former Subsection R as Subsection V, and in it substituted "dispenser" for "dealer or fitter".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-3 NMSA 1978, as enacted by Laws 1981, ch. 249, § 3, relating to appointment of the speech-language pathology and audiology advisory board, and § 3 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2005 amendment, effective June 17, 2005, changed "treatment" to "intervention" in Subsection B; deleted "or delivery notes" in Subsection E; and deleted former Subsection F, which provided that the services may include reporting but not interpreting data relative to client performance to teacher, family or other professionals.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

Effective dates. — Laws 2013, ch. 110 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2013, 90 days after the adjournment of the legislature.

61-14B-4. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 128, § 11 repealed 61-14B-4 NMSA 1978, as enacted by Laws 1996, ch. 57, § 4, relating to the scope of practice for nondispensing audiologists, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 61-14B-5 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-5 NMSA 1978, as enacted by Laws 1981, ch. 249, § 5, relating to licensure and regulation of speech-language pathologists or audiologists, and § 5 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, broadened the scope of practice for audiologists; in Subsection B, deleted the introductory language "The scope of practice for audiologists may include"; added Subsection F; and deleted former Subsection G, which provided that authorized the scope of practice of audiologists to be expanded to include dispensing of hearing aids.

The 1999 amendment, effective June 18, 1999, in the section heading, deleted "dispensing" preceding "audiologists"; and rewrote the section to the extent that a detailed comparison is impracticable.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-6 NMSA 1978, as enacted by Laws 1981, ch. 249, § 6, relating to persons and practices not restricted by provisions of the Speech-Language Pathology and Audiology Act, and § 6 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity and construction of state statutes regulating hearing aid fitting or sales, 96 A.L.R.3d 1030.

61-14B-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", "phoniatrist" 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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-7 NMSA 1978, as enacted by Laws 1981, ch. 249, § 7, relating to enforcement by the department of rules and regulations of the Speech-Language Pathology and Audiology Act, and § 7 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; and in Paragraph (2) of Subsection A and in Subsections B, C, and D, deleted "represent himself to be" and added "make any representation as being".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-8 NMSA 1978, as enacted by Laws 1981, ch. 249, § 8, relating to qualifications of applicants for licensure as a speech-language pathologist or audiologist, and § 8 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; in Subsection A, changed "license", "certificate" and "registration" to their plural forms; in Subsection B, changed "he" to "the person" and "state department of public education" to "public education department"; and in Subsection D, changed "he" or "his" to "the student".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-9 NMSA 1978, as enacted by Laws 1981, ch. 249, § 9, relating to special conditions for licensing of applicants to practice speech-language pathology or audiology, and § 9 of that act enacts the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, increased the number of board members; increased the number of board members who are licensed speech-language pathologists; in Subsection B, in the first sentence, after "shall consist of", deleted "ten" and added "eleven" and in the second sentence, after "Among the membership" deleted "two" and added "three".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-10 NMSA 1978, as enacted by Laws 1981, ch. 249, § 10, relating to powers and duties of the regulation and licensing department, and § 10 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed terminology; in Subsection A, in the second sentence, changed "successors are" to "the member's successor is"; in Subsection C, changed "chairman" to "chair"; and in Subsection F, changed "his" to "the member's".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-11 NMSA 1978, as enacted by Laws 1981, ch. 249, § 11, relating to disposition of funds collected under the Speech-Language Pathology and Audiology Act, and § 11 of that act enacted the above section, effective July 1, 1996.

Cross references. — For the federal Americans with Disabilities Act of 1990, *see* Titles 29, 42 and 47 of the U.S.C.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the speech-language pathology, audiology and hearing aid dispensing practices board is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, deleted "adopt" and added "promulgate", after "rules", deleted "and regulations and establish policy", and after "in accordance with the", deleted "Uniform Licensing" and added "State Rules"; in Subsection B, deleted "adopt" and added "promulgate"; and in Subsection H, deleted "adopt" and added "promulgate", and after "provide for", deleted "licensure by reciprocity, including" and added "expedited licensure and".

The 2019 amendment, effective June 14, 2019, required the speech-language pathology, audiology and hearing aid dispensing practices board to include in its code of ethics rules requiring audiologists and hearing aid dispensers to inform each prospective purchaser about hearing aid options that can provide a direct connection between the hearing aid and the assistive listening systems; and in Subsection C, after "adopt a code of ethics", added the remainder of the subsection.

The 2003 amendment, effective July 1, 2003, deleted former Subsection F, concerning hire of staff, and redesignated the subsequent subsections accordingly.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-12 NMSA 1978, as enacted by Laws 1981, ch. 249, § 12, relating to licensing of applicants in speech-language pathology and in audiology, and Laws 1996, ch. 57, § 12 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the licensure requirements for speech-language pathologists by replacing the required certification from a nationally recognized speech-language association with a "certification by a national professional association"; in Subsection A, after "certification by a", deleted "nationally recognized speech-language" and added "national professional", and after "association; and", added "either"; in Subsection B, after "currently holds", deleted "a certificate of clinical competence from a nationally recognized speech-language" and added "certification by a national professional"; and in Subsection C, after "experience requirements for", deleted "a certificate of clinical competence from a nationally recognized speech-language" and added "certification by a national professional".

The 2005 amendment, effective June 17, 2005, deleted former references to audiology; provided that a license shall be issued to a person who certifies that the applicant is not guilty of any activities listed in Section 61-14B-21 NMSA 1978; deleted former Subsection B, which required the applicant to provide evidence that the applicant certifies that the applicant is not guilty of any of the activities listed in Section 61-14B-21 NMSA 1978; deleted the provision in Subsection C that the applicant submit evidence of having completed the educational or experience requirements.

The 1999 amendment, effective June 18, 1999, deleted "nondispensing" preceding "audiologist" in the section heading and the introductory language; and in Subsection B, substituted "Section 61-14B-21 NMSA 1978" for "Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the licensure requirements for audiologists by replacing the required certification from a nationally recognized hearing association with a certification by a national professional association; in Subparagraph A(3)(a), after "requirements for certification by a", deleted "nationally recognized hearing" and added "national professional", after "board by rule;", deleted "and"; in Subparagraph A(3)(b), after "by rule", added "and"; added Subparagraph A(3)(c); in Paragraph (4) of Subsection A, deleted "provides official documentation from a nationally recognized hearing association, as determined by the board by rule", redesignated the remaining language from Paragraph (4) of Subsection A as Subparagraph A(3)(c), added "has earned certification by a national professional association", and after "Hearing Aid Dispensing Practices Act", deleted "and"; deleted Paragraph (5) of Subsection A; in Paragraph (2) of Subsection B, after "NMSA 1978", deleted "and"; in Subparagraph B(3)(a), after "2007", deleted "meets" and added "has met", after "requirements for certification by a", deleted "nationally recognized hearing" and added "national professional", after "has earned a", deleted "a certificate of clinical competence from a nationally recognized hearing" and added "certification by a national professional"; in Subparagraph B(3)(b), after "experience requirements for", deleted "a certificate of competence in audiology from a nationally recognized hearing" and added "certification by a national professional"; redesignated Subparagraph B(3)(c) as Paragraph (4) of Subsection B, and after "training experience", deleted "and"; and deleted Subparagraph B(3)(d).

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure of audiologists; in Subsection A, Paragraph (3), Subparagraph (a), at the beginning of the sentence, after "holds a", deleted "master’s degree in" and added "doctor of", after

"doctor of audiology", added "degree", after "audiology degree or", deleted "communication disorders; or", after "equivalent degree", deleted "awarded prior to January 1, 2007" and added "regardless of degree name and", after "nationally recognized", deleted "speech-language or", after "hearing association", added "as determine by the board by rule", and after "board by rule; and", deleted "currently holds a certificate of clinical competence from a nationally recognized speech-language or hearing association in the area that the applicant is seeking licensure; or", in Subparagraph (b), at the beginning of the sentence, after "has", deleted "completed the current academic, practicum and employment experience requirements for a certificate of clinical competence in audiology from a nationally recognized speech-language or hearing association and has" and after "recognized standard examination", deleted "or" and added "in audiology, if required by rule"; added Paragraphs (4) and (5); and in Subsection B, added the introductory sentence, in Paragraph (3), in Subparagraph (a), after "holds a", deleted "doctoral" and added "master's", after "degree in audiology or", added "communication disorders or an", after "equivalent degree", deleted "regardless of degree name and" and added "in audiology or communication disorders or an equivalent degree awarded prior to January 1, 2007", after "nationally recognized", deleted "speech-language or", and after "hearing association; and", added the remainder of the sentence; in Subparagraph (b), after "practicum and employment", added "experience", after "experience requirements", added "for a certificate of competency in audiology from", and after "nationally recognized", deleted "speech-language or", and added Subparagraphs (c) and (d).

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-13 NMSA 1978, as enacted by Laws 1981, ch. 249, § 13, relating to fees for speech-language pathologists or audiologists licenses, and Laws 1996, ch. 57, § 13 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2015 amendment, effective June 19, 2015, removed "audiologist" from the section of the law that provides for an endorsement to practice hearing aid dispensing; in the catchline, after "hearing aids as an", deleted "audiologist"; in the introductory sentence of the section, after "issued to a licensed", deleted "audiologist or"; and in Subsection D, after "certifies that", deleted "he" and added "the otolaryngologist".

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4; 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 144.

Practicing medicine, surgery, dentistry, optometry, podiatry or other healing arts without license as a separate or continuing offense, 99 A.L.R.2d 654.

53 C.J.S. Licenses § 34.

61-14B-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, specified that each applicant for a bilingual-multicultural endorsement must submit satisfactory evidence that the applicant is eligible for and in the process of obtaining a license to practice as a speech-language pathologist and required applicants to meet requirements in at least one of the listed subsections; in Paragraph (1) of Subsection A, after "obtaining a license", added "to practice as a speech-language pathologist"; in Paragraph (4) of Subsection A, after "board", added "or"; in the introductory paragraph of Subsection B, after "NMSA", added "1978"; in Paragraph (2) of Subsection B, after "department", added "or"; deleted the paragraph designation in Paragraph (4) of Subsection B and added the language from former Paragraph (4) of Subsection B to Paragraph (3) of Subsection B; in the introductory paragraph of Subsection C, after "NMSA", added "1978"; and in Paragraph (1) of Subsection C, after "has", deleted "an active" and added "a".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-14 NMSA 1978, as enacted by Laws 1981, ch. 249, § 14, relating to denial, suspension and revocation of speech-language pathology or audiology licenses, and § 14 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure as a hearing aid dispenser; in Paragraph (1) of Subsection A, after "audiologist", deleted "a clinical fellow in audiology" and in Paragraph (2) of Subsection A, after "audiologist", deleted "a clinical fellow in audiology".

The 1999 amendment, effective June 18, 1999, deleted "a dispensing" preceding "audiologist" in Subsections A and A(1); in Subsection A, inserted "provides required" preceding "documentation"; in Subsection A(1), deleted "who does not meet the qualifications regarding a dispensing otolaryngologist set forth in Section 13 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act" following "otolaryngologist"; in Subsection A(2), deleted "a nondispensing audiologist" preceding "a clinical fellow in audiology"; in Subsection A(2)(a), inserted "has reached the age of majority and"; and in Subsection A(2)(c), substituted "Section 61-14B-21 NMSA 1978" for "Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act".

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-15 NMSA 1978, as enacted by Laws 1981, ch. 249, § 15, relating to penalties for violation of any of the provisions of the Speech-Language Pathology and Audiology Act, and Laws 1996, ch. 57, § 15 enacted a new section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the certification requirements for an applicant for a license to practice as a clinical fellow of speech-language pathology; and in Subsection A, after "certification by a", deleted "nationally recognized speech-language or hearing" and added "national professional".

The 2013 amendment, effective June 14, 2013, eliminated the qualifications for licensure as a clinical fellow of audiology; in the title, after "pathology", deleted "clinical follow of audiology"; in the introductory sentence, after "speech-language pathology", deleted "or audiology" and after "complete application", deleted "passes the examination approve by the board prior to or within one year of applying for the examination"; in Subsection A, after "communication disorders", deleted "or audiology or both", deleted former Subsection B, which required the filing of a GFY plan; in Subsection C, after "Section", deleted "12 of the Speech Language Pathology, Audiology and Hearing Aid Dispensing Practices Act" and added "61-14B-12 NMSA 1978"; in Subsection D, at the beginning of the sentence, after "has", deleted "a GFY" and added "an appropriate", deleted former Paragraph (1), which required the applicant to be a licensed speech-language pathologist or audiologist, deleted former Paragraph (2) which required the applicant to be registered as a CFY supervisor, and added "as defined in Section 61-14B-2 NMSA 1978".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for licensure as an apprentice in speech and language; in Subsection C, after "communicative disorders", added "or a related field"; in Subsection E, after "supervised by", deleted "a person licensed as a speech-language pathologist who has a minimum of two years experience as a speech-language pathologist" and added "an appropriate supervisor, as defined in Section 61-14B-2 NMSA 1978"; and in Subsection F, deleted "receives a minimum of ten percent direct supervision and ten percent indirect supervision" and added "has arranged for appropriate supervision to meet the supervision requirement defined by rule".

The 2005 amendment, effective June 17, 2005, deleted the provision that an a person have an equivalent degree regardless of the degree name; deleted the reference to audiology in Subsection B and added the provision that a person be enrolled and complete graduate classes and is accepted into a master's level program in speech-language pathology in Subsection C.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-16 NMSA 1978, as enacted by Laws 1981, ch. 249, § 16, relating to annual renewal of speech-language pathology or audiology licenses, and § 16 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

Compiler's notes. — The Speech-Language Pathology and Audiology Act and the Hearing Aid Act were the precursors to the Speech-Language Pathology, Audiology and

Hearing Aid Dispensing Practices Act, and were compiled as Chapter 61, Article 14B and Chapter 61, Article 24A NMSA 1978, respectively, before their repeal in 1996.

The phrase "effective date of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act", referred to in this section, means July 1, 1996, the effective date of Laws 1996, ch. 57.

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1996, ch. 57, § 27 repealed 61-14B-17 NMSA 1978, as enacted by Laws 1990, ch. 16, § 4, relating to termination of the speech-language pathology and audiology advisory board, and § 17 of that act enacted the above section, effective July 1, 1996.

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, changed the qualifications for issuance of a hearing aid dispensing temporary trainee permit; and in Subsection D, at the beginning of the sentence, after "An audiologist", deleted "clinical fellow in audiology".

The 1999 amendment, effective June 13, 1999, in Subsection A, deleted "a dispensing" preceding both "audiologist" and "otolaryngologist", substituted "Section 61-14B-13 NMSA 1978" for "Section 13 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act", and substituted "Section 61-14B-14 NMSA 1978" for "Section 14 of that act"; in Subsection A(1), inserted "has reached the age of majority and"; in Subsection A(2), deleted "as defined in the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act" from the end; in Subsection A(5), substituted "Section 61-14B-21 NMSA 1978" for "Section 21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act"; and in Subsection D, substituted "An audiologist" for "A dispensing audiologist, nondispensing audiologist".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, required the board to test proficiency in fitting hearing aids; and in Paragraph (4) of Subsection B, after "proper selection", added "fitting".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2013 amendment, effective June 14, 2013, provided for biennial renewal of licenses; in Subsection A, after "renew the licensee’s license", deleted "every year" and added "biennially" and added the third sentence; in Subsection D, in the first sentence,

after "may be renewed", added "annually" and in the second sentence, after "shall not be renewed", added "for a second year" and after "national examination in", deleted "either", and after "speech-language pathology", deleted "or audiology or both"; and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory paragraph, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2013 amendment, effective June 14, 2013, increased the renewal fees; in Subsection A, at the beginning of the sentence, deleted "fifty dollars ($50.00)" and

added "one hundred dollars "($100)"; in Subsection B, at the beginning of the sentence, deleted "one hundred dollars ($100)" and added "two hundred dollars "($200)"; in Subsection C, at the beginning of the sentence, deleted "three hundred dollars ($300)" and added "six hundred dollars "($600)"; in Subsection D, at the beginning of the sentence, deleted "two hundred dollars ($200)" and added "four hundred dollars "($400)"; in Subsection F, at the beginning of the sentence, deleted "two hundred dollars ($200)" and added "four hundred dollars "($400)"; and added Subsection H.

The 1999 amendment, effective June 13, 1999, in Subsection A, substituted "apprentices in speech and language" for "hearing aid dispenser trainees"; in Subsection B, deleted "nondispensing" preceding "audiologists"; in Subsection C, deleted "or dispensing audiologists" following "hearing aid dispensers"; added Subsections F and G; and redesignated the former Subsection F as Subsection H.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the disciplinary proceedings provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act by authorizing the speech language pathology, audiology and hearing aid dispensing practices board to deny, revoke, suspend or impose conditions upon a license if the licensee sells or fits the first hearing aid of a child under sixteen years of age who has not been examined and cleared for a hearing aid by an otolaryngologist or a dispensing audiologist who has earned "certification by a national professional association"; the law previously required clearance from both an otolaryngologist and a dispensing audiologist; in the introductory sentence of Subsection A, after "conditions

upon", deleted "any" and added "a"; in Paragraph (5) of Subsection A, after "first hearing aid of", deleted "any" and added "a", after "otolaryngologist", deleted "and" and added "or", after "dispensing audiologist who", deleted "is certified competent by a nationally recognized speech-language or hearing association or holds equivalent certification" and added "has earned certification by a national professional association"; in Paragraph (6) of Subsection A, after "hearing aid on", deleted "any" and added "a"; in Paragraph (8) of Subsection A, after "(8)", deleted "is representing himself as" and added "makes any representation as being", and after "medical doctor when", deleted "he" and added "the licensee or applicant"; in Paragraph (9) of Subsection A, after the second occurrence of "addicted to", deleted "any" and added "a", and after "to render", deleted "him" and added "the licensee or applicant"; in Paragraph (11) of Subsection A, after "guilty of", deleted "any" and added "a"; in Paragraph (12) of Subsection A, after "violated", deleted "any" and added "a"; and in Subsection B, after "initiated by", deleted "any" and added "a", and after "complaint.", deleted "Any" and added "A".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14B-25 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the speech-language pathology, audiology and hearing aid dispensing practices board, and changed "July 1, 2021" to "July 1, 2027" and "July 1, 2022" to "July 1, 2028".

The 2015 amendment, effective June 19, 2015, extended the termination date for the speech-language pathology, audiology and hearing aid dispensing practices board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed the Osteopathic Physicians' Assistants Act, §§ 61-10A-1 to 61-10A-7 NMSA 1978, effective July 1, 2016.

Cross references. — For penalties for misdemeanors, *see* 31-19-1 NMSA 1978.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-1 NMSA 1978, as enacted by Laws 1983, ch. 147, § 1, providing the title of the Athletic Trainer Act, and § 1 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2000 amendment, effective February 15, 2000, substituted "Chapter 61, Article 14D NMSA 1978" for "Sections 1 through 19 of this act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — Medical malpractice liability of sports medicine care providers for injury to, or death of, athlete, 33 A.L.R.5th 619.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repeals former section 61-14D-2 NMSA 1978, as enacted by Laws 1983, ch. 147, § 2, containing definitions, and § 2 of ch. 325 enacts the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits, §§ 4, 5, 14, 34 to 36, 39, 45 to 47.

53 C.J.S. Licenses §§ 5, 7, 30, 34 to 41, 64.

61-14D-3. Definitions. (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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-3 NMSA 1978, as enacted by Laws 1983, ch. 147, § 3, creating the athletic trainers advisory board, and § 3 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2017 amendment, effective June 16, 2017, defined "clinical assessment", "emergency care", "preventive services", and "therapeutic intervention and rehabilitation"; added a new Subsection D and redesignated former Subsections D and E as Subsections E and F, respectively; added Subsection G; redesignated former Subsection F as Subsection H; in Subsection H, after "pursuant to", deleted "Articles" and added "Article"; and added Subsections I and J.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-4 NMSA 1978, as enacted by Laws 1983, ch. 147, § 4, concerning meetings, officers, and support personnel of the athletic trainers advisory board, and § 4 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

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.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 39 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2022, 90 days after adjournment of the legislature.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-5 NMSA 1978, as amended by Laws 1987, ch. 329, § 12, concerning the powers of the athletic trainers advisory board, and § 5 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

Compiler's notes. — As enacted by Laws 1993, ch. 325, § 5 this section did not contain a Subsection B.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-6 NMSA 1978, as amended by Laws 1989, ch. 40, § 1, specifying examination and license fees, and § 6 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2017 amendment, effective June 16, 2017, amended the scope of practice of athletic trainers to add clinical assessment and therapeutic intervention of athletes; after "athletic training includes", deleted "the prevention, care and rehabilitation of athlete's injuries. Athletic trainers may evaluate and treat athletes" and added "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", and after "protocol of a licensed physician", deleted the remainder of the section, which provided for methods of treatment and prohibited treatment of athletes injured in a non-athletic setting.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-7 NMSA 1978, as enacted by Laws 1983, ch. 147, § 7, concerning the qualifications of applicants for an athletic trainer license, and § 7 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection C that board members shall be United States citizens and residents of New Mexico for at least three years, that one member shall be employed by a high school and that members shall reside in separate districts.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-8 NMSA 1978, as enacted by Laws 1983, ch. 147, § 8, providing an exemption from the application of the Athletic Trainer Act, and § 8 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required the regulation and licensing department to assist the athletic trainer practice board in administering the Athletic Trainer Practice Act; in the introductory clause, after "The department", deleted "in consultation with" and added "shall assist", and after "the board", added "in administering the Athletic Trainer Practice Act and"; and in Subsection C, after "administer", added "and", and after "coordinate", deleted "and enforce".

The 2005 amendment, effective June 17, 2005, provided in Subsection A that the department shall process applications and conduct examinations and added Subsection G to require the department to provide a current register of licensees as a matter of public record.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-9 NMSA 1978, as enacted by Laws 1983, ch. 147, § 9, stating that the Athletic Trainer Act does not require school districts to employ athletic trainers, and § 9 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, added Subsections A through E, G and J to provide that the board provide examinations no less than semiannually, establish passing scores, determine eligibility for licensure, set fees for administrative services and licenses, authorize disbursements, review license applications and recommend approval or disapproval, take disciplinary action, and require and establish criteria for continuing education.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-10 NMSA 1978, as enacted by Laws 1983, ch. 147, § 10, concerning the issuance of licenses to persons currently engaged as trainers, and § 10 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided that the board may issue a license to an applicant who has completed a baccalaureate degree, is currently competent in cardiopulmonary resuscitation and in the use of automated electrical defibrillator units and demonstrates professional competence by passing an examination.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-11 NMSA 1978, as enacted by Laws 1983, ch. 147, § 11, concerning hearings and appeals, and § 11 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, deleted former Subsections A through D and provided that applicants shall demonstrate professional competency by passing an examination and that the board shall establish examination application deadlines and the requirement for reexamination.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1993, ch. 325, § 20 repealed former section 61-14D-12 NMSA 1978, as enacted by Laws 1983, ch. 147, § 12, authorizing expenditure of funds by the regulation and licensing department for implementing the Athletic Trainer Act, and § 12 of ch. 325 enacted the above section, which has been compiled at this location, effective June 18, 1993.

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, revised Subsection A to provide that an applicant who has passed the examination may obtain a provisional permit to engage in athletic training if the applicant meets all licensure requirements except for passing the national examination and the applicant provides proof of registration to take the national examination, provided in Subsection B that the provisional permit is valid

until the national examination has been received by the board, and provided in Subsection C that if the applicant fails or does not take the national examination, the board may issue a second provisional permit upon proof that the applicant has re-registered for the national examination.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection B that the board may require certification in the use of automated electrical defibrillator units; added Subsection C to provide that if a license is not renewed by the expiration date, the license will be considered expired, that a licensee may renew a license within the grace period upon payment of the fees and proof of compliance with renewal requirements and that the failure to receive a renewal notice from the board does not excuse the licensee from the requirements for renewal; and added Subsection D to provide that a license automatically expires if the licensee fails to apply for renewal within thirty days after the renewal deadline.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2022 amendment, effective May 18, 2022, placed a limit on the amount of fees for applications, licenses, expedited licenses, provisional permits, renewal licenses, placement on inactive status and necessary and reasonable administrative fees and initial prorated licensing fees; and after "schedule of reasonable fees", added "not to exceed one hundred dollars ($100) each", and after "applications, licenses", added "expedited licenses".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective June 17, 2005, required the board to establish prorated licensing fees.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

The 2005 amendment, effective June 17, 2005, provided in Subsection A(1) that the board may take disciplinary action if a licensee or an applicant is guilty of misrepresentation in procuring a license.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-14D-19 NMSA 1978.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, extended the sunset date for the athletic trainer practice board; after the first occurrence of "July 1", changed "2021" to "2027" and changed "2022" to "2028" throughout.

The 2015 amendment, effective June 19, 2015, extended the termination date for the athletic trainer practice board to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "July 1, 2005" for "July 1, 1999" in the first sentence, substituted "July 1, 2006" for "July 1, 2001" in the second sentence, and rewrote the last sentence which read "Effective July 1, 2000, the Athletic Trainer Practice Act is repealed".

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the reference of the act to the Chapter and Article of NMSA 1978 and changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act".

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; after "ionizing" in two places, added "or non-ionizing"; after "practice of", deleted "the healing arts" and added "medical imaging"; after "administering", deleted "radiologic" and added "medical imaging and radiation therapy" and after "examination and", changed "certification" to "licensure".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers, §§ 26 to 29, 31, 51 to 61, 63, 74 to 120, 125 to 130, 132.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6, 7, 12, 13, 19 to 24, 28, 33, 35 to 57.

61-14E-3. Administration; enforcement.

The administration and enforcement of the Medical 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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act".

The 1993 amendment, effective June 18, 1993, substituted "department" for "division".

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed 61-10A-4 NMSA 1978, effective July 1, 2016.

The 2013 amendment, effective June 14, 2013, changed the definition of "division" and "non-ionizing radiation"; in Subsection I, after "health", added "bureau of the field operations and infrastructure" and after "department", deleted "of environment"; and in Subsection R, after "means the", deleted "optical radiations, including ultraviolet, visible, infrared and lasers".

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; in Subsection A, changed "radiation technical" to "medical imaging and radiation therapy"; deleted former Subsection J, which defined "radiologist technologist"; deleted former Subsection K, which defined "radiologic technology";

deleted former Subsection S, which defined "registered physician and assistant"; and added Subsections E, F, H through K, M through R, T, U, X and Z.

The 1994 amendment, effective May 18, 1994, added Subsection D and redesignated former Subsections D through K as Subsections E through L, respectively, and added Subsection M.

The 1993 amendment, effective June 18, 1993, added Paragraph (5) of Subsection C, making related grammatical changes; and rewrote Subsection D, which formerly defined "division".

The 1991 amendment, effective June 14, 1991, added Paragraph (4) in Subsection C; in Subsection K, substituted "licensed practitioner" for "physician" and added "or the American chiropractic board of radiology" at the end; and made related stylistic changes.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certification" to "licensure"; changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; and added "as verified by credentialing organizations for medical imaging and radiation therapy"; and in Subsection B, changed "certification" to "licensure"; and at the end of the sentence, deleted "regarding radiologic technology" and added the remainder of the sentence.

Promulgation of rules and regulations by board. — The environmental improvement board is authorized to promulgate rules and regulations for radiation protection without the radiation technical advisory council approving the terms of such rules and

regulations, if the board promulgates regulations pursuant to the Medical Radiation Health and Safety Act (now Medical Imaging and Radiation Therapy Health and Safety Act), Sections 61-14E-1 to 61-14E-12 NMSA 1978; but the board may not do so without the council's approval if the regulations are promulgated pursuant to the Radiation Protection Act (Section 74-3-1 NMSA 1978 et seq.). 1988 Op. Att'y Gen. No. 88-39.

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.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Laws 2016, ch. 90, § 29 repealed 61-10-1 NMSA 1978, effective July 1, 2016.

Effective dates. — Laws 2009, ch. 106 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 19, 2009, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certification" to "licensure"; added "magnetic resonance" and deleted "technology and certificates of limited practice", and added the remainder of the sentence; deleted former Subsection B, which provided for educational programs and added a new Subsection B; in Subsection C, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; and added Subsection F.

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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2013 amendment, effective June 14, 2013, provided limited authorization for registered or certified health care practitioners, registered nurses and certified nurse-midwives to perform certain ultrasound procedures; in Paragraph (1) of Subsection B, after "practitioner" deleted language which exempted licensed or certified auxiliary or health practitioners; added Paragraphs (2) and (3) of Subsection B; and added Subsection G.

The 2009 amendment, effective June 19, 2009, in Subsection A, changed "certified by the department as a radiologic technologist" to "licensed by the department as a medical imaging professional or radiation therapist"; in Paragraph (1) of Subsection A, after "ionizing", added "or non-ionizing"; in Paragraph (2) of Subsection A, changed "certified radiologic technologist" to "licensed medical imaging professional or radiation therapist"; in former Subsection B, deleted language which provided for the use of the title "radiologic technologist" of "L.R.T."; in Subsection B, at the beginning of the sentence, added the phrase beginning with "Notwithstanding" through the comma; after "requirement of a" in two places, changed "certificate" to "medical imaging license"; after "auxiliaries" added "or health practitioners"; after "hygiene", deleted "or radiologic technology"; after "direct supervision of a", deleted "certified radiologic technologist" and added "licensed medical imaging professional or radiation therapist"; and added Subsections C, D and E.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the introductory language.

The 1991 amendment, effective June 14, 1991, in the final paragraph, deleted "or a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene or radiologic technology who applies radiation to humans while under the supervision of a licensed practitioner or the direct supervision of a certified radiologic technologist" and added the second sentence.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 14, § 3 repealed former 61-14E-8 NMSA 1978, as enacted by Laws 1983, ch. 317, § 8, relating to temporary certification, and enacted the above section, effective June 14, 1991.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" near the beginning of the section.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, after "regulations", added "except as provided in Section 61-1-34 NMSA 1978".

The 2009 amendment, effective June 19, 2009, in Subsection A, deleted "initial" before "application"; in Subsection B, deleted the former provision which provided for a fee not to exceed $50 for a full certification and $25 for a certificate of limited practice, and added the remainder of the sentence after "exceed"; deleted former Subsection C which provided for a full certificate renewal fee not to exceed $100; deleted former Subsection D which provided for a certificate of limited practice renewal fee of not to exceed $60; and deleted language which provided for the renewal of certificates due to lapse for failure to renew; and added Subsections C through E.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the introductory language of the first paragraph, in Subsection D, and in two places in the first sentence of the second paragraph.

61-14E-10. Fund established; disposition; method of payment.

A. There is created in the state treasury the "radiologic technology fund".

B. All fees received by the department pursuant to the Medical 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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act", and in Subsection C, changed "radiologic technology" to "medical imaging technology and radiation therapy".

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the first sentence of Subsection B and in two places in the first sentence of Subsection C.

The 1989 amendment, effective April 7, 1989, deleted the former last sentence of Subsection C, which read "Any income earned on investment of the fund shall be credited to the fund for use as provided in that act".

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; after "suspend any", changed "certificate" to "license"; and after "grounds that the", deleted "radiologic technologist" and added "medical imaging professional or radiation therapist"; in Subsection A, after "procure a", changed "full certificate" to "license"; in Subsection F, after "person", deleted "is not certified" and added "does not possess a license" and after "activities of a", changed "certificate" to "license"; and in Subsection G, after "activities of a", changed "a full certificate or" to "an individual licensed or a".

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.

ANNOTATIONS

The 2009 amendment, effective June 19, 2009, changed the name of the act from "Medical Radiation Health and Safety Act" to "Medical Imaging and Radiation Therapy Health and Safety Act"; in Subsection A, after "employ as a", deleted "radiologic technologist" and added "medical imaging professional or radiation therapist"; after "valid", changed "certificate" to "license" and after "practice of", deleted "radiologic technology" and added "medical imaging or radiation therapist"; in Subsection B, after "furnish any", deleted "radiologic technology" and added "medical imaging or radiation therapist" and after "certificate or", changed "certificate" to "license"; and in Subsection C, after "practice", deleted "radiologic technology" and added "medical imaging or radiation therapist"; after "exempted or", changed "duly certified" to "license"; and added the last sentence.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in the first sentence of the second paragraph.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, provided for the waiver of registration or renewal of registration fees for military service members and veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Cross references. — For the federal Electronic Signatures in Global and National Commerce Act, see 15 U.S.C. § 7001.

Effective dates. — Laws 2009, ch. 169, § 21 made the Uniform Athlete Agents Act effective July 1, 2009.

Severability. — Laws 2009, ch. 169, § 20 provided that if any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

Cross references. — For engineering practice, see 61-23-1 NMSA 1978 et seq.

The 1987 amendment, effective June 19, 1987, deleted the Subsection A designation at the beginning, substituted "in the Architectural Act" for "and from six months after the passage of this act" at the end of the first sentence, and in the second sentence inserted "or exempt" following "is duly registered" and substituted "the Architectural Act" for "this act except as hereinafter provided" at the end.

Registration not required for licensed engineers. — Professional engineers licensed under 67-21-1 to 67-21-25, 1953 Comp. (now repealed) (now Section 61-23-1 NMSA 1978 et seq.), need not secure registration under this act. They are authorized to draw plans and construct buildings and to do many acts similar to those of registered architects. The two laws are similar, but need not be read together, since they are each for the purpose of regulating separate and distinct professions in which the actual practice calls for doing similar acts. 1939 Op. Att'y Gen. No. 39-3205 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

Registration and residence prerequisites to county employment. — A county may not employ an architect who is not a resident of New Mexico and who has not obtained state registration. 1947 Op. Att'y Gen. No. 47-5072.

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

For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

Architect's or engineer's compensation as affected by inability to carry out plan or specifications at amount satisfactory to employer, 127 A.L.R. 410.

Responsibility of one acting as architect for defects or insufficiency of work attributable to plans, 25 A.L.R.2d 1085.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

Architect's liability for personal injury or death allegedly caused by improper or defective plans or design, 97 A.L.R.3d 455.

6 C.J.S. Architects § 4.

61-15-1.1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "Chapter 61, Article 15 NMSA 1978" for "Sections 61-15-1 through 61-15-12 NMSA 1978".

61-15-2. Definitions (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

Repeals and reenactments. — Laws 1979, ch. 362, § 2, repealed former 61-15-2 NMSA 1978, relating to definitions of "practice of architecture," "general administration of construction" and "building," and enacted a new 61-15-2 NMSA 1978.

The 1999 amendment, effective June 18, 1999, in Subsection B, inserted "as defined by rule of the board", substituted "predesign services, programming and planning, providing designs" for "planning, providing preliminary studies, designs", substituted "administration of construction contracts, coordination of technical submissions prepared by others and such" for "and the observation of construction for the purpose of assuring substantial compliance with drawings and specifications and include such" in the first sentence, deleted language allowing engineers to engage in activities properly classified as architecture insofar as it is incidental to work as an engineer, and added the language beginning "codes, rules and ordinances" at the end of the subsection; in Subsection D, substituted the term "construction administration" for the term "construction observation of a construction contract" twice and deleted "periodic" preceding "observation"; deleted former Subsection E, which defined "direct supervision"; added Subsections E, F, H and I, and redesignated former Subsection F as Subsection G; and in Subsection G, substituted "architectural services" for "any service which requires architectural education, training and experience" in the first sentence, and added the second sentence.

The 1987 amendment, effective June 19, 1987, alphabetized and relettered the subsections; rewrote Subsection B; in Subsection D substituted "construction observation of a construction contract" for "general administration of a construction contract" at the beginning, and added "when performed by a person engaged in the practice of architecture" to the end of the first sentence and added the second sentence; inserted Subsection E; and rewrote Subsection F.

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

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

Cross references. — For termination of board, see 61-15-13 NMSA 1978.

For the constitutional oath of office, see N.M. Const., art. XX, § 1.

Repeals and reenactments. — Laws 1979, ch. 362, § 3, repealed former 61-15-3 NMSA 1978, relating to the creation of a state board of examiners for architects, and enacted a new 61-15-3 NMSA 1978.

The 2017 amendment, effective June 16, 2017, required that one of the six architects on the board of examiners for architects be from the public sector, and made certain technical changes; in Subsection A, after the subsection designation, deleted "There is created a" and added "The", after "architects'", added "is created", and after "accredited college of architecture,", deleted "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" and added "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"; in Subsection D, after "as defined by", deleted "regulations" and added "rules"; and in Subsection E, replaced "chairman" with "chair" throughout the subsection.

Temporary provisions. — Laws 2017, ch. 52, § 21 provided that in carrying out the statutory requirement to replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.

The 1987 amendment, effective June 19, 1987, in the first sentence in Subsection A, substituted "seven members" for "five members", in the second sentence substituted "six" for "four" at the beginning and inserted "five years of which shall have been in responsible charge of architectural projects" following "experience in the profession", inserted the present fourth sentence, in the fifth sentence substituted "seventh" for "fifth" and inserted "who is a voting member" at the end; in Subsection C deleted from the end "terms, and a public member shall be appointed upon the occurrence of the first vacancy on the board"; added Subsection E; and made numerous minor changes in language and punctuation throughout the section.

"Effective date of this section". — The phrase "effective date of this section", referred to near the end of Subsection C, appears in Laws 1979, ch. 362, § 3 which was effective on June 16, 1979.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 C.J.S. Architects §§ 7, 9, 10.

61-15-4. Powers and duties of the board. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for architects is required to follow the provisions of the State Rules Act when promulgating rules, excluded money collected for fines from being deposited with the state treasurer, and provided that civil penalties be deposited to the credit of the current school fund; in Subsection C, after "prescribe by rules", added "promulgated in accordance with the State Rules Act", after "certificates of registration granted, and", deleted "may" and added "shall not", and after "make rules", deleted "not"; in Subsection E, after "knowledge and practice", deleted "adopt" and added "promulgate"; in Subsection F, after "operation of the Architectural Act", added "not including fines"; and in Subsection L, after "pursuant to the Architectural Act", added the remainder of the subsection.

The 2017 amendment, effective June 16, 2017, provided that the board of examiners for architects may impose a civil penalty not to exceed seven thousand five hundred dollars ($7,500) for each violation against any person engaged in the practice of architecture without a license; in Subsection K, after "state board of", deleted "registration" and added "licensure", and after "engineers and", deleted "land" and added "professional"; and added Subsection L.

The 1999 amendment, effective June 18, 1999, added Subsections B, D, E, and J, and redesignated subsequent subsections accordingly; added the first sentence of Subsection C; in Subsection F, deleted "except for the secretary who shall receive, in addition, a salary to be set by the board" at the end of the first sentence, and substituted "chair or the chair's designee" for "chairman and secretary or by two other members and the secretary of the board" in the second sentence; in Subsection G, substituted "by rule provide for the examinations required for registration" for "hold at least once each year an examination of applicants for registration, at a time and place designated by the board" in the first sentence, and deleted "written or oral" at the end of the last sentence; substituted "criminal violation" for "person violating any provision" in Subsection I; deleted former Subsection G, relating to the board's right to refuse to issue, to suspend, or to revoke any license for any of the grounds set forth in 61-15-12 NMSA 1978 or for any violation of the Architectural Act; and in Subsection K, deleted "architect-engineer-landscape architect" preceding "joint practice committee" in the first sentence, deleted the former second sentence, which read "The committee shall have as its purpose the resolution of disputes concerning the professions", and added the next-to-last sentence.

The 1987 amendment, effective June 19, 1987, in Subsection A substituted "at least four" for "a meeting within sixty days after its members are first appointed and thereafter shall hold at least two" in the first sentence and added the last sentence; in Subsection C, in the last sentence, substituted "fund of the board of examiners for architects" for "separate fund hereinafter designated"; in Subsection D added the last sentence; in Subsection E substituted "a fee set by the board" for "a fee of fifty dollars ($50.00)"; in Subsection H in the first sentence, inserted "and the board of landscape architects" following "land surveyors", inserted "landscape architect" in the committee name, and in the second sentence deleted "two" preceding "professions"; and made minor language changes throughout the section.

No fee charged for registration certificate. — A plain reading of Subsection E (now Subsection H) discloses that the board is required to issue a certificate of registration to an applicant upon being satisfied of the applicant's qualifications. No mention is made in the section of any fee to be charged for the architect's first certificate of registration. 1966 Op. Att'y Gen. No. 66-44.

Application fee not payable in installments. — This section clearly prescribes an application fee of $50 which must be paid in its entirety at the time the application is made. There is no provision or even an indication in the law which would permit payment of the fee in installments. 1966 Op. Att'y Gen. No. 66-44 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 6 C.J.S. Architects §§ 7, 9, 10.

61-15-4.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 282, § 15 repeals 61-15-4.1 NMSA 1978, as enacted by Laws 1983, ch. 63, § 1 relating to development, adoption and enforcement of rules governing the practice of architecture on public projects, effective June 19, 1987. For former provisions see the 1986 Cumulative Supplement.

61-15-5. Additional duties of the board. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided an exception to the provision prohibiting the disclosure of certain confidential data, communications and information, allowing for the board of examiners for architects to disclose such information to the extent necessary to fulfill the duties of the board; and in Subsection D, after "shall not be disclosed", added "except to the extent necessary to fulfill the duties of the board".

The 1999 amendment, effective June 18, 1999, in Subsection C, deleted "on or before August 30" following "Annually", deleted "attested by affidavits of its chairman and secretary" at the end of the first sentence, and added the last sentence; in Subsection D, deleted "where any investigation is still pending and other materials of like confidential nature" at the end of the first sentence, and added the last sentence; in Subsection E, inserted "annually", deleted reference to a supplement to the roster, and substituted "shall be made available" for "shall be mailed"; and added Subsections F and G.

The 1987 amendment, effective June 19, 1987, rewrote the section to the extent that a detailed comparison is impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

6 C.J.S. Architects § 7.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

Cross references. — For registration fee, see 61-15-4E NMSA 1978.

For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

For the incorporation of architects as a professional corporation, see 53-6-1 NMSA 1978 et seq.

The 2017 amendment, effective June 16, 2017, revised the requirements for applicants to receive a certificate of registration as an architect, including completion of the architectural experience program of the national council of architectural registration boards, submission of evidence satisfactory to the board of examiners for architects of the applicant’s qualification in comprehensive design, and in the case of practice through a business entity, required that registered architects control a majority interest in the business entity, and provided rules for business entities primarily offering engineering services and for business entities offering project delivery through a teaming of architectural and construction services; in Subsection E, Paragraph E(2), after "completion of the", deleted "intern training" and added "architectural experience"; in Subsection F, in the introductory clause, after "presenting", added "for review by the board", in Paragraph F(2), after "qualification in", added "comprehensive", after

"design", deleted "for seismic forces" and added "as prescribed by rule of the board; and", and added Paragraph F(3); in Subsection G, after "responsibility for", deleted "at least five years" and added "a period of time as prescribed by the board", and after "related to architecture", added "including evidence satisfactory to the board of qualification in comprehensive design"; in Subsection J, after "through a", deleted "partnership" and added "business entity primarily", after "one of the", deleted "partners" and added "owners", after "Architectural Act, and", added "registered architects shall control a majority interest in the business entity", and after "issued by or for the", deleted "partnership" and added "business entity for a project physically located within New Mexico"; in Subsection K, in the introductory clause, after "business entity", deleted the former language, which related to registered architects being in responsible charge of the activities of the business entity, and added the current language, and added Paragraphs K(1) through K(4); and added Subsection L.

The 1999 amendment, effective June 18, 1999, rewrote Subsection B, which formerly read "An applicant for registration shall have been actively engaged for eight years or more in architectural work of a character satisfactory to the board. However, each year of teaching or study of architecture satisfactorily completed in a school of architecture of a standing satisfactory to the board shall be equivalent to one year of professional experience. In addition, effective January 1, 1990, an applicant for examination for registration must have a professional degree from an accredited architectural program in order to be eligible for the examination for registration"; substituted "any examinations required" for "a written examination and may be required to pass an oral examination as required" in Subsection C; deleted former Subsection D, which read "In determining the qualifications of applicants for registration as architects, a majority vote of the members of the board shall be required"; added Subsections D to G, and redesignated the subsequent subsections accordingly; inserted "or other business entity" twice in Subsection H; inserted "or other business entities" in Subsection I; inserted "offering architectural services" in Subsection J; and in Subsection K, substituted "business entity" for "association or corporation" throughout the subsection, substituted "is an employee of the business entity with the authority to bind the entity by contract" for "has the authority to bind the association or corporation by contract" in the first sentence, substituted "responsible charge" for "direct supervision" in the next-to-last sentence, and added the last sentence.

The 1987 amendment, effective June 19, 1987, divided the former Subsection A into the present Subsections A and B and relettered the subsequent subsections; in Subsection B substituted "professional experience" for "such active engagement" at the end of the second sentence and added the third sentence; in Subsection D deleted the former last sentence which read "In case the board denies the issuance of a certificate to an applicant, one-half of the registration fee deposited shall be returned by the board to the applicant"; in Subsection E substituted "sole proprietorship" for "firm" where it appears in the first and second sentences, deleted "joint stock" preceding "association" both places that word appears and substituted "F, G and H" for "E, F and G"; in Subsection F substituted "individuals or through partnerships" for "individual partners or through joint stock"; in Subsection H deleted "joint stock" preceding "association" in five

places, and substituted "direct supervision of" for "responsible charge of and directly responsible for" at the end; and made minor language changes throughout the section.

United States citizenship is not required to be an architect licensed to practice in New Mexico. 1942 Op. Att'y Gen. No. 42-4177.

Applicant entitled to 50% refund upon examination failure. — Because failure to pass the examinations required by the board is a statutory basis for refusal of the registration certificate, the board must refund to the applicant 50% of the registration fee he deposited. 1966 Op. Att'y Gen. No. 66-79.

Full fee required with subsequent application. — A failure of all or a portion of the examination required by the board necessitates the denial of the issuance of a certificate of registration to an applicant, and the applicant must then pay the full application fee before he may again be considered by the board for issuance of a certificate of registration even though he might not be required to take all sections of the examination on his subsequent attempts. 1966 Op. Att'y Gen. No. 66-79 (rendered under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Validity of license statute or ordinance which discriminates against nonresidents, 61 A.L.R. 337, 112 A.L.R. 63.

Practice of architecture by corporation, 56 A.L.R.2d 726.

Revocation or suspension of license to practice architecture, 58 A.L.R.3d 543.

Grant or denial of license to practice architecture, 2 A.L.R.4th 1103.

6 C.J.S. Architects §§ 7 to 15.

61-15-7. Certificates of registration. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of certificates of registration fees for military service members and veterans; in Subsection C, added "Except as provided in Section 61-1-34 NMSA 1978, issuance or"; and in Subsections D and E, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1999 amendment, effective June 18, 1999, in Subsection A, added the first sentence, and substituted the language beginning "prepared by an architect or under" for "issued by a registrant shall be stamped with the seal during the life of a registrant's certificate" in the last sentence; substituted "be valid for a period of time as set by rule and shall be invalid after the date of expiration" for "expire on the last day of December following their issuance or renewal and shall be invalid after that date" in Subsection B; in Subsection C, substituted "prior to expiration" for "during December" in the first sentence, and deleted the former second sentence, which read "The registrant shall satisfy the board that he is still proficient and qualified to practice architecture, as required by the board"; in Subsection D, substituted "prior to expiration" for "annually in December", substituted "within three years of the expiration date of the certificate" for "thereafter, but the fee to be paid for the renewal of a certificate after December shall be increased ten percent for each month or a fraction of a month that the payment for renewal is delayed", and added the last sentence; and added Subsection E.

The 1987 amendment, effective June 19, 1987, in Subsection C deleted from the end of the first sentence "but not to exceed fifty dollars ($50.00) for a legal resident and one hundred dollars ($100) for a nonresident" and deleted from the last sentence "the

secretary of" preceding "the board"; in Subsection D deleted the former last sentence which read "The maximum fee for a delayed renewal shall not exceed twice the normal fee for each and every year that registrant remains in default"; and made minor changes in language and punctuation throughout the section.

Initial registration certificate free. — This section does not provide for any registration fee to be collected at the time the applicant has been accepted by the board as being entitled to registration as a New Mexico architect. Thus, a New Mexico architect appears to be entitled to his original certificate of registration free of charge. 1966 Op. Att'y Gen. No. 66-44.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

Failure of architect to procure license as affecting validity or enforceability of contracts, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

What amounts to architectural or engineering services within license requirements, 82 A.L.R.2d 1013.

6 C.J.S. Architects §§ 7 to 15.

61-15-8. Exemptions; 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided an additional exemption from the provisions of the Architectural Act; in Subsection A, Paragraph A(2), after "railroad system", added "or architects acting on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction".

The 1999 amendment, effective June 18, 1999, in the catchline, added "from registration"; rewrote Subsection A(1), which formerly read "architects who are not legal residents of and have no established places of business in this state who are acting as consulting associates of a legal resident architect registered under the provisions of the Architectural Act, provided the nonresident architects are qualified for such professional service in their own state or country; and"; and rewrote Subsection B, which formerly read "Nothing in the Architectural Act shall prevent the draftsmen, students, superintendents and other employees of lawfully practicing architects under the provisions of the Architectural Act from acting under the instructions, control or supervision of the employer or shall prevent the employment of superintendents on the construction, enlargement or alterations of buildings or any appurtenances thereto or shall prevent those superintendents from acting under the direct supervision of registered architects by whom the plans and specifications of any building, enlargements, constructions or alterations were prepared".

The 1987 amendment, effective June 19, 1987, substituted "the Architectural Act" for "this Act" throughout the section; redesignated the former Subsections B and C as Paragraph (1) and (2) of Subsection A; deleted the former Subsection D as set out in the 1986 Replacement Pamphlet; redesignated the former Subsection E as Subsection B; and in Subsection B, deleted "clerks of the work" preceding "superintendents" near the beginning and substituted "direct supervision" for "immediate personal supervision" near the end; and made minor changes in language and punctuation throughout the section.

Substantial compliance suffices. — Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and climate control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident pursuant to Section 67-12-8 (now Section 61-15-9 NMSA 1978). 1965 Op. Att'y Gen. No. 65-07.

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

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, revised certain exemptions from the requirements of the Architectural Act; in Subsection B, Paragraph B(4), after "as defined in", deleted "uniform" and added "applicable state or local", after "building", deleted "code" and added "codes", and after "shall set, by", deleted "regulation" and added "rule"; and in Subsection D, after "the engineer does not", deleted "hold himself out to be" and added "make any representation as being".

The 1999 amendment, effective June 18, 1999, rewrote the catchline, which formerly read "Restrictions"; rewrote Subsection A, which related to public work; in Subsection B, in the introductory language, substituted the language ending "building plans and specifications" for "Nothing in the Architectural Act shall prevent any person from preparing building plans and specifications without being registered"; in Subsection C, substituted the language beginning "if the alteration does not affect" for "of nonstructural elements of an existing structure"; and added Subsection D.

The 1987 amendment, effective June 19, 1987, in Subsection B, in the opening clause, substituted "building plans" for "architectural plans" the first occurrence, substituted "building plans" for "plans" the second occurrence and deleted from the end "residences of less than three stories or the work shall be done on commercial, industrial or semi-public buildings, the construction cost of which does not exceed eighty thousand dollars ($80,000)", and added Paragraphs (1) through (4); and deleted the former Subsection C as set out in the 1986 Replacement Pamphlet and redesignated the former Subsection D accordingly.

Substantial compliance suffices. — Where an independent school district hires a registered and resident New Mexico architect to design and supervise the construction of a new junior high school and employs a firm of out-of-state architects and engineers and where the work is commenced and the architectural design, preliminary surveys and client control is complete, the New Mexico architect dies, prior to the actual finalization of the plans, substantial compliance exists with the Architectural Act. The school district may construct the proposed project based upon the plans completed by the out-of-state firm. However, it must be emphasized that any further architectural services of any nature must be performed by a registered resident of New Mexico pursuant to this section. 1965 Op. Att'y Gen. No. 65-07.

Unlicensed architect allowed on less than three-storied residence. — An individual, firm, or corporation may practice architecture without being registered, where the work is done on residences of less than three stories. 1933 Op. Att'y Gen. No. 33-560.

Licensed engineer not restricted. — A professional licensed engineer does not violate this section by drawing plans and constructing a building, since authority to do so is conferred upon him by law. 1939 Op. Att'y Gen. No. 39-3126 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

Licensed engineers not affected. — Section 10 of Laws 1939, ch. 82 does not repeal the matter pertaining to engineers in 67-21-1 to 67-21-25, 1953 Comp. (now repealed) since these acts must be read separately, similar powers being conferred upon professional engineers as are granted to architects in this act. 1939 Op. Att'y Gen. No. 39-3205 (rendered prior to enactment of Engineering and Land Surveying Practice Act).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 1 et seq.

6 C.J.S. Architects §§ 3, 7.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

Cross references. — For ceding fines to the current school fund, *see* N.M. Const., art. XII, § 4.

The 2022 amendment, effective May 18, 2022, clarified that the board of examiners for architects is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection C, after "disciplinary hearing", added "conducted in accordance with the Uniform Licensing Act".

The 2017 amendment, effective June 16, 2017, provided that the board of examiners for architects shall impose civil penalties not to exceed seven thousand five hundred dollars ($7,500) for each violation of the Architectural Act, and provided considerations for determining the amount of the civil penalty; and added Subsection C.

The 1999 amendment, effective June 18, 1999, added Subsection A, redesignated the formerly undesignated introductory language of the section as the introductory language of Subsection B, and in that language, substituted "pursuant to Section 31-19-1 NMSA 1978" for "upon conviction by a fine of not less than two hundred fifty dollars ($250) or more than one thousand dollars ($1,000) or by imprisonment not to exceed three months or both"; redesignated the former subsections as numbered paragraphs under Subsection B; deleted former Subsection A, which read "presenting or attempting to file as his own the certificate of registration as an architect of another person"; deleted former Subsection C, which read "falsely impersonating any other practitioner"; deleted "as defined in Section 61-15-2 NMSA 1978" following "practice of architecture" in Subsection B(4); rewrote Subsection B(5), which formerly read "using in connection with his name any designation tending to imply that he is a registered or licensed architect"; and added Subsection B(6).

The 1987 amendment, effective June 19, 1987, in the opening clause substituted "two hundred fifty dollars ($250) or more than one thousand ($1,000)" for "one hundred dollars ($100) nor more than five hundred dollars ($500)", in Subsection F substituted "registered" for "licensed" following "unless exempted or duly"; and made minor language changes throughout the section.

Designation "architect" restricted to those registered. — The designation of "architect" may not be used by any individual or firm in New Mexico not registered as such in this state. 1949 Op. Att'y Gen. No. 49-5241.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 5 Am. Jur. 2d Architects § 23 et seq.

6 C.J.S. Architects § 3.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 1987 amendment, effective June 19, 1987, substituted "the Architectural Act" for "Sections 67-12-1 through 67-12-10 NMSA 1953".

61-15-12. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-15-13 NMSA 1978.

The 2017 amendment, effective June 16, 2017, included the civil penalties provided for in Section 61-15-10 NMSA 1978 in the types of disciplinary action that the board of examiners for architects may impose for misconduct by registered architects; and in

Subsection A, in the introductory clause, after "censure or reprimand", deleted "an administrative" and added "a civil", and after "penalty", added "pursuant to Section 61-15-10 NMSA 1978", and in Paragraph A(6), after the paragraph designation, deleted "represented himself to be" and added "made any representation as being".

The 1999 amendment, effective June 18, 1999, rewrote the section heading, which formerly read "Refusal, suspension or revocation of certificate of registration"; in Subsection A, in the introductory language, substituted the language beginning "and the board may impose disciplinary conditions" for "upon the grounds that the licensee or applicant is" in the introductory language, in Paragraph (1) substituted "engaged in" for "found guilty by the board of", added Paragraph (2), in Paragraph (3) substituted "engaged in" for "guilty of" and inserted "as set forth by rule", in Paragraph (4) substituted "stamped" for "guilty of stamping", in Paragraph (5) substituted "practiced" for "guilty of practicing" and "registration in the jurisdiction in which the practice took place" for "license", in Paragraph (6) substituted "represented" for "guilty of representing" and added "in the jurisdiction in which the representation took place" at the end, deleted former Paragraph (6) which read "guilty of dishonorable or unprofessional conduct as defined by regulation of the board; or", deleted former Paragraph (7) which read "convicted of a felony", and added Paragraphs (7) to (13); added Subsection B, redesignating subsequent subsections accordingly; deleted "license or" preceding "certificate of registration" in Subsection D; and added Subsection F.

The 1987 amendment, effective June 19, 1987, in Subsection A added Paragraph (7) and made minor changes in language.

61-15-13. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed "July 1, 2023" to "July 1, 2029" and changed "July 1, 2024" to "July 1, 2030".

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, twice substituted "the Architectural Act" for "Chapter 61, Article 15 NMSA 1978", substituted "July 1, 2005" for "July 1, 1999" and inserted "provisions of the" in the first sentence, substituted "July 1, 2006" for "July 1, 2000" in the second sentence, and substituted "July 1, 2006" for "July 1, 2000" in the last sentence.

The 1993 amendment, effective June 18, 1993, substituted "July 1, 1999" for "July 1, 1993" in the first sentence and "July 1, 2000" for "July 1, 1994" in the last two sentences; and made a minor stylistic change.

The 1987 amendment, effective June 19, 1987, substituted "1993" for "1987" in the first sentence and "1994" for "1988" in the second and third sentences.

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.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, removes the limitation on the amount of the fee that an auctioneer may not receive from the owner of the goods auctioned.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 29, 30, 71 to 75.

Effect on auction sale of by-bidding or puffing, 46 A.L.R. 122.

Withdrawal of property from auction sale, 37 A.L.R.2d 1049.

Auctioneer's action for commissions against seller, 38 A.L.R.4th 170.

Auction sales under UCC § 2-328, 44 A.L.R.4th 110.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 3, 15, 22.

61-16-2. [Puffing; illegal fees; penalty; civil liability.]

Any person whether as auctioneer or as a puffer of any auctioneer who shall violate the provisions of this chapter, shall be deemed guilty of a misdemeanor, and on conviction before any justice of the peace [magistrate] of the precinct where the offense shall have been committed, shall be fined in a sum not less than twenty-five [$25.00] nor more than fifty dollars [$50.00] and costs of prosecution, or by imprisonment in the county jail for no less than thirty days, and besides such person shall be bound to the person bidding at any such public auction and injured by the unlawful bidding of the auctioneer or his puffers in double the amount of the price of the articles such person bade on, to be recovered by civil action.

History: Laws 1889, ch. 95, § 2; C.L. 1897, § 1291; Code 1915, § 378; C.S. 1929, § 10-102; 1941 Comp., § 51-1502; 1953 Comp., § 67-13-2.

ANNOTATIONS

Cross references. — For the establishment and organization of magistrate courts, see 35-1-1 NMSA 1978 et seq.

Meaning of "this chapter". — The term "this chapter" apparently refers to Laws 1889, ch. 95, §§ 1 and 2, which are compiled as 61-16-1 and 61-16-2 NMSA 1978.

Abolishment of office of justice of the peace. — The office of justice of the peace has been abolished by 35-1-38 NMSA 1978, and the jurisdiction, powers and duties conferred by law upon justices of the peace transferred to the magistrate courts. See N.M. Const., art. VI, § 31.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 29, 30, 77, 81, 82, 86.

7A C.J.S. Auctions and Auctioneers §§ 23, 25, 27.

61-16-3. Purpose.

The purpose of the present act [61-16-3 to 61-16-17 NMSA 1978] is to regulate auction sales of jewelry in order to prevent fraud, deception and misrepresentation upon the buying public at such sales. It is to be construed liberally to effectuate this purpose.

History: Laws 1941, ch. 45, § 1; 1941 Comp., § 51-1503; 1953 Comp., § 67-13-3.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 8, 46.

Jewelry auctions, regulation and licensing of, 53 A.L.R.2d 1433.

7A C.J.S. Auctions and Auctioneers §§ 3, 8, 27.

61-16-4. Scope; auction sales exceptions.

A. Chapter 61, Article 16 NMSA 1978 shall apply to all sales by auction, other than those specifically excepted in this section, of gold, silver, plated ware, precious or semiprecious stones, watches, clocks and goods, wares and merchandise commonly classified as jewelry of any kind and nature. It shall not apply to:

(1) bona fide judicial sales; or

(2) bona fide sales upon foreclosure of a chattel mortgage landlord's lien or other lien or like interests.

B. Auction sales of jewelry by transferees upon judicial or bankruptcy sales shall be subject to all the provisions of Chapter 61, Article 16 NMSA 1978.

History: Laws 1941, ch. 45, § 2; 1941 Comp., § 51-1504; 1953 Comp., § 67-13-4; Laws 1993, ch. 59, § 1.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "auction sales exceptions" in the catchline; substituted "Chapter 61, Article 16 NMSA 1978" for "This act" at the beginning of Subsection A and for "hereof" at the end of Subsection B; inserted "in this section" in the first sentence of Subsection A; and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 8, 46.

7A C.J.S. Auctions and Auctioneers §§ 3, 8.

61-16-5. Sales prohibited without license.

All sales of jewelry by auction within the scope of Chapter 61, Article 16 NMSA 1978 are forbidden unless a license issued pursuant to that article has been obtained and is in effect. No such sales whether licensed or not shall be held or be or remain open for

business for a period of more than fifteen consecutive days exclusive of Sundays and legal holidays nor shall any license be granted for a sale of greater duration.

History: Laws 1941, ch. 45, § 3; 1941 Comp., § 51-1505; 1953 Comp., § 67-13-5; Laws 1993, ch. 59, § 2.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "Sales prohibited without license" for "Prohibition" in the catchline; deleted former subsection designations, so that former Subsections A and C become the first and second sentences of this section; substituted "Chapter 61, Article 16 NMSA 1978" and "that article" for "this Act" in the first sentence; and deleted former Subsection B, pertaining to limitations on the hours for sales.

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3, 4, 8, 9.

Unlicensed auctioneer's right to recover compensation, 30 A.L.R. 851, 42 A.L.R. 1226, 118 A.L.R. 646.

License restrictions and regulations, validity, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

Discrimination against nonresident by license, 61 A.L.R. 346, 112 A.L.R. 63.

Validity, construction and effect of "Sunday closing" or "blue" laws - modern status, 10 A.L.R.4th 246.

7A C.J.S. Auctions and Auctioneers §§ 3, 4.

61-16-6. Licenses.

Licenses to conduct auction sales of jewelry within this act [61-16-3 to 61-16-17 NMSA 1978] in any municipality shall be secured upon application filed at least thirty days prior to the proposed auction sale in conformity with this act to the governing body of such municipality. Licenses to conduct such sales outside the boundaries of any incorporated municipality shall be secured upon application filed at least thirty (30) days prior to the proposed auction sale in conformity with this act to the board of county commissioners of the county wherein the sale is to be held. The municipal or county board, as the case may be, is hereinafter referred to as "the licensing authority."

History: Laws 1941, ch. 45, § 4; 1941 Comp., § 51-1506; 1953 Comp., § 67-13-6.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers § 4.

61-16-7. Application for license.

Every application for a license hereunder shall be under oath and shall include at least the following:

A. the name, residence and business address and age of the applicant together with an account of the applicant's occupation for the five years preceding the application;

B. the name, residence and business address and age of any person who will participate in conducting the proposed auction sale together with an account of the occupation of such person or persons for the five years preceding the application;

C. a complete inventory of the merchandise to be sold at the proposed auction, assigning a number to each item describing it specifically and giving as to each at least the following information:

(1) in the case of watches and clocks: the movement number, case number and model number, if any; a statement as to whether the article is new or rebuilt; the correct number of jewels; the kind of case, and the quality of the case; whether solid, gold or silver, gold-filled and the quality of any plating; the approximate year of manufacture;

(2) in the case of diamonds, whether sold separately or as a part of other jewelry: the exact weight; the color and quality; the degree of fineness; and the degree of perfection;

(3) in the case of precious and semiprecious stones other than diamonds, whether sold separately or as a part of other jewelry: the exact weight, the degree of fineness; and whether the stone is mined, reconstructed, synthetic or imitation;

(4) in the case of metallic wares, except watches, and other jewelry: the fineness of the metal, whether solid, filled or plated; and the quality of the plating, if there be plating;

D. an oath to observe the laws of this state and of any subdivision thereof wherein the sale is to be held;

E. the address, hours and dates of the proposed sale, only one place of auction being permitted;

F. the proposed terms of all sales;

G. a statement whether or not any auction license issued to the applicant has been denied or revoked.

All applications together with accompanying documents shall be kept by the municipal or county clerk as the case may be and shall be open to public inspection at all reasonable hours.

History: Laws 1941, ch. 45, § 5; 1941 Comp., § 51-1507; 1953 Comp., § 67-13-7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.

Persons eligible for license, 31 A.L.R. 304, 39 A.L.R. 773, 111 A.L.R. 473.

7A C.J.S. Auctions and Auctioneers § 4.

61-16-8. Bond.

In addition, all such applications for license shall be accompanied by the bond of the applicant in the penal sum of five thousand dollars ($5,000) running to the state of New Mexico, and conditioned to secure the faithful observance of this act [61-16-3 to 61-16-17 NMSA 1978] by all persons taking part in the conduct of any auction hereunder. Such bonds shall be secured by two or more individual sureties each of whom must be qualified by ownership of property subject to execution within this state over and above all just debts and liabilities of a value equal to the penal sum of the bond; or by one corporate surety qualified to do business in this state.

History: Laws 1941, ch. 45, § 6; 1941 Comp., § 51-1508; 1953 Comp., § 67-13-8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 6, 7, 10.

7A C.J.S. Auctions and Auctioneers § 26.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978", and after "terminated for any violation", deleted "hereof" and added "of Chapter 61, Article 16 NMSA 1978".

61-16-10. Inspectors.

Said fees shall be used to defray the expense of employing a special inspector or inspectors who shall remain on the premises upon which the auction sale is conducted during all times when the same is open for business. The special inspectors shall be appointed specially for each auction by the licensing authority and so far as possible regularly employed police officers or deputy sheriffs shall be used for this purpose. He shall have power and be under duty to supervise the auction to ensure observance of the laws of this state and to make arrests in the same manner and to the same extent as other peace officers. Any surplus of fees over and above the cost of employing such special inspector or inspectors shall be retained by the municipality or county.

History: Laws 1941, ch. 45, § 8; 1941 Comp., § 51-1510; 1953 Comp., § 67-13-10.

61-16-11. Hearing.

Upon the presentation of an application for a license hereunder the municipal or county clerk as the case may be shall set a date for hearing thereon not less than one week nor more than three weeks thereafter, said hearing to be held at either a regular or special meeting of the licensing authority. Notice of said hearing shall be given forthwith by registered mail to each person or company engaged in the business of selling jewelry within the particular municipality or county.

At the hearing upon said application the applicant shall attend and shall submit to an examination touching his application under oath to be conducted by the municipal or district attorney as the case may be, and by any citizen of said municipality or county, and by the attorney for any jeweler or any association of jewelers doing business within this state. The applicant or any person, persons, corporations or associations opposing the granting of a license may introduce evidence either [by] written or oral testimony or by affidavit.

If the governing board of the county or municipality as the case may be shall determine that the applicant is not disqualified, and that the application conforms with the law a license shall be granted; otherwise a license shall not be granted. As a condition of granting the license the licensing board may require more complete descriptions of the items in the inventory if they deem the tendered descriptions to be incomplete.

History: Laws 1941, ch. 45; § 9; 1941 Comp., § 51-1511; 1953 Comp., § 67-13-11.

ANNOTATIONS

Bracketed material. — The bracketed word in the second paragraph was added by the compiler. It was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.

53 C.J.S. Licenses § 43.

61-16-12. Licenses limited.

Licenses issued hereunder shall be expressly limited to the particular times and premises described in the application as required in Section 5(e) [61-16-7(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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.

7A C.J.S. Auctions and Auctioneers § 4.

61-16-13. Persons disqualified.

No person shall be granted a license, if he or any of his agents, principals or employees:

A. has been convicted of a violation of this act [61-16-3 to 61-16-17 NMSA 1978] or of Sections 61-16-1 and 61-16-2 NMSA 1978;

B. has had a license issued under this act revoked;

C. has held a jewelry auction sale within thirty (30) days prior to the date given in the application for the beginning of the sale sought to be licensed.

History: Laws 1941, ch. 45, § 11; 1941 Comp., § 51-1513; 1953 Comp., § 67-13-13.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers § 9.

7A C.J.S. Auctions and Auctioneers § 4.

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.

ANNOTATIONS

Cross references. — For the penalty for employing puffers, see 61-16-1 and 61-16-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 13 to 36, 77, 86.

Title to goods, as between purchaser from, and one who entrusted them to, auctioneer, 36 A.L.R.2d 1362.

Implied or apparent authority of agent selling personal property to make warranties, 40 A.L.R.2d 285.

Liability of auctioneer under doctrine of strict products liability, 83 A.L.R.4th 1188.

7A C.J.S. Auctions and Auctioneers §§ 8 to 17, 27.

61-16-15. Penalties.

Any person or corporation violating the provisions of Section 3(a) [61-16-5(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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 3 to 11.

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

7A C.J.S. Auctions and Auctioneers § 4.

61-16-17. Recovery on bond.

The state of New Mexico for the purpose of recovery of fines and penalties hereunder, and any person purchasing at any auction hereunder for the satisfaction of any civil judgment in an action for misrepresentation or fraud, or arising out of any violation of this act [61-16-3 to 61-16-17 NMSA 1978], shall have a right of action upon the bond required by Section 6 [61-16-8 NMSA 1978] hereof. Such action shall be brought in the name of the state of New Mexico only or in the name of the state of New Mexico to the use of the party entitled to recover upon said bond, as the case may be.

History: Laws 1941, ch. 45, § 15; 1941 Comp., § 51-1517; 1953 Comp., § 67-13-17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 7 Am. Jur. 2d Auctions and Auctioneers §§ 6, 7, 10.

Liability of auctioneer or clerk to buyer as to title, condition or quality of goods, 80 A.L.R.2d 1237.

7A C.J.S. Auctions and Auctioneers §§ 3, 26.

ARTICLE 17
Barbers (Repealed.)

61-17-1 to 61-17-42. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 171, § 28 repealed former 61-17-1 to 61-17-6 NMSA 1978, as enacted by Laws 1963, ch. 103, § 1, and as amended by Laws 1981, ch. 27, § 1, Laws 1987, ch. 107, §§ 1 to 3, and Laws 1988, ch. 38, § 1, concerning the licensing of barbers, the short title, definitions, regulation of barber schools, barber instructors, and barber qualifications, effective June 18, 1993. For present comparable provisions, *see* Chapter 61, Article 17A NMSA 1978.

Laws 1987, ch. 107, § 12 repealed former 61-17-7 NMSA 1978, as amended by Laws 1979, ch. 372, § 1, relating to apprentice qualifications, effective June 19, 1987.

Laws 1993, ch. 171, § 28, repealed former 61-17-8 NMSA 1978, as amended by Laws 1987, ch. 107, § 4, concerning reciprocity with other states, territories or possessions of the United States, or the District of Columbia, effective June 18, 1993.

Laws 1987, ch. 107, § 12, repealed former 61-17-9 NMSA 1978 as enacted by Laws 1937, ch. 220, § 7, relating to registered apprentices from other states, effective June 19, 1987.

Laws 1993, ch. 171, § 28 repealed former 61-17-10 to 61-17-25 NMSA 1978, as enacted by Laws 1937, ch. 220, §§ 10, 12, and 15 to 17; and Laws 1979, ch. 372, § 3; and as amended by Laws 1977, ch. 247, § 175; Laws 1983, ch. 262, §§ 2, 3; and Laws 1987, ch. 107, §§ 5 to 11; concerning the issuance, display, renewal, suspension or revocation of a certificate of registration, creating, organizing, and empowering the board of barber examiners, and providing laws concerning sanitation, effective June 18, 1993. For present comparable provisions, *see* Chapter 61, Article 17A NMSA 1978.

Laws 1979, ch. 372, § 7, repealed former 61-17-26 to 61-17-39 NMSA 1978, relating to unfair, unjust and uneconomic trading practices in the operation of barber shops in the state and the prohibition thereof.

Laws 1993, ch. 171, § 28 repealed former 61-17-40 to 61-17-42 NMSA 1978, as enacted by Laws 1974, ch. 78, § 21; and Laws 1983, ch. 262, § 5; and as amended by Laws 1987, ch. 333, § 9; concerning application of the Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, providing for the delayed repeal of this article, and construing this article, effective June 18, 1993.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Barbers and Cosmetologists Act; and at the beginning of the sentence, deleted "Sections 1 through 24 of this act" and added "Chapter 61, Article 13 NMSA 1978".

Law reviews. — For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Res. J. 599 (1972).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists §§ 4 to 12.

Places or persons within purview of statute or ordinance as to licensing of barbers, 31 A.L.R. 433, 59 A.L.R. 543.

Validity, construction, and effect of statute or ordinance regulating beauty culture schools, 56 A.L.R.2d 879.

39A C.J.S. Health and Environment §§ 37 to 39.

61-17A-2. Definitions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided that "department" means the regulation and licensing department, as used in the Barbers and Cosmetologists Act;

and added a new Subsection D and redesignated former Subsections D through M as Subsections E through N, respectively.

2017 Amendments. — Laws 2017, ch. 112, § 3, effective June 16, 2017, defined "hairstylist" and revised the definitions of certain terms as used in the Barbers and Cosmetologists Act; in Subsection F, after "barbering", added "hairstyling"; added new Subsection H and redesignated the succeeding subsections accordingly; in Subsection K, after "cosmetology", deleted "or", and after "barbering", added "or hairstyling"; and in Subsection L, after "barbering", added "hairstyling".

Laws 2017, ch. 108, § 1, effective June 16, 2017, defined "eyebrow threading" and revised the definition of "establishment" to include "eyebrow threading" as used in the Barbers and Cosmetologists Act; in Subsection F, after "barbering", added ", eyebrow threading"; and added new Subsection H and redesignated the succeeding subsections according.

The 1997 amendment added Subsections E, I and K and redesignated former Subsections E to H accordingly, inserted "other than a student" near the beginning of Subsections D and H, rewrote Subsection G, and made minor stylistic changes throughout the section. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-17A-25 NMSA 1978.

Effective dates. — Laws 2017, ch. 112 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2017 amendment, effective June 16, 2017, required individuals who engage in the practice of hairstyling or who teach hairstyling to obtain a license pursuant to the Barbers and Cosmetologists Act; and in Subsections A and C, after "barbering", added "hairstyling".

The 1997 amendment substituted "License required" for "Certification required" in the section heading and substituted "Unless licensed" for "Unless certified" at the beginning of Subsection D. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the

legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Inapplicable in federal enclave. — The state of New Mexico may not require that barbers employed at White Sands missile range by a concessionaire under contract with the army and air force exchange service be subject to licensing and other regulation under the laws of New Mexico as administered by the state board of barber examiners. 1960 Op. Att'y Gen. No. 60-15 (rendered under former law).

Inspection prerequisite to reopening. — The opening of a barber shop after it was closed for some years constitutes the opening or establishment of such shop for which the inspection fee is payable. 1938 Op. Att'y Gen. No. 38-1974 (rendered under former law).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17A-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, revised the composition of the board of barbers and cosmetologists, requiring one member to be a licensed hairstylist and reducing the number of members who must be licensed barbers; in Subsection B, after "Of those five,", deleted "two members" and added "one member", after "shall be", added "a", and after the second occurrence of "licensed", deleted "barbers" and added "barber, one member shall be a licensed hairstylist".

The 2015 amendment, effective July 1, 2015, reduced the number of board members and changed the composition of the board of barbers and cosmetologists ; in Subsection A, in the first sentence, after "The board", deleted "shall be" and added "is", and in the third sentence, after "The board", deleted "shall consist" and added "consists", and after "of", deleted "nine" and added "seven"; in Subsection B, after "Of the", deleted "nine" and added "seven", after "represent school owners.", deleted "Two members shall be licensed body artists pursuant to the Body Art Safe Practices Act and shall have at least five years in practice in their occupation.", and after "Cosmetologists Act", deleted "the Body Art Safe Practices Act"; and in Subsection E, after "set forth by board", deleted "regulation" and added "rule".

Temporary provisions. — Laws 2015, ch. 129, § 10 provided:

A. On July 1, 2015:

(1) all personnel and all money, appropriations, records, furniture, equipment, supplies and other property that belonged or were allocated to the board of barbers and cosmetologists for use in connection with the implementation of the Body Art Safe Practices Act are transferred to the board of body art practitioners;

(2) all money that is in the barbers and cosmetologists fund that was paid into the fund pursuant to the Body Art Safe Practices Act or regulations promulgated pursuant to that act shall be transferred to the body art practitioners fund;

(3) all existing contracts, agreements and other obligations that relate to the Body Art Safe Practices Act or the board of barbers and cosmetologists work pursuant to that act shall be binding on the board of body art practitioners;

(4) all pending court cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the board of barbers and cosmetologists that relate solely to the implementation of the Body Art Safe Practices Act shall be unaffected and shall continue in the name of the board of body art

practitioners. Pending legal or administrative proceedings described in this paragraph that relate to the board of barbers and cosmetologists and to the implementation of the Body Art Safe Practices Act shall be unaffected, but the board of body art practitioners shall be joined as a party;

(5) all rules, orders and other official acts of the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall continue in effect until amended, replaced or repealed by the board of body art practitioners; and

(6) references in the law, rules and orders to the board of barbers and cosmetologists in connection with the Body Art Safe Practices Act shall be deemed references to the board of body art practitioners.

B. Licenses that were issued before the effective date of this act by the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall remain in effect until the license expires or is renewed or reissued by the board of body art practitioners.

The 2007 amendment, effective June 15, 2007, provides that two members of the board shall be licensed body artists who shall have at least five years in practice in their occupation.

The 1997 amendment deleted "or certified" following "shall have ever been licensed" in the last sentence of Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Removal without hearing. — Members of the former state board of barber examiners were policy-making persons, having no property interest in their positions; they were not statutorily, nor constitutionally, entitled to hearings before removal from their positions. *State ex rel. Duran v. Anaya*, 1985-NMSC-044, 102 N.M. 609, 698 P.2d 882 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 9.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, expanded the powers and duties of the regulation and licensing department, and clarified that the board of barbers and cosmetologists is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; in the section heading, added "and department"; in Subsection A, deleted Paragraphs A(5) and A(6) and redesignated former Paragraphs A(7) through A(12) as Paragraphs A(5) through A(10), respectively, in Paragraph A(10), after "in accordance with that act", added "in accordance with the Uniform Licensing Act"; and added Subsection D.

The 2017 amendment, effective June 16, 2017, required the board of barbers and cosmetologists to provide for the licensure of hairstylists; in Subsection A, Paragraph A(8), after "licensure of barbers", added "hairstylists".

The 2015 amendment, effective July 1, 2015, removed the board of barbers and cosmetologists' oversight authority over the Body Art Safe Practices Act; in Paragraph (1) of Subsection A, after "Cosmetologists Act", deleted "and the Body Art Safe Practices Act"; in Paragraph (4) of Subsection A, after "estheticians", added "and", and after "electrologists", deleted "and body artists and operators pursuant to the Body Art Safe Practices Act"; in Paragraph (8) of Subsection A, after "estheticians", deleted "body artists and operators pursuant to the Body Art Safe Practices Act"; in Paragraph (11) of Subsection A, after "students", added "and"; deleted Paragraph (12) of Subsection A, relating to the hiring staff to administer the provisions of the Body Art Safe Practices Act, and redesignated former Paragraph (13) of Subsection A as Paragraph (12) of Subsection A; in Paragraph (12) of Subsection A, after "Cosmetologists Act", deleted "or the Body Art Safe Practices Act", and after "in accordance with", deleted "those acts" and added "that act"; in Subsection C, after Cosmetologists Act", deleted "and the Body Art Safe Practices Act".

The 2013 amendment, effective June 14, 2013, added the power to issue cease and desist orders; and added Paragraph (13) of Subsection A.

The 2007 amendment, effective June 15, 2007, requires the board to adopt rules to carry out the Body Art Safe Practices Act and establish standards and provide examination and licensure for body artists and operators pursuant to the Body Art Safe Practices Act and adds Paragraph (12) of Subsection A.

Appropriations. — Laws 2007, ch. 181, § 18, effective June 15, 2007, appropriates $300,000 from the barbers and cosmetology fund to the board of barbers and cosmetologists for expenditure in fiscal year 2008 for administration of the Body Safe Practices Act.

The 2003 amendment, effective July 1, 2003, deleted "and regulations" following "State Rules Act, rules" near the middle of Paragraph A(1); deleted "and regulations" following "copies of rules" near the beginning of Paragraph A(6); and deleted former Paragraph A(11), concerning hire of director and staff, and redesignated former Paragraph A(12) as present Paragraph A(11).

The 1997 amendment, in Subsection A, substituted "licensure and license renewal" for "certification and renewal of certification" in Paragraph (4), inserted "enterprise" in Paragraph (6), deleted "certification or" preceding "licensure" in Paragraph (7), rewrote Paragraph (8), inserted "and fees" in Paragraph (10), added Paragraph (12) and made minor stylistic changes at the end of Subsections (10) and (11) accordingly; and, in Subsection C, inserted "enterprise". Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Board deemed state officers for venue purposes. — The former board of barber examiners was clothed by the legislature with powers and duties of statewide scope, the exercise of which involved some portion of the governmental power. Hence the board itself, as well as its component members, was a state officer for venue purposes. *Tudesque v. N.M. State Bd. of Barber Exam'rs*, 1958-NMSC-128, 65 N.M. 42, 331 P.2d 1104.

Fee not waivable. — A barber shop had to pay the establishment license fee in order to be a valid operation and the state board had no authority to waive the requirement that a shop pay the fee. 1952 Op. Att'y Gen. No. 51-5407 (rendered under former law).

Inspection fee not chargeable for relocation. — Inspection fee provision applied only to barber shops which were opening for business for the first time. It did not apply where mere location of shop was changed. 1937 Op. Att'y Gen. No. 37-1709 (rendered under former law).

Inspection fee chargeable for reopening. — The opening of a barber shop after it was closed for some years constituted the opening or establishment of such shop for which the inspection fee was payable under former Section 61-17-13 NMSA 1978. 1938 Op. Att'y Gen. No. 38-1974 (rendered under former law).

No fee chargeable for certificate transfer. — The board could pass a rule requiring a transfer of the annual establishment license mentioned in former Section 61-17-13 NMSA 1978 in the books of the board, or by an exchange of the certificate transferred for a new certificate issued in lieu of the old one and in the name of the vendee, but it

could not make any charge for this transfer or exchange of license certificates, since former Section 61-17-13 NMSA 1978 did not authorize such a charge and the board could not, by rule, require the payment of charges not authorized by this section. 1939 Op. Att'y Gen. No. 39-3233 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 9 et seq.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, *see* 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for barbers; in Subsection A, deleted former Paragraph A(1), which provided "has an education equivalent to the completion of the second year of high school", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3) , respectively, and in Paragraph A(2), after "two hundred hours", added "or equivalent credits"; and in Subsection B, after "Paragraphs (1) through", changed "(4)" to "(3)".

The 2015 amendment, effective June 19, 2015, authorized the issuance of a barber license for any person who shows proof of having completed an approved registered barbering apprenticeship; in the introductory sentence of Subsection A, added "Except as provided in Subsection B of this section"; in Subsection A,Paragraph (3), after "school", added "or apprenticeship"; added Subsection B and redesignated the succeeding subsection accordingly; and in Subsection C, after "'barber',", added "and".

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of Subsection A, substituted "one thousand two hundred hours" for "twelve hundred hours" in Paragraph A(3), and inserted ", the initials 'R.B.' following the holder's surname" in Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Paroled felon not barred from applying. — A convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or any other trade, profession or occupation in this state. 1958 Op. Att'y Gen. No. 58-214 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologist §§ 11, 12.

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.

ANNOTATIONS

Delayed repeals. — For the delayed repeal of this section, *see* 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for hairstylists; in Subsection A, deleted former Paragraph A(1), which provided "has an education equivalent to the completion of the second year of high school", and redesignated former Paragraphs A(2) through A(4) as Paragraphs A(1) through A(3), respectively, and in Paragraph A(2), after "two hundred hours in a school", added "approved by the board"; and in Subsection B, after "Paragraphs (1) through", changed "(4)" to "(3)".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for cosmetologists; and in Subsection A, deleted former Paragraph A(2), which provided "has an education equivalent to the completion of the second year of high school", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3), respectively.

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of the introductory language of Subsection A, substituted "one thousand six hundred hours" for "sixteen hundred hours" in Paragraph A(3), and rewrote Subsection B. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Products liability: perfumes, colognes, or deodorants, 46 A.L.R.4th 1197.

61-17A-10. 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment substituted "Licensure requirements" for "Certification" in the section heading, substituted "licensure" for "certification" and "license" for "certificate" throughout the section, rewrote the last sentences of Subsections A, B and C, and made gender neutral changes throughout the section. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised the licensure requirements for cosmetologist instructors; and in Subsection A, deleted former Paragraph A(2), which provided "has completed at least a four year high school course of study or its equivalent as approved by the board", and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(2) and A(3) , respectively.

The 1997 amendment deleted "submits satisfactory evidence that he" at the end of the introductory paragraphs of Subsections A and B, substituted "of compliance" for "that he complies" near the end of Subsection C, and rewrote Subsection D. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

College teaching credit not required. — The New Mexico state barbers board (now board of barbers and cosmetologists) could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957 Op. Att'y Gen. No. 57-245 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 8.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment rewrote Subsection F. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

No upper limit on required hours. — The language of former Section 61-17-4 NMSA 1978 clearly stated the minimum number of hours necessary for graduation and placed no maximum hours upon the course of study. 1957 Op. Att'y Gen. No. 57-153 (rendered under former law).

Students not required to charge fees. — Former Section 61-17-4 NMSA 1978 was silent as to fees to be charged by student barbers, if any. The legislature could authorize a minimum fee to be charged for services performed by student barbers, but in lieu of such specific statutory authorization, student barbers, attending barber school, could refuse to accept or collect any charge for barbering services rendered to the public. 1957 Op. Att'y Gen. No. 57-153 (rendered under former law).

College teaching credit not required. — Under former Section 61-17-4 NMSA 1978, the New Mexico state barbers board could not require that instructors in barbers colleges in New Mexico have 10 hours teaching credit in or at an accredited college or university. 1957 Op. Att'y Gen. No. 57-245 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 8.

Liability of cosmetology school for injury to patron, 81 A.L.R.4th 444.

61-17A-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 218, § 18 repealed 61-17A-13, as enacted by Laws 1993, ch. 171, § 13, relating to the tuition recovery fund, effective June 20, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, eliminated the depositing of fines in the barbers and cosmetologists fund; and after "fees", added "and", and after "charges", deleted "and fines".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 1997 amendment added "and enterprises" at the end of the section heading and at the end of the first sentence, and inserted "enterprises" near the beginning of the second sentence. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, *see* 61-17A-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective July 1, 2019, increased the maximum fee that may be imposed by the board for certain professional and occupational licenses; after "cosmetologist license", deleted "50.00" and added "100", after "barber license", deleted "50.00" and added "100", after "hairstylist license", deleted "50.00" and added "100", after "specialty license", deleted "50.00" and added "100", and after "instructor license", deleted "50.00" and added "100".

The 2017 amendment, effective June 16, 2017, provided the fee for a hairstylist license; after "barber license . . . $ 50.00", added "hairstylist license . . . $ 50.00".

The 1997 amendment, in the table of fees, substituted "specialty license" for "specialty certificate", and increased various fees throughout. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided for expedited licensure, provided that the board of barbers and cosmetologists shall issue an expedited license without examination to a person who holds a valid, unrestricted license in another licensing jurisdiction, provided that the board shall expedite the issuance of licenses in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in Subsection A, after "under the provisions of", deleted "that" and added "the Barbers and Cosmetologists"; in Subsection B, after "The board", deleted "may" and added "shall", after "holds a", deleted "current" and added "valid, unrestricted", and deleted "state, territory or possession of the United States or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and" and added "licensing jurisdiction", and deleted former Paragraph B(2); and added Subsection C.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 1997 amendment substituted "licensed as a barber, a cosmetologist, an esthetician" for "licensed or certified as a barber, or cosmetologist" near the beginning of Subsection A, deleted "or certified" and "or certificate" following "licensed" and "license", respectively, near the end of Subsection A, in Subsection B, deleted "submits proof that he" at the end of the introductory paragraph and deleted "or certification" following "license" in Paragraph (1). Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required every holder of a license issued pursuant to the Barbers and Cosmetologists Act to notify the department of regulation and licensing of any change in place of business, and removed a provision requiring notification be made to the executive director; and after "holder of a license", added "issued pursuant to the Barbers and Cosmetologists Act", after "shall notify the", deleted "executive director" and added "department", and deleted "Upon receipt of the notification, the executive director shall make the necessary change in the books.".

The 1997 amendment rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, substituted the board of barbers and cosmetologists with the department of regulation and licensing as the entity under whose authority licenses are issued; and after "Barbers and Cosmetologists Act by the", deleted "board" and added "department".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17A-25 NMSA 1978.

The 2019 amendment, effective July 1, 2019, increased the duration of a license issued to a barber, hairstylist, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologists from one to two years; and in Subsection A, after "for a period of", deleted "one year" and added "two years", and after "for the next", deleted "year" and added "two-year period".

The 2017 amendment, effective June 16, 2017, provided that the original issuance and renewal of licenses to practice as a hairstylist shall be for a period of one year or less from the date of issuance; in Subsection A, after "barber,", added "hairstylist".

The 2007 amendment, effective June 15, 2007, appropriates $300,000 from the barbers and cosmetology fund to the board of barbers and cosmetologists for expenditure in fiscal year 2008 for administration of the Body Art Safe Practices Act.

The 1997 amendment rewrote this section to the extent that a detailed comparison is impracticable. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 12.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2022 amendment, effective May 18, 2022, removed "habitual drunkenness or habitual addiction to the use of habit-forming drugs" and "conviction of a crime involving moral turpitude" from the list of grounds for refusal to issue, renew, suspend or revoke a license, added "working in a capacity regulated pursuant to the Barbers and Cosmetologists Act while under the influence of intoxicating liquor or drugs" to the list of grounds for refusal to issue, renew, suspend or revoke a license, and provided that any suspended or revoked license shall be delivered to the department of regulation and licensing; in Subsection A, deleted former Paragraph A(5) and added a new Paragraph A(5), deleted former Paragraph A(13) and redesignated former Paragraph A(14) as Paragraph A(13); and in Subsection B, changed each occurrence of "board" to "department".

The 1997 amendment, in Subsection A, substituted "continuing to practice in or be employed by an establishment, an enterprise, a school or an electrology clinic" for "continuing to be employed or practicing in an establishment" at the beginning of Paragraph (6) and inserted "enterprise" near the end of Paragraph (6), substituted "default of a licensee" for "notification of a licensee's default" in Paragraph (7), inserted "enterprise, school or electrology clinic" in Paragraph (12), and made a stylistic change in Paragraph (9). Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Law reviews. — For note, "On Building Better Laws for New Mexico's Environment," see 4 N.M.L. Rev. 105 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 12.

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

53 C.J.S. Licenses § 44.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, exempted persons who provide only eyebrow threading services from the provisions of the Barbers and Cosmetologists Act; and added Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 11 Am. Jur. 2d Barbers and Cosmetologists § 11.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Bribery §§ 4 to 7.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal, see 61-17A-25 NMSA 1978.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of barbers and cosmetologists; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 2001 amendment, effective July 1, 2001, extended the life of the board of barbers and cosmetologists by changing the termination date of the board from July 1, 2001 to July 1, 2005 and delaying the repeal of the Barbers and Cosmetologists Act from July 1, 2002 to July 1, 2006.

The 1997 amendment substituted "July 1, 2001" for "July 1, 1998" in the first sentence and substituted "July 1, 2002" for "July 1, 1999" in the second and third sentences. Laws 1997, ch. 218 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2015 amendment, effective July 1, 2015, changed the statutory reference of the Body Art Safe Practices Act from "Sections 1 through 14 of this act" to "Chapter 61, Article 17B NMSA 1978".

Temporary provisions. — Laws 2015, ch. 129, § 10 provided:

A. On July 1, 2015:

(1) all personnel and all money, appropriations, records, furniture, equipment, supplies and other property that belonged or were allocated to the board of barbers and cosmetologists for use in connection with the implementation of the Body Art Safe Practices Act are transferred to the board of body art practitioners;

(2) all money that is in the barbers and cosmetologists fund that was paid into the fund pursuant to the Body Art Safe Practices Act or regulations promulgated pursuant to that act shall be transferred to the body art practitioners fund;

(3) all existing contracts, agreements and other obligations that relate to the Body Art Safe Practices Act or the board of barbers and cosmetologists work pursuant to that act shall be binding on the board of body art practitioners;

(4) all pending court cases, legal actions, appeals and other legal proceedings and all pending administrative proceedings that involve the board of barbers and cosmetologists that relate solely to the implementation of the Body Art Safe Practices Act shall be unaffected and shall continue in the name of the board of body art practitioners. Pending legal or administrative proceedings described in this paragraph that relate to the board of barbers and cosmetologists and to the implementation of the Body Art Safe Practices Act shall be unaffected, but the board of body art practitioners shall be joined as a party;

(5) all rules, orders and other official acts of the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall continue in effect until amended, replaced or repealed by the board of body art practitioners; and

(6) references in the law, rules and orders to the board of barbers and cosmetologists in connection with the Body Art Safe Practices Act shall be deemed references to the board of body art practitioners.

B. Licenses that were issued before the effective date of this act by the board of barbers and cosmetologists pursuant to the Body Art Safe Practices Act shall remain in effect until the license expires or is renewed or reissued by the board of body art practitioners.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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 microbiotic 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2015 amendment, effective July 1, 2015, replaced the board of barbers and cosmetologists with "the board of body art practitioners" in the meaning of "board" in the definitions section of the Body Art Safe Practices Act; in Subsection A, after "the board of", deleted "barbers and cosmetologists" and added "body art practitioners".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of body art practitioners is required to follow the provisions of the State Rules Act when promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters, provided that license fees and license renewal fees shall not exceed three hundred dollars and that late fees shall not exceed one hundred dollars, provided that the board of body art practitioners shall issue an expedited license to a person licensed in another licensing jurisdiction in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and

those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "renewal; expedited licensure"; in Subsection A, after "defined by the board", added "by rules promulgated in accordance with the State Rules Act", and after "the applicant demonstrates", deleted "the training and experience received by the applicant is equivalent to the" and added "the applicant meets the"; in Subsection B, after "place a valid", deleted "and unsuspended"; in Subsection C, after "license renewal fees", deleted "and late fees in amounts necessary to administer the provisions of the Body Art Safe Practices Act" and added "not to exceed three hundred dollars ($300) and late fees not to exceed one hundred dollars ($100)"; added a new Subsection D and redesignated former Subsections D through H as Subsections E through I, respectively; and in Subsection E, after "The board", deleted "shall promulgate rules for the revocation or suspension of" and added "may suspend or revoke", after "pursuant to that act", added "in accordance with the Uniform Licensing Act", and after "suspended or revoked", deleted "pursuant to the Body Art Safe Practices Act".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, provided for the waiver of license fees and license renewal fees for military service members and veterans; and in Subsection C, after "established by the board", added "Except as provided in Section 61-1-34 NMSA 1978".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection E, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective April 4, 2019, required the board of body art practitioners to grant credit to an applicant for licensure for training or experience obtained outside the state; in Subsection A, after the semicolon, added "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 training and experience received by the applicant is equivalent to the training and experience required pursuant to the Body Art Safe Practices Act.".

The 2015 amendment, effective July 1, 2015, provided for license requirements for body artists and required the board of body art practitioners to promulgate rules for body artists in accordance with the Body Art Safe Practices Act; in Subsection A, after "body art license", added "and an operator shall obtain a body art establishment license, the", after "defined by the board", added "and shall include the requirement", after "that",

added "a body artist applicant", after "scarification and", deleted "to establish and maintain" and added "the requirement that", and after "body art establishment", added "be maintained"; in Subsection B, after "has been issued to", deleted "the" and added "that"; in Subsection C, after "the issuance", added "or renewal", after "by the board.", deleted "The operator or body artist shall renew the license annually.", after "shall set license fees", deleted "and", after "license renewal fees", added "and late fees", and after "Body Art Safe Practices Act.", added the remainder of the section; in Subsection D, after "suspension of a license for", deleted "an operator" and added "a body art establishment", after "Body Art Safe Practices Act", added "or rules promulgated pursuant to that act", after "operator or the body artist", added "with", and after "Section", deleted "9 of the Body Art Safe Practices Act" and added "61-17B-9 NMSA 1978"; in Subsection E, after "application", deleted "or annual renewal of a" and added "to issue a new or renewed", after "The", deleted "operator or body artist" and added "applicant", after "required by the board", added "and proof of the applicant's", and after "training as required", deleted "and approved"; in Subsection F, after "current body art", added "license", and after "or body art", deleted "operator" and added "establishment"; deleted Subsection G and redesignated the succeeding subsections accordingly; in the introductory sentence of Subsection G, after "shall be kept", deleted "on file" after "establishment and", added "shall be"; in Paragraph (2) of Subsection G, after "photograph", added "for the operator and any body artists"; in Paragraph (4) of Subsection G, after "address of the", deleted "body art establishment owner" and added "operator"; in Paragraph (5) of Subsection G, after "performed", added "at the body art establishment"; in Paragraph (6) of Subsection G, after "inks used", added "at the body art establishment", and after "manufacturer", added "of those items"; in Paragraph (7) of Subsection G, after "a", added "current"; and in Subsection H, after "address of the", added "body art establishment's".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2013 amendment, effective June 14, 2013, added penalties; in the title, added "penalties"; in Subsection C, in the second sentence, at the beginning of the sentence, deletes "provided that" and added "Except as provided in Subsection D of this section", and after "no penalty", deleted "exceeds" and added "shall exceed"; and added Subsection D.

61-17B-12. Repealed.

History: Laws 2007, ch. 181, § 12; repealed by Laws 2015, ch. 129, § 11.

ANNOTATIONS

Repeals. — Laws 2015, ch. 129, § 11 repealed 61-17B-12 NMSA 1978, as enacted by Laws 2007, ch. 181, § 12, relating to the use of barbers and cosmetologists fund, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

Effective dates. — Laws 2007, ch. 181 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

61-17B-14. Repealed.

History: Laws 2007, ch. 181, § 14; repealed by Laws 2015, ch. 129, § 11.

ANNOTATIONS

Repeals. — Laws 2015, ch. 129, § 11 repealed 61-17B-14 NMSA 1978, as enacted by Laws 2007, ch. 181, § 14, relating to the promulgation of rules, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2019 amendment, effective April 4, 2019, revised the composition of the board of body art practitioners; in Subsection B, after "Of the five members of the board,", deleted "four" and added "two", after "Of those", deleted "four, two members" and added "two, one member", after "shall be an operator and", deleted "two members" and added "one member", and after "The remaining", deleted "one member" and added "three members".

Temporary provisions. — Laws 2019. ch. 245, § 3 provided that on or after April 4, 2019, the governor shall appoint two public members to serve on the board, one of whom shall replace one operator member and one of whom shall replace one body artist member so that the board shall be composed of three public members and two members licensed pursuant to the Body Art Safe Practices Act. The terms of the members shall remain staggered.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of body art practitioners is required to follow the provisions of the State Rules Act when promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters; and in Subsection A, Paragraph A(1), after "promulgate rules", added "in accordance with the State Rules Act", and added Paragraph A(8).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-17B-18 NMSA 1978.

The 2022 amendment, effective May 18, 2022, provided that the body art practitioners fund may also consist of gifts, grants and donations, and eliminated the depositing of fines in the body art practitioners fund; and after "The fund consists of appropriations", added "gifts, grants and donations", after "charges", deleted "and fines", and after "imposed by the board", deleted "and that shall be deposited into the fund".

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, changed "July 1, 2021", to "July 1, 2027", and changed "July 1, 2022" to "July 1, 2028".

ARTICLE 18
Collection Agencies (Repealed.)

61-18-1 to 61-18-67. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 252, § 34 repealed former 61-18-1 to 61-18-67 NMSA 1978, as enacted by Laws 1957, Chapter 218, Laws 1974, Chapter 78, Laws 1978, Chapter 11, and Laws 1979, Chapter 27 and as amended by Laws 1961, Chapter 49, Laws 1973, Chapter 338, Laws 1974, Chapter 78, Laws 1977, Chapter 245,. Laws 1977, Chapter 306, and Laws 1978, Chapter 11, relating to collection agencies, effective July 1, 1987. For present comparable provisions, *see* 61-18A-1 to 61-18A-33 NMSA 1978.

Laws 1987, ch. 298, § 10 purported to amend 61-18-61 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

Laws 1987, ch. 292, § 14 purported to amend 61-18-64 NMSA 1978, but, due to the prior 1987 repeal, that amendment was not given effect.

ARTICLE 18A
Collection Agencies

61-18A-1. Short title.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, changed "This act" to "Chapter 61, Article 18A NMSA 1978".

Collection agency may not practice law directly. — A collection agency engages in the unauthorized practice of law when it represents parties before judicial bodies, prepares pleadings, manages litigation, gives legal advice, renders services requiring legal skill, or prepares instruments which secure legal rights. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law indirectly. — Soliciting assignments of claims on a contingent fee basis and filing suit thereon on the same basis constitutes the practice of law. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law by pro forma assignments. — Where the agency procures the assignment merely to facilitate filing suit, legal services are in effect offered; this is unauthorized practice. *State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc.*, 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Section 61-18A-26 NMSA 1978 does not authorize the practice of taking the assignment of debts from an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the collection agency's own name. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468 (D.N.M. 1990).

Collection agency may not control litigation. — Where assignment is pro forma, the fact that the agency directs the litigation constitutes the unauthorized practice of law.

State ex rel. Norvell v. Credit Bureau of Albuquerque, Inc., 1973-NMSC-087, 85 N.M. 521, 514 P.2d 40.

Collection agency may not practice law by procuring legal services. — A collection agency may solicit claims for collection, but it engages in the unauthorized practice of law when it holds out that it can procure or perform legal services in the collection process. 1974 Op. Att'y Gen. No. 74-28.

Creditor must select attorney freely. — If nonlitigation methods fail, the agency must refer the claim back to the creditor and must advise him to select an attorney of his own choice. For the agency to take a pro forma interest in the claim to enable it to file suit in its own name is to actually furnish legal services and as such is unauthorized. 1974 Op. Att'y Gen. No. 74-28.

Collection agency may not otherwise interfere with attorney-client relation. — If the creditor selects an attorney who is also an agency attorney, the agency may not control the litigation or interfere in any way with the attorney-client relationship; such control or interference constitutes the unauthorized practice of law. 1974 Op. Att'y Gen. No. 74-28.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 15A Am. Jur. 2d Collection and Credit Agencies §§ 1 to 10, 15, 16.

Regulation and licensing of collection and commercial agencies or representatives thereof, 54 A.L.R.2d 881.

Liability of collection agency for failure to pursue claim, 76 A.L.R.2d 1155.

Civil liability of attorney for abuse of process, 97 A.L.R.3d 688.

What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)), 159 A.L.R. Fed. 121.

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 repossessor, 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.

ANNOTATIONS

Cross references. — For the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008, *see* 12 USC §§ 5101 to 5116.

The 2021 amendment, effective July 1, 2021, revised the definition of "collection agency" as used in the Collection Agency Regulatory Act; and in Subsection C, after "two or more creditors", added "or a person engaging in the business the principal purpose of which is the collection of debts".

The 2019 amendment, effective July 1, 2019, defined "nationwide multistate licensing system and registry" and revised the definition of "director" as used in the Collection Agency Regulatory Act, and made certain technical amendments; in Subsection B, after "director of the", deleted "financial institutions", after "division", deleted "of the regulation and licensing department" and added "or a duly authorized agent designated by the director"; and added a new Subsection K.

Am. Jur. 2d, A.L.R. and C.J.S. references. — What constitutes "debt" for purposes of Fair Debt Collection Practices Act (15 U.S.C.A. § 1692a(5)), 159 A.L.R. Fed. 121.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, revised certain licensing procedures for licenses required by the Collection Agency Regulatory Act, and provided for the director of the financial institutions division of the regulation and licensing department to utilize the nationwide multistate licensing system and registry to receive and process applications for licenses; added new subsection designation "A." and redesignated former Subsections A through C as Subsections B through D, respectively; and added Subsections E through H.

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, repossessors, managers and solicitors, for the conduct of such persons and for the general enforcement of the various provisions of the Collection Agency Regulatory Act 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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the director of the financial institutions division is required to follow the provisions of the State Rules Act when promulgating rules and the provisions of the Uniform Licensing Act in disciplinary matters; in the section heading, deleted "and regulations"; in Subsection A, after "The director shall", deleted "establish" and added "promulgate rules in accordance with the State Rules Act"; and in Subsection B, after "any provisions of", deleted "that" and added "the Collection Agency Regulatory", after "rules", deleted "and regulations established" and added "promulgated", and after "other disciplinary action", added "as provided in the Uniform Licensing Act".

61-18A-5. Unlawful to conduct collection agency or engage in the business of a repossessor 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 repossessor without having first applied for and obtained a repossessor's license.

C. No person shall be considered to be engaged in collection activity within this state if that person's activities regarding this state are limited to collecting debts not incurred in New Mexico from debtors located in this state by means of interstate communications, including telephone, mail or facsimile transmission, from the person's location in another state.

History: Laws 1987, ch. 252, § 5; 1993, ch. 213, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, added Subsection C.

Violations of federal law. — A debt collection agency violated provisions of the federal Fair Debt Collection Practices Act by engaging in collection activity in New Mexico without a license. *Russey v. Rankin*, 911 F. Supp. 1449 (D.N.M. 1995).

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 repossessor 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, repossessor'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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2019 amendment, effective July 1, 2019, revised certain licensing procedures for licenses required by the Collection Agency Regulatory Act; added new subsection designation "A.", and added new Subsections B through D.

The 1993 amendment, effective June 18, 1993, inserted "or" and deleted "and solicitor's license" following "manager's license".

61-18A-8. Applications; required information.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, authorized the director of the financial institutions division of the regulation and licensing department to establish certain requirements for a license application, and made certain technical amendments; added

new subsection designations "B" and "C"; in Subsection B, added new paragraph designations "(1)" through "(4)"; and added Subsection D.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, removed United States citizenship as a qualification for a licensed manager of a collection agency; and deleted former Subsection A and redesignated the succeeding subsections accordingly.

The 1999 amendment, effective June 18, 1999, deleted former Subsection D, which read "have been a bona fide resident of this state continuously for at least six months prior to the date of the filing of the application", and redesignated the subsequent subsections accordingly.

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.

ANNOTATIONS

The 2012 amendment, effective July 1, 2012, permitted a foreign collection agency to maintain electronic records at a location where the collection agency regularly maintains records; in the first sentence, after "establish and maintain a", deleted "full time bona fide", after "during the life of any", added "collection agency", and after "license issued to", deleted "it" and added "the foreign corporation or partnership"; and in the second sentence, after "All records of the collection agency", added "located in New Mexico shall", after "maintained at the", added "collection agency’s", and after "principal office in New Mexico", deleted "of such agency" and added the remainder of the sentence.

61-18A-15. Surety bond.

A. Prior to the issuance of any collection agency or repossessor'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, repossessor, 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.

ANNOTATIONS

Repeals. — Laws 2019, ch. 144, § 31 repealed 61-18A-18 NMSA 1978, as enacted by Laws 1987, ch. 252, § 18, relating to display of license, duration, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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 repossessor 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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, revised the deadline for renewing an office management license, and changed the expiration month for an office management license that is not renewed by the deadline; in Subsection A, after "on or before", deleted "May 31" and added "November 30", and after "shall expire", deleted "June 30" and added "January 1"; and in Subsection B, after "licensed manager", deleted "must" and added "shall".

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.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-18A-24 NMSA 1978 as enacted by Laws 1987, ch. 252, § 24, relating to proceedings in connection with issuance, renewal, suspension, denial or revocation, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, removed a provision authorizing a court, in its discretion, to order payment of attorney fees and costs to the prevailing party in certain debt collection lawsuits; and deleted "In such a suit, the court may, in its discretion, authorize payment of reasonable attorney fees and costs to the prevailing party.".

Pro forma assignments. — This section does not authorize the practice of taking the assignment of debts from an underlying creditor on a contingency fee basis and the filing of a suit by the collection agency's own attorneys in the collection agency's own name. *Kolker v. Duke City Collection Agency*, 750 F. Supp. 468 (D.N.M. 1990).

Practice of law not authorized. — This section cannot authorize collection agencies to practice law by bringing suits on nominally assigned claims in state court, since the regulation of the practice of law is an exclusive prerogative of the New Mexico Supreme Court. *Martinez v. Albuquerque Collection Servs., Inc.*, 867 F. Supp. 1495 (D.N.M. 1994).

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, revised the deadline for renewing a license required by the Collection Agency Regulatory Act, and provided that renewed licenses shall be dated "January 1"; added new subsection designations "A" and "B"; in Subsection A, after "on or before", deleted "May 31" and added "November 30"; and in Subsection B, after "dated", deleted "July 1" and added "January 1".

61-18A-28. Remittance of collections to clients.

All collection agencies shall remit to their clients the proceeds of all collections, after deducting their commission, other lawful expenses and any amounts collected pursuant to Section 61-18A-28.1 NMSA 1978, within forty days of such collection unless otherwise provided by regulation.

History: Laws 1987, ch. 252, § 28; 1992, ch. 36, § 1.

ANNOTATIONS

The 1992 amendment, effective May 20, 1992, substituted "shall remit" for "must remit", inserted "and any amounts collected pursuant to Section 61-18A-28.1 NMSA 1978", and made a stylistic change.

61-18A-28.1. Additional collection from debtors.

A. Unless the agreement between the debtor and the creditor or the agreement between the collection agency and the creditor otherwise expressly prohibits, a collection agency may collect from the debtor an amount equal to the gross receipts tax and the local option gross receipts taxes, as those terms are defined in the Gross Receipts and Compensating Tax Act [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.

ANNOTATIONS

Levy of additional tax not authorized. — This section does not authorize collection agencies to levy an additional gross receipts tax on the commission portion of the referred debt if the creditor has already assessed a gross receipts tax on the entire balance. *Martinez v. Albuquerque Collection Servs.*, Inc., 867 F. Supp. 1495 (D.N.M. 1994).

61-18A-29. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 213, § 4 repeals former 61-18A-29 NMSA 1978, as enacted by Laws 1987, ch. 252, § 29, concerning the issuance of a solicitor's license, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

61-18A-30. Fees.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans, and made certain technical amendments; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 1993 amendment, effective June 18, 1993, substituted "five hundred dollars ($500)" for "two hundred dollars ($200)" in Subsection A, "three hundred dollars ($300)" for "two hundred dollars ($200)" in Subsection B, "one hundred dollars ($100)" for "fifty dollars ($50.00)" in Subsection F, and "fifty dollars ($50.00)" for "thirty-five dollars ($35.00)" in Subsection G; deleted former Subsections J and K, providing for a solicitor's certificate fee of $7.50, and a fee of $100 for examination of a licensee's books, accounts, files and records; inserted present Subsection J; redesignated former Subsection L as present Subsection K; and substituted "two hundred fifty dollars ($250)" for "one hundred fifty dollars ($150)" in Subsection K.

61-18A-31. Deposit of 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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, required that all money received under the Collection Agency Regulatory Act by the director be deposited in the general fund; in the section heading, deleted "in general fund"; and after "shall be deposited in the", deleted "office of the state treasurer" and added "general fund".

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.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

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.

ANNOTATIONS

Compiler's notes. — The phrase "effective date of the enactment of the Collection Agency Regulatory Act" means July 1, 1987, the effective date of Laws 1987, ch. 252.

ARTICLE 19
Cosmetology (Repealed.)

61-19-1 to 61-19-47. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 382, § 35 repealed former 61-19-1 to 61-19-47 NMSA 1978, relating to the regulation of cosmetology, effective April 6, 1979. For present comparable provisions, *see* Chapter 61, Article 17A NMSA 1978.

ARTICLE 19A
Cosmetology (Repealed.)

61-19A-1 to 61-19A-34. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 171, § 28 repealed former 61-19A-1 to 61-19A-25 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 1 to 25 and amended by Laws 1982, ch. 106, §§ 1 to 4, Laws 1984, ch. 44, § 1, and Laws 1989, ch. 110, §§ 1 to 4, regulating

cosmetology, effective June 18, 1993. For present comparable provisions, *see* Chapter 61, Article 17A NMSA 1978.

Laws 1989, ch. 110, § 7 repeals former 61-19A-26 NMSA 1978, as enacted by Laws 1979, ch. 382, § 26, relating to reissue of authority after revocation, effective June 26, 1989.

Laws 1993, ch. 171, § 28 repealed former 61-19A-27 to 61-19A-34 NMSA 1978, as enacted by Laws 1979, ch. 382, §§ 27 to 34, and amended by Laws 1989, ch. 110, §§ 5 and 6, concerning exemptions; prohibited acts; sanitary rules; investigations; entry and inspection; remedies; confidentiality; and repeal of the article, effective June 18, 1993. For present comparable provisions, *see* Chapter 61, Article 17A NMSA 1978.

ARTICLE 20
Dry Cleaning Industry (Repealed.)

61-20-1 to 61-20-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 241, § 35, repealed former 61-20-1 to 61-20-14 NMSA 1978, relating to the regulation of the dry cleaning industry, effective April 8, 1981.

ARTICLE 21
Embalmers and Funeral Directors (Repealed.)

61-21-1 to 61-21-37. Repealed.

ANNOTATIONS

Repeals. — Laws 1978, ch. 185, § 26, repealed former 67-20-1 to 67-20-33, 1953 Comp. (61-21-1 to 61-21-37 NMSA 1978), relating to embalmers and funeral directors, effective July 1, 1978. For provisions of the Thanatopractice Act, *see* 61-32-1 NMSA 1978 et seq.

ARTICLE 22
Employment Agencies (Repealed.)

61-22-1 to 61-22-16. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 241, § 35, repealed former 61-22-1 to 61-22-16 NMSA 1978, relating to the regulation of employment agencies, effective April 8, 1981.

ARTICLE 23
Engineering and Surveying

61-23-1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336, repealed former 61-23-1 NMSA 1978, as amended by Laws 1947, ch. 110, § 2, relating to replacement of reference marks which have been removed or obliterated, effective June 19, 1987, and enacted a new section.

The 1993 amendment, effective July 1, 1993, substituted "Chapter 61, Article 23 NMSA 1978" for "Sections 1 through 32 of this act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 69 to 75.

53 C.J.S. Licenses §§ 5, 7, 34 to 40, 50 to 63.

61-23-1.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 336, § 34 repealed former 61-23-1.1 NMSA 1978, as enacted by Laws 1979, ch. 156, § 1, relating to standards and procedures for restoration or reestablishment of monuments, effective June 19, 1987.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-2 NMSA 1978, as amended by Laws 1947, ch. 110, § 3, relating to right of entry on public and private property, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, made technical revisions; replaced each occurrence of "he" or "his" with "the person" or "the person’s" throughout the section, and in the fourth sentence, after "capacity of", deleted "a professional engineer or professional" and added "an engineer or".

The 2003 amendment, effective June 20, 2003, substituted "engage in the business, act in the capacity of, advertise" for "in New Mexico" in the third sentence; and added the fourth sentence pertaining to professional engineers or surveyors.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section, and substituted "by the board" for "by the state board of registration for professional engineers and surveyors" in the last sentence.

The 1993 amendment, effective July 1, 1993, substituted "professional, licensed or registered engineer" for "professional engineer, engineer, professional surveyor" and deleted "which shall be construed in accordance with this declaration of policy" at the end of the third sentence, and added the final sentence.

Broad interpretation of licensing act violated freedom of speech. — Where respondent, who was a hydrologist and a member of the board of directors of a conservancy district, investigated the use of demolition and construction waste as rip-rap in ditches and prepared and presented a report to the board of directors criticizing the conservancy district's use of the rip-rap to prevent erosion; respondent used a civil engineering mathematical formula to compare the conveyance capacity of ditches that had rip-rap with ditches that had sandy bottoms and asserted that the rip-rap reduced conveyance capacity, led to flooding and bank erosion that could lead to failure; respondent criticized the district's engineer who directed the use of the rip-rap; respondent reiterated multiple times that respondent was not an engineer and insisted that the district hire a registered engineer to review respondent's report and to address the issue; and petitioner determined that respondent had practiced engineering without a license, because respondent had applied engineering principles, equations and concepts to investigate and evaluate the flow of water in the district's ditches, the petitioner's broad interpretation and application of Section 61-23-23 NMSA 1978 violated respondent's right to freedom of speech. *New Mexico Bd. of Licensure v. Turner*, 2013-NMCA-067, 303 P.3d 875.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-3 NMSA 1978, as enacted by Laws 1933, ch. 130, § 3, relating to violation of reference mark and entry provisions, effective June 19, 1987, and enacted a new section.

The 2023 amendment, effective June 16, 2023, revised the definition of "engineer," "engineering," "person," "surveyor," and "surveyor intern," and defined "professional engineer"; in Subsection F, after "'engineer'", deleted "'professional engineer', 'consulting engineer', 'licensed engineer' or 'registered engineer'", after "means a person who", deleted "is qualified to practice engineering by reason of the person's intensive preparation and knowledge in the use of mathematics, chemistry, physics and engineering sciences, including the principles and methods of engineering analysis and design acquired by professional education and engineering experience, and who is licensed by the board to practice engineering" and added "has completed engineering education and has training and experience in the application of engineering principles and the interpretation of engineering data"; in Subsection H, after "the application of", deleted "special knowledge of the mathematical, physical and engineering sciences" and added "engineering principles and the interpretation of engineering data"; in Subsection M, after "individual", deleted "corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial entity" and added "or business entity"; added a new Subsection O and redesignated former Subsections O through U as Subsections P through V, respectively; in Subsection S, after "a person who is", deleted "qualified to practice surveying by reason of the person's intensive preparation and knowledge in the use of mathematics, physical and applied sciences and surveying, including the principles and methods of surveying acquired by education and experience and who is licensed by the board to practice surveying" and added "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"; and in Subsection T, after "a person who", added "is certified as a surveyor intern by the board and who".

The 2017 amendment, effective July 1, 2017, defined "authorized company officer", "business entity" and "engineering accreditation commission", and revised the definition of "engineer" as used in the Engineering and Surveying Practice Act; added a new Subsection B and redesignated former Subsection B as Subsection C; added a new Subsection D and redesignated former Subsections C and D as Subsections E and F, respectively; in Subsection F, after "'engineer'", added "'professional engineer', 'consulting engineer', 'licensed engineer' or 'registered engineer'", and after "engineering experience", added "and who is licensed by the board to practice engineering"; added a new Subsection G and redesignated former Subsections E through K as Subsections H through N, respectively; deleted former Subsection L and redesignated former Subsections M through S as Subsections O through U, respectively; in Subsection P, Paragraph P(5), after "field notes", added "easements" and added Paragraph P(6); in Subsection R, after "'surveyor'", deleted "or", and after "'professional surveyor'", added "'licensed surveyor' or 'registered surveyor'"; and in Subsection U, deleted the last three sentences, which related to supplemental surveying work for the planning and design of an engineering project.

The 2012 amendment, effective July 1, 2012, defined "professional development" as the education to maintain licensure and in Subsection K, after "relevant skills and knowledge", added "to maintain licensure".

The 2005 amendment, effective June 17, 2005, added the promulgation and adoption of rules of professional responsibility for professional engineers as a function of the engineering committee in Subsection F; changed the definition of "surveying" in Subsection N to include the establishment of controls that will be the basis for all geospatial data used for future design surveys; added the promulgation and adoption of rules of professional responsibility for professional surveyors as a function of the surveying committee in subsection, added a definition of "supplemental surveying work" in Subsection S and permitted professional engineers to perform supplemental surveys in certain circumstances.

The 2003 amendment, effective June 20, 2003, inserted Subsection J, and redesignated the remaining subsections accordingly.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration", "licensee" for "registrant", and made similar substitutions throughout the section; added the next-to last sentence in Subsection E; added Subsection H, and redesignated subsequent subsections accordingly; and in the undesignated paragraph at the end of the section, deleted the former last sentence, which read "A registered professional engineer may apply photogrammetric methods to derive topographic and other date", and added the last two sentences.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-4. Criminal offender's character evaluation. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-4 NMSA 1978, as amended by Laws 1979, ch. 363, § 1, relating to short title, effective June 19, 1987, and enacted a new section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-5 NMSA 1978, as amended by Laws 1979, ch. 363, § 2, relating to declaration of policy, effective June 19, 1987, and enacted a new section.

The 2005 amendment, effective June 17, 2005, changes "surveyors" to "professional surveyors".

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "licensure" for "registration" and twice substituted "licensed" for "registered".

The 1993 amendment, effective July 1, 1993, in Subsection A, deleted "or surveying" following "engineering" and substituted "two public members" for "one public member"; in Subsection B, substituted "Section 61-23-6 NMSA 1978" for "Section 6 of the Engineering and Surveying Practice Act" in the second sentence, divided the former fourth sentence into the present fourth and fifth sentences by deleting "and", inserted "the appointee" in the fifth sentence, inserted "full" near the end of the sixth sentence, and added the final two sentences; and made minor stylistic changes in Subsections A and C.

61-23-6. Board members; qualifications. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-6 NMSA 1978, as amended by Laws 1979, ch. 363, § 3, relating to definitions, effective June 19, 1987, and enacted a new section.

The 2005 amendment, effective June 17, 2005, requires that engineer members of the board have had responsible charge of engineering projects for at least five years as a professional engineer licensed in New Mexico and that surveyor members have had responsible charge of surveying projects for at least five years as a professional surveyor licensed in New Mexico.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section, and deleted "and at least thirty-five years of age" following "resident of New Mexico" in Subsection C.

The 1993 amendment, effective July 1, 1993, substituted "engineer" for "engineering" in the first sentence and inserted "or engaged in engineering education for at least ten years, including responsible charge of engineering education for at least five years" in the second sentence of Subsection A; inserted "architect or landscape architect" and substituted "professions" for "occupation" in Subsection C; and made minor stylistic changes throughout the section.

61-23-7. Reimbursement of board members. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-7 NMSA 1978, as enacted by Laws 1974, ch. 78, § 27, relating to criminal offender's character evaluation, effective June 19, 1987, and enacted a new section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-8 NMSA 1978, as amended by Laws 1979, ch. 363, § 4, relating to state board of registration for professional engineers and land surveyors, effective June 19, 1987, and enacted a new section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-9 NMSA 1978, as amended by Laws 1979, ch. 363, § 5, relating to qualifications of board members, and enacted a new section, effective June 19, 1987.

The 2005 amendment, effective June 17, 2005, provides that in the event of a lack of a quorum at a meeting of the engineering committee and at the request of the committee, other board members may be substituted for a non-attending member in order to have a quorum, creating a joint engineering and surveying standing committee of the board.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in Subsections A and B, and substituted "bylaws or rules" for "bylaws or regulations" throughout the section.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-10. Duties and powers of the board. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-10 NMSA 1978, as amended by Laws 1963, ch. 43, § 25, relating to reimbursement of board members, effective June 19, 1987, and enacted a new section.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the State Rules Act when promulgating rules and to follow the provisions of the Uniform Licensing Act in disciplinary matters; in Subsection B, after "The board", deleted "shall have the power to adopt and amend all bylaws and" and added "may

promulgate", after "rules", deleted "of procedure consistent with the constitution and the laws of this state" and added "in accordance with the State Rules Act"; and in Subsection F, after "in any disciplinary action", added "conducted in accordance with the Uniform Licensing Act".

The 2005 amendment, effective June 17, 2005, provides that the board is the sole authority to certify the qualifications of professional engineers and professional surveyors' authorizes the professional engineering committee and the professional surveying committee to adopt and promulgate rules of professional responsibility exclusive to engineering and surveying respectively, and provides that the joint engineering and surveying standing committee has exclusive authority over practice disputes between engineer and surveyors to determine to determine if proposed rules of professional responsibility are exclusive to one practice or the other in order to delegate rule making authority to the proper committee.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" and made similar changes throughout the section; added Subsection F, and redesignated subsequent subsections accordingly; substituted "board member or an agent, and employee or a member of an advisory committee" for "board member or employee" in Subsection G; and deleted "of registration for professional engineers and surveyors" following "regulations of the board" in Subsection I.

The 1993 amendment, effective July 1, 1993, added the second sentence of Subsection A; deleted "or the Engineering and Surveying Practice Act" following "laws of this state" in the first sentence of Subsection B; substituted "examiners for architects" for "architectural examiners" and " 'joint practice committee' " for " 'architect-engineer-landscape architect joint practice committee', to resolve disputes concerning these professions" in the first sentence and added the second sentence of Subsection G; added Subsection H; and made minor stylistic changes throughout the section.

61-23-11. Receipts and 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-11 NMSA 1978, as enacted by Laws 1957, ch. 211, § 7, relating to removal of board members, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, in Subsection A, after "approved by the", changed "chairman" to "chair".

The 1999 amendment, effective June 18, 1999, added "fund created" to the section heading; substituted references to "fund" for references to "professional engineers' and surveyors' fund" throughout the section; and in Subsection A, added the first and last sentences, and substituted "the fund" for "a separate fund" in the second sentence.

The 1993 amendment, effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences of Subsection A and in the first sentence of Subsection B; and substituted "examiners for engineering and surveying" for "engineering examiners" near the end of Subsection C.

61-23-12. Records and reports. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-12 NMSA 1978, as amended by Laws 1979, ch. 363, § 6, relating to organization and meetings of the board, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, in Subsection D, after "affidavits of the board's", changed "chairman" to "chair".

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" twice in Subsection A, and substituted "same effect" for "same force and effect" in Subsection C.

The 1993 amendment, effective July 1, 1993, deleted "the date of the application, the place of business of such applicant" following "residence of each applicant" in the first sentence of Subsection A; inserted "ongoing or is" in Subsection B(5); added "and executive director" at the end of Subsection D; and made minor stylistic changes in Subsections A and D.

61-23-13. Roster of 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-13 NMSA 1978, as amended by Laws 1979, ch. 363, § 7, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, removed the provision requiring the board to maintain and place a list of all licensed professional engineers and licensed professional surveyors with the secretary of state's office; in the catchline, after "engineers and", added "professional"; and after "licensed professional engineers and", added "licensed", and after "placed on file with", deleted "the secretary of state and".

The 2012 amendment, effective July 1, 2012, required the board to provide a roster of engineers and surveyors to the public; deleted former language which required the board to prepare a roster in even-numbered years and a supplement to the roster in odd numbered years; to make the roster and supplement available to licensees, and permitted the board to distribute or sell the roster to the public; and after "professional surveyors shall be", added "maintained by the board and shall be placed on file with the secretary of state and the state commission of public records and made available to the public".

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in the section heading and first sentence, and substituted "made available to each licensee" for "mailed to each registrant" in the last sentence.

The 1993 amendment, effective July 1, 1993, substituted "executive director" for "secretary" in the first and second sentences; and, in the third sentence, substituted "registrant no later than November 30 of each year" for "person so registered" and inserted "and the state commission of public records".

61-23-13.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 336, § 34 repeals former 61-23-13.1 NMSA 1978, as enacted by Laws 1981, ch. 336, § 1, relating to surveying rules and regulations, effective June 19, 1987.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed a former 61-23-14 NMSA 1978, as amended by Laws 1979, ch. 363, § 8, relating to receipts and disbursements, effective June 19, 1987, and enacted former 61-23-14 NMSA 1978.

Laws 1993, ch. 218, § 11 repealed former 61-23-14 NMSA 1978, as enacted by Laws 1987, ch. 336, § 14, which concerned the requirements for registration as a professional engineer or certification as an engineering intern, and enacted a new section, effective July 1, 1993.

The 2023 amendment, effective June 16, 2023, revised the qualifications for certification as an engineer intern; in Subsection A, Paragraph A(1), after "reputation", added "as determined by board rules", and in Paragraph A(2), after "accredited by the", deleted "technical" and added "engineering technology"; and in Subsection C, Paragraph C(1), after "board-approved", deleted "four-year", and after "engineering curriculum", added "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", and in Paragraph C(2), after "accredited by the", deleted "technology" and added "engineering technology".

The 2005 amendment, effective June 17, 2005, eliminates the limitation in Subsection B on the number of examinations an applicant may take.

The 1999 amendment, effective June 18, 1999, deleted "related science curriculum" following "curriculum in engineering" in Subsection A(2); substituted "licensed professional" for "registered professional" in Subsection A(3); and deleted "related science curriculum or" preceding 'engineering technology program" in Subsection C(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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, revised the qualifications for licensure as a professional engineer; in Subsection A, Paragraph A(1), after "reputation", added "as determined by board rules"; in Subsection B, Paragraph B(1), after "following", added "combinations of education and experience; provided that experience shall only be considered after receiving the first qualifying engineering degree", in Subparagraph B(1)(a), after "engineering experience", deleted "subsequent to receiving the degree", in Subparagraph B(1)(b), after "engineering experience", deleted "in the United States subsequent to receiving the degree", in Subparagraph B(1)(c), after "engineering experience", deleted "subsequent to receiving the degree", in Subparagraph B(1)(d), after "engineering experience", deleted "in the United States subsequent to receiving the degree", in Subparagraph B(1)(e), after "engineering experience", deleted "subsequent to receiving the degree", and in Subparagraph B(1)(f), after "accredited by the", added "engineering"; and in Subsection D, Paragraph D(3), after "is", added "not applying for licensure in the structural discipline but is", and added Subparagraph D(3)(d).

The 2019 amendment, effective June 14, 2019, provided additional grounds for reciprocity for engineers licensed in other jurisdictions; and in Subsection D, added Paragraph D(3).

The 2017 amendment, effective July 1, 2017, revised the requirements for licensure as a professional engineer; in Subsection A, in Paragraph A(2), after "experience and reputation", deleted "other than professional engineers"; and in Subsection B, in Subparagraph B(1)(a), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "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", after "and has", added "at least", added new Subparagraph B(1)(b) and redesignated former Subparagraph B(1)(b) as Subparagraph B(1)(c), in Subparagraph B(1)(c), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "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", added new Subparagraph B(1)(d) and redesignated former Subparagraphs B(1)(c) and B(1)(d) as Subparagraphs B(1)(e) and B(1)(f), in Subparagraph B(2)(a), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "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 in Subparagraph B(2)(b), after "recognized by the board from a", deleted "board-approved engineering curriculum" and added "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".

Applicability. — Laws 2017, ch. 42, § 20 provided that the provisions of Section 61-23-14.1 NMSA 1978 apply to persons initially applying for licensure as a professional engineer on or after July 1, 2017.

The 2012 amendment, effective July 1, 2012, changed the experience requirements for licensure; in Subsection B, deleted former language which provided internship, educational, and experience requirements for licensure; deleted former Subsection B which permitted applicants to take examinations approved by the board; and added Subsection B.

The 2005 amendment, effective June 17, 2005, changed the qualification in Subsection A.(e) to require a minimum of twelve years of engineering experience subsequent to the awarding or an engineering degree; provided in Subsection B that the board approves the appropriate examination and provided in Subsection C that the applicant must successfully complete the exam, the required experience and other requirements of this section to be eligible for a license.

The 2003 amendment, effective June 20, 2003, deleted Paragraph A(2) and redesignated former Paragraph A(2) as Paragraph A(3); substituted "meets one of the following requirements:" for "either" in present Paragraph (2); redesignated former Paragraphs A(3) and A(4) as Subparagraphs A(2)(a) and A(2)(b); and inserted Paragraphs A(c) through A(e).

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; deleted "related science or" preceding "engineering technology curriculum" in Subsection A(5).

61-23-15, 61-23-16. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-15 and 61-23-16 NMSA 1978, as enacted by Laws 1987, ch. 336, §§ 15 and 16, concerning registration as a professional surveyor and certification as a surveying intern, effective July 1, 1993. For provisions of former sections, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-17 NMSA 1978, as enacted Laws 1979, ch. 363, § 11, relating to general requirements for registration or certification as an engineer, effective June 19, 1987, and enacted a new section.

The 2023 amendment, effective June 16, 2023, revised the conditions for which an application for licensure under the Engineering and Surveying Practice Act may be denied; and in Subsection C, after "or any crime", deleted "involving moral turpitude" and added "that may impede the ability of the applicant to perform professionally as determined by board rules".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2012 amendment, effective July 1, 2012, eliminated the concept of registration as a professional engineer and in Subsection A, in the first sentence, after "examination", deleted "registration" and added "licensure".

The 2005 amendment, effective June 17, 2005, changes "his" to "the applicant's" in Subsection A.

61-23-17.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 336 repealed former 61-23-17.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 12, concerning general requirements for registration or certification of professional land surveyors, effective June 19, 1987.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-18 NMSA 1978, as amended by Laws 1979, ch. 363, § 13, relating to application and examination fees, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "certification and licensure" for "certification and registration" in the first sentence.

The 1993 amendment, effective July 1, 1993, rewrote the section to the extent that a detailed comparison is impracticable.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-19 NMSA 1978, as amended by Laws 1979, ch. 363, § 14, relating to examinations, effective June 19, 1987, and enacted a new section.

The 2019 amendment, effective June 14, 2019, authorized the board of licensure for professional engineers and professional surveyors to approve alternative authentications to physical or electronic seals; and in Subsection B, after "use of seals", added "and may approve alternative authentications to physical or electronic seals".

The 2017 amendment, effective July 1, 2017, provided rules for supplemental surveying work for the planning and design of an engineering project; in the catchline, changed "license" to "licenses", and added "incidental architectural work; supplemental surveying work"; and added Subsection D.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; in the title after "Engineering", deleted "certificate" and added "license"; in Subsection A, in the first sentence, after "board shall issue", deleted "certificates of licensure" and added "licenses"; and in Subsection C, after "engineer shall not", deleted "hold himself out to be" and added "make any representation as being".

The 1999 amendment, effective June 18, 1999, substituted "certificates of licensure pursuant to" for "certificates of registration under" in Subsection A.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-20 NMSA 1978, as amended by Laws 1979, ch. 363, § 15, relating to certificates and seals, effective June 19, 1987, and enacted a new section.

The 2023 amendment, effective June 16, 2023, allowed renewal notifications to be sent by mail or other means; and in Subsection C, substituted "sent" for "mailed".

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2017, revised certain language regarding qualifications for licensure that the board may consider; in Subsection F, after "reapplication,", deleted "need not question" and added "may consider", after "qualifications for licensure", deleted "unless" and added "if", after the next occurrence of "the", deleted "qualifications" and added "requirements for licensure", and after "changed since the", deleted "license expired" and added "applicant was first licensed".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; established deadlines for notification of change of address and for renewal of a license by a delinquent licensee; prohibited a delinquent licensee from practicing until the license is renewed; in Subsection A, in the second sentence, after "Initial", deleted "certificates of licensure" and added "licenses"; in Subsection D, after "change of address", added "within thirty days of the change"; in Subsection F, in the first sentence, after "on or before", deleted "the last day" and added "December 31" and after "of the", added "applicable", in the second sentence, after "A", deleted "licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a", after "may renew a", deleted "certificate" and added "license", and after "renewal fee at any time", deleted "up to twelve months after the renewal fee became due", added "before March 1, but the delinquent licensee shall not practice during this period", and in the third sentence, after "Should the licensee", deleted "wish" and added "apply", after "renew an expired", deleted "certificate" and added "license", and after "license after the", deleted "twelve-month period" and added "March 1 deadline".

The 2005 amendment, effective June 17, 2005, provided that initial certification of licensure shall be issued in accordance with the board's rules.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; in Subsection A, deleted "regulations and" preceding "rules of procedure" in the first sentence; and added the last sentence in Subsection F.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

61-23-21. Practice of engineering. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-21 NMSA 1978, as amended by Laws 1979, ch. 363, § 16, relating to registration and renewal fees and expirations, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, provided additional rules for the practice of engineering through a business entity; replaced "firm, partnership, corporation or joint stock association" with "business entity" throughout the section; in Subsection B, after "Engineering and Surveying Practice Act as individuals", deleted "partners", after "specifications or reports that are involved in such practice," added "or that are", after "In the case of practice through", added "a business entity that is a", after "specifications or reports that are involved in such practice", added "or that are", after "In the case of practice through a", deleted "joint stock association or corporation", and added "business entity other than a partnership", after "specifications or reports that are involved in engineering practice", added "or that are"; in Subsection C, after "in accordance with the requirements", deleted "in this section" and added "of the Engineering and Surveying Practice Act"; and added Subsection D.

The 1999 amendment, effective June 18, 1999, substituted "licensed pursuant to" for "registered under" in the first sentence of Subsection A, and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, rewrote the catchline; deleted "or surveying" following "engineering" in the second sentence of Subsection A; in Subsection B, substituted "engage in the practice of engineering and perform engineering work" for "practice" in the first sentence, inserted the second and third sentences, and rewrote the last sentence; deleted former Subsection C, pertaining to professional surveyors; redesignated former Subsection D as present Subsection C; in Subsection C, inserted "individual" in two places, substituted "'registered' or 'licensed' engineer" for "'surveyor', 'professional surveyor' or 'surveying'", and deleted "or surveying" following "practice engineering"; and made minor stylistic changes throughout the section.

Qualifying as expert witness. — Even though a biomechanical engineer was not licensed as an engineer, the trial court did not abuse its discretion by qualifying him to testify as an expert witness regarding causation of temporomandibular joint injuries. *Baerwald v. Flores*, 1997-NMCA-002, 122 N.M. 679, 930 P.2d 816, cert. denied, 122 N.M. 589, 929 P.3d 981.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-32 NMSA 1978, as amended by Laws 1979, ch. 363, § 17, relating to organizations permitted to practice, effective June 19, 1987, and enacted former 61-23-22 NMSA 1978.

Laws 1993, ch. 218, § 17 repealed former 61-23-22 NMSA 1978, as enacted by Laws 1987, ch. 336, § 22, providing exemptions from the Engineering and Surveying Practice Act, and enacted a new section, effective July 1, 1993.

The 2023 amendment, effective June 16, 2023, provided the condition that the engineering services that are exempt from the provisions of the Engineering and Surveying Practice Act must be limited to the legal boundaries of the property owned, leased or lawfully operated by the business entity, and clarified language in the section; in Subsection A, added "professional" preceding "engineer"; and in Subsection B, after "business entity's", added "or an affiliated business entity's", and after "services to the public", added "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", after "Section 61-23-26 NMSA 1978", added "or within off-premises easements", and after "to the public and is", deleted "not exempt" and added "subject to the Engineering and Surveying Practice Act".

The 2017 amendment, effective July 1, 2017, clarified that performing engineering services on public works projects constitutes engineering services to the public and is not exempt from the provisions of the Engineering and Surveying Practice Act; in Subsection A, after "the architect shall not", deleted "hold himself out to be" and added "make any representation as being"; and in Subsection B, after "employed by a", deleted "firm, association or corporation" and added "business entity", after "operation of the", deleted "employer's" and added "business entity's", after "the employee nor the", deleted "employer" and added "business entity", and added the last sentence.

The 1998 amendment, effective May 20, 1998, deleted Subsection B and redesignated Subsection C as Subsection B.

61-23-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-23 NMSA 1978, as enacted by Laws 1987, ch. 336, § 23, concerning registration by endorsement, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Compiler's notes. — This section was originally enacted by the legislature as 61-23-23 NMSA 1978, but it was redesignated by the compiler because of the existence of a former 61-23-23 NMSA 1978 that was repealed in 1993.

The 2012 amendment, effective July 1, 2012, provided that a valid license is required to act as an engineer or to seek work involving the practice of engineering; increased the penalty; in Subsection A, added the last sentence; and in Subsection B, after "penalty up to", deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-24 NMSA 1978, as amended by Laws 1979, ch. 363, § 19, relating to registration by endorsement, effective June 19, 1987, and enacted former 61-23-24 NMSA 1978.

Laws 1993, ch. 218, § 18 repealed former 61-23-24 NMSA 1978, as enacted by Laws 1987, ch. 336, § 24, concerning violations and disciplinary actions, and enacted a new section, effective July 1, 1993.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the Uniform Licensing Act in disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2017 amendment, effective July 1, 2017, removed the provision related to the adoption of rules of professional responsibility for professional engineers, and revised references to Section 61-23-3 NMSA 1978; in Subsection B, after "Subsections", deleted "E" and added "F", and after the next "and", deleted "L" and added "H"; in Subsection H, after "payment of a fee", added a period and deleted "determined by the board."; and deleted Subsection I and redesignated former Subsections J through L as Subsections I through K, respectively.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; increased the fine; eliminated requirements for the publication and amendment of rules; in the title, after "reissuance of", deleted" and added "licenses"; in Subsections A and H, substituted "license" for "certificate of licensure" throughout the sections; in Subsection A, after "not to exceed", deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)"; in Subsection I, deleted former language which provided for the publication and amendment of rules of professional responsibility; and in Subsection J, after "not more than" deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)".

The 2005 amendment, effective June 17, 2005, provided in Subsection I that the professional engineering committee shall adopt, revise and amend rules of professional responsibility for professional engineers.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; deleted "and regulations" following "rules" in Subsections A(8) and A(10); added the exception at the beginning of Subsection B; in Subsection E, deleted "the Uniform Licensing Act" preceding "Subsection D, E, or F" in the third sentence, and inserted "or settled informally" in the last sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

61-23-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-25 NMSA 1978, as enacted by Laws 1987, ch. 336, § 25, concerning injunctions, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-26 NMSA 1978, as amended by Laws 1979, ch. 363, § 21, relating to violations and penalties, effective June 19, 1987, and enacted a new section.

The 2017 amendment, effective July 1, 2017, removed the provision requiring professional surveying to be executed under the charge of a licensed professional surveyor, and removed provisions exempting certain public works projects; in the catchline, added "Engineering"; deleted the subsection designation "A.", after "political subdivisions", added "or any person", after "involving engineering unless the", deleted "plans and specifications involving", after "engineering", deleted "have been prepared by and are" and added "is", and after "under the responsible charge of a licensed professional engineer", deleted the remainder of the paragraph, which provided an exemption for certain public works projects; and deleted Subsection B, which provided an exemption for certain construction surveys of engineering and architectural public works projects from the Engineering and Surveying Practice Act.

The 1999 amendment, effective June 18, 1999, deleted "Engineering" at the beginning of the section heading, and substituted "licensed" for "registered" twice in Subsection A.

The 1993 amendment, effective July 1, 1993, deleted former Subsection A, pertaining to adoption of rules governing the practice of engineering and surveying in public works project; redesignated former Subsections B and C as present Subsections A and B; deleted "professional" preceding "engineering" in two places in Subsection A; and made a minor stylistic change in Subsection A.

61-23-27. Engineering; public officer; 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-27 NMSA 1978, as amended by Laws 1979, ch. 363, § 22, relating to injunctions, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the section heading, and "licensed" for "registered" in the section.

The 1993 amendment, effective July 1, 1993, added "Engineering" at the beginning of the catchline, deleted "or professional surveyor, whichever is applicable" following "professional engineer", substituted "that includes" for "which requires", and deleted "or surveying work" at the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 63C Public Officers and Employees § 50 to 52.

67 C.J.S. Officers and Public Employees § 34.

61-23-27.1, 61-23-27.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 259, § 35 repealed 61-23-27.1 and 61-23-27.2 NMSA 1978, as enacted by Laws 1993, ch. 218, §§ 22 and 23, relating to certification of surveyor interns and registration of professional surveyors, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that an applicant for certification as a surveyor intern shall demonstrate that applicant is of good moral character and reputation as determined by the rules of the state board of licensure for professional engineers and professional surveyors; and in Subsection A, Paragraph A(1), after "reputation", added "as determined by board rules".

The 2019 amendment, effective June 14, 2019, revised certain requirements to be considered for certification as a surveyor intern; in Subsection E, after "specific record of", deleted "four" and added "two", after "not be counted in the", deleted "four" and added "two", and after "toward the", deleted "four" and added "two".

The 2012 amendment, effective July 1, 2012, permitted the board to credit work prior to or while attending school toward the experience requirement; in Subsection A, in the introductory sentence, after "appropriate application", deleted "where he shall"; and in Subsection E, in the second sentence, added "Class", after "Class time", deleted "spent in obtaining the related curriculum" and after "not be counted in the four years of required experience", added the remainder of the sentence.

The 1999 amendment, effective June 18, 1999, deleted "effective July 1, 1995" at the end of the section heading and at the beginning of Subsection A; substituted "licensed" for "registered" in Subsections A(3) and E; substituted "intern" for "registrant" in the first sentence of Subsection D; and in Subsection E, substituted "a board-approved but related curriculum" for "an unapproved but related curriculum" in the first sentence, and deleted "unapproved or" preceding "related curriculum" in the last sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided additional comity provisions for licensure as a professional surveyor, and clarified language; in Subsection A, Paragraph A(1), after "reputation", added "as determined by board rules"; and in Subsection E, added a new Paragraph E(2) and redesignated former Paragraph E(2) as Paragraph E(3).

The 2012 amendment, effective July 1, 2012, changed the experience requirements for licensure; in Subsection A, in Paragraph (3), after "board approved surveying curriculum", deleted "or has a minimum of eight years of board-approved surveying experience, including the four years of experience required for surveying intern certification, if graduated from a four-year, board-approved related science curriculum; and" and added "as defined by board rule", and added Paragraph (5); in Subsection B, after "experience pursuant to", deleted "Paragraph" and added "Paragraphs", and after "Paragraphs (3)", added "and (5)".

The 2005 amendment, effective June 17, 2005, required the applicant to demonstrate at least four years of board-approved surveying experience if the applicant has graduated from a four year, board approved curriculum or has a minimum of eight years of board-approved surveying experience, including the four years of experience required for surveying intern certification.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes in the section heading and throughout the section; deleted "effective July 1, 1995" at the end of the section heading and at the beginning of Subsection A; in Subsection A(3), substituted the language beginning "if graduated from a four-year" for "after graduation; and"; and inserted "pursuant to Paragraph (3) of Subsection A of this section" in Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided that any application for licensure may be denied for any crime that may impede the ability of the applicant to perform professionally as determined by board rules; and in Subsection C, after "any crime", deleted "involving moral turpitude" and added "that may impede the ability of the applicant to perform professionally as determined by board rules".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective July 1, 2017, in Subsection A, after "a detailed summary of", deleted "his" and added "the applicant's".

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the first sentence of Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the first sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, allowed renewal notifications to be sent by mail or other means; and in Subsection C, substituted "sent" for "mailed".

The 2020 amendment, effective July 1, 2020, provided an exception to the license renewal fee for qualified military service members, their spouses and dependent

children, and for certain veterans; and in Subsection B, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; established a deadline for renewal of a license by a delinquent licensee; prohibited a delinquent licensee from practicing until the license is renewed; in Subsections A, D and F, substituted "license" for "certificate of licensure" throughout the sections; in Subsection A, in the first sentence, after "Licensure" added "for surveyors"; in Subsection F, in the first sentence, after "on or before", deleted "the last day" and added "December 31" and after "of the", added "applicable", in the second sentence, after "A", deleted "licensee, however, shall be permitted to reinstate a certificate without penalty upon payment of the required fee within sixty days of the last day of the biennial period. After expiration of this grace period, a", after "may renew a", deleted "certificate" and added "license", and after "renewal fee at any time", deleted "up to twelve months after the renewal fee became due", added "before March 1, but the delinquent licensee shall not practice during this period", and in the third sentence, after "renew an expired", deleted "certificate" and added "license", and after "license after the", deleted "twelve-month period" and added "March 1 deadline".

The 2005 amendment, effective June 17, 2005, provided that initial certificates of licensure shall be issued in accordance with the board's rules.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes in the section heading and throughout the section; substituted "as provided in Section 61-23-27.4 NMSA 1978" for "as provided in Section 61-23-27.2 NMSA 1978 or, if after July 1, 1995 as provided in Section 61-23-27.4 NMSA 1978 of the Engineering and Surveying Practice Act" in the next-to-last sentence of Subsection F; and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2019 amendment, effective June 14, 2019, authorized the board of licensure for professional engineers and professional surveyors to approve alternative authentications to physical or electronic seals; and in Subsection B, after "use of seals", added "and may approve alternative authentications to physical or electronic seals".

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; in the title, after "Surveying", deleted "certificates" and added "licenses"; and in Subsection A, in the first sentence, after "shall issue", deleted "certificates of licensure" and added "surveying licenses".

The 1999 amendment, effective June 18, 1999, substituted "licensure pursuant to" for "registration under" in the first sentence of Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, required, in the case of professional surveyors practicing through a business entity, an authorized company officer and its professional surveyor to place on file with the board a signed affidavit as prescribed by board rule; in Subsection A, after each occurrence of "No", deleted "firm, partnership, corporation or joint stock association" and added "business entity", and after "except as provided in", deleted "that" and added "the Engineering and Surveying Practice"; in Subsection B, after "the Engineering and Surveying Practice Act as individuals", deleted "partners", after "or through", deleted "joint stock associations or corporations" and added "a business entity", after "In the case of practice through a", added "business entity that is a", after "a professional surveyor pursuant to", deleted "that" and added "the Engineering and Surveying Practice", after "In the case of practice through a", deleted "joint stock association or corporation" and added "business entity other than a partnership", after "may be offered through the", deleted "joint stock association or corporation" and added "business entity", after "charge of the activities of the", deleted "joint stock association or corporation" and added "business entity", after "constitute the practice", added "of surveying", after "authority to bind", deleted "such joint stock association or corporation" and added "the business entity", after "involved in such practice, added "or that are", and after "issued by or for the", deleted "joint stock association or corporation" and added "business entity"; added a new Subsection C and redesignated former Subsections C and D as Subsections D and E, respectively; and in Subsection D, after "An individual", deleted "firm, partnership, corporation or joint stock association" and added "or business entity", after "unless that individual", deleted "firm, partnership, corporation or joint stock association" and added "or business entity", and

after "in accordance with the requirements", deleted "in this section" and added "of the Engineering and Surveying Practice Act".

The 2005 amendment, effective June 17, 2005, provides that in all contract or agreements for professional surveying services, the surveying services contractor shall provide a written statement indicating the minimum terms and conditions of professional liability insurance coverage or the absence of professional liability insurance coverage.

The 1999 amendment, effective June 18, 1999, substituted "licensed" for "registered" in the first sentence of Subsection A, and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2023 amendment, effective June 16, 2023, provided the condition that the surveying services that are exempt from the provisions of the Engineering and Surveying Practice Act must be limited to the legal boundaries of the property owned, leased or lawfully operated by the business entity, and clarified language; deleted "An employee of" and added "A surveyor employed by", after "business entity's", added "or an affiliated business entity's", and after "services to the public", added "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", after "Section 61-23-27.13 NMSA 1978", added "or within off-premises easements", and after "public space and is", deleted "not exempt" and added "subject to the Engineering and Surveying Practice Act".

The 2017 amendment, effective July 1, 2017, clarified that the performance of surveying on public works projects is not exempt from the Engineering and Surveying Practice Act; after "An employee of a", deleted "firm, association or corporation" and added "business entity", after "involved in the operation of the", deleted "employer's" and added "business entity's", after "the employee nor the", deleted "employer" and added "business entity", after "and provided", added "further", and added the last sentence.

The 1999 amendment, effective June 18, 1999, deleted the former subsection designations; deleted former Subsection A, which read "Officers and employees of the government of the United States engaged within New Mexico in the practice of surveying for the government, provided that they offer no surveying services to the public, and further provided that services do not affect the public, shall be exempt from the Engineering and Surveying Practice Act"; substituted "An employee of a firm" for "A surveyor employed by the firm" at the beginning of the section; and added the second proviso at the end of the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the state board of licensure for professional engineers and professional surveyors is required to follow the provisions of the Uniform Licensing Act in disciplinary matters; in Subsection A, added "In accordance with the Uniform Licensing Act"; and in Subsection B, after "The board may by rule", added "and in accordance with the Uniform Licensing Act".

The 2017 amendment, effective July 1, 2017, removed the provision requiring the professional surveying committee to prepare and adopt rules of professional responsibility for professional surveyors; in Subsection D, after "misconduct against a", deleted "licensee" and added "professional surveyor", and after "Uniform Licensing Act by the", deleted "professional"; in Subsection G, after "a majority of the members of the", deleted "professional"; and deleted Subsection H and redesignated former Subsections I through K as Subsections H through J, respectively.

The 2012 amendment, effective July 1, 2012, eliminated the issuance of certificates of licensure; increased the fine; eliminated requirements for the publication and amendment of rules; in the title, after "reissuance of", deleted "certificates" and added "licenses"; in Subsections A and G, substituted "license" for "certificate of licensure" throughout the sections; in Subsection A, after "not to exceed", deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)"; in Subsection H, deleted former language which provided for the publication and amendment of rules of professional responsibility; and in Subsection I, after "not more than", deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)".

The 2005 amendment, effective June 17, 2005, provided in Subsection H that the professional surveying committee shall adopt, revise and amend rules of professional responsibility for the professional surveyors.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and made similar changes throughout the section; inserted "or settled informally" in the last sentence of Subsection D; and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, made it unlawful for 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; and after "political subdivisions", added "or any person".

The 1999 amendment, effective June 18, 1999, substituted "licensed professional" for "registered professional".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" in the section heading and "licensed" for "registered" in the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2012 amendment, effective July 1, 2012, provided that a valid license is required to act as an surveyor or to seek work involving the practice of surveying; increased the penalty; in Subsection A, added the last sentence; and in Subsection B, after "penalty up to", deleted "five thousand dollars ($5,000)" and added "seven thousand five hundred dollars ($7,500)".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-28 NMSA 1978, as amended by Laws 1983, ch. 111, § 1, relating to public work, effective June 19, 1987, and enacted a new section.

The 2011 amendment, effective December 31, 2012, removed the county surveyor as a person with whom maps and field notes may be recorded.

The 1999 amendment, effective June 18, 1999, substituted "licensed surveyor" for "registered surveyor" in the first sentence.

61-23-28.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 259, § 35 repealed 61-23-28.1 NMSA 1978, as amended by Laws 1997, ch. 80, § 1, relating to recording of surveys, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2017 amendment, effective July 1, 2017, allowed the local governing authority to determine the size of "boundary surveys" that are recorded at the office of the county clerk; and in Subsection A, Paragraph A(4), after "one-half inches by eleven inches", added "or as required by the local governing authority".

The 2011 amendment, effective July 1, 2011, eliminated the requirement that boundary surveys consist of two black-line copies; imposed the fees provided for in Section 14-8-15 NMSA 1978; and eliminated the requirement that county clerks keep an indices of boundary survey plats and land division plats.

Authority to review survey plats prior to recording. — A county clerk has limited statutory authority to independently review the contents of survey plats presented for recordation to determine the threshold question whether the survey accomplishes a subdivision of land and the county clerk may enlist the aid of county zoning and planning officials in conducting this review. *Valdez v. Vigil*, 2007-NMCA-031, 141 N.M. 316, 154 P.3d 691, cert. denied, 2006-NMCERT-011, 140 N.M. 846 (decided under prior law).

61-23-29. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 218, § 41 repealed former 61-23-29 NMSA 1978, as enacted by Laws 1987, ch. 336, § 29, concerning the restoration or reestablishment of monuments, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com*.

61-23-29.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 336 repealed former 61-23-29.1 NMSA 1978, as enacted by Laws 1979, ch. 363, § 26, relating to licensure under prior laws, effective June 19, 1987.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Repeals and reenactments. — Laws 1987, ch. 336 repealed former 61-23-30 NMSA 1978, as amended by Laws 1983, ch. 111, § 2, relating to termination of agency life and delayed repeal, effective June 19, 1987, and enacted a new section.

The 1999 amendment, effective June 18, 1999, substituted "licensed professional" for "registered professional".

Compiler's notes. — Laws 1987, ch. 333, § 10 purported to amend former 61-23-30 NMSA 1978, as amended by Laws 1981, ch. 241, § 31, relating to termination of agency life, but was not given effect due to the repeal and reenactment by Laws 1987, ch. 336, § 30.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 75 Am. Jur. 2d Trepass § 103, 104.

87 C.J.S. Trespass §§ 52 to 54.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "valid license" for "valid registration" and "renewal of licensure" for "renewal of such registration".

The 1993 amendment, effective July 1, 1993, substituted "professional surveyor, professional engineer and surveyor or certification as an engineer intern, or surveyor intern" for "professional land surveyor, land surveyor or professional engineer and land surveyor or certification as an engineering intern, engineer-in-training or land surveying intern".

61-23-31.1. Good samaritan. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

The 2005 amendment, effective June 17, 2005, adds aircraft structure and aeronautical services to the list of services that professional engineers and professional surveyors may provide without incurring liability and includes terrorists acts as catastrophic events.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, extended the termination date of the state board of licensure for professional engineers and professional surveyors; changed "July 1, "2023" to "July 1, 2029", and changed "July 1, 2024", to "July 1, 2030".

Laws 2023, ch. 15, § 3 and Laws 2023, ch. 79, § 12, both effective June 16, 2023, enacted identical amendments to this section. The section was set out as amended by Laws 2023, ch. 79, § 12. *See* Section 12-1-8 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2012 amendment, effective July 1, 2012, added the reference to professional surveyors and in the first sentence, after "engineers and" added "professional".

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, substituted "licensure" for "registration" and "July 1, 2005" for "July 1, 1999" in the first sentence, and substituted "July 1, 2006" for "July 1, 2000" in the last two sentences.

The 1993 amendment, effective July 1, 1993, substituted "1999" for "1993" in the first sentence and "2000" for "1994" in the second and third sentences.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-23-32 NMSA 1978.

Effective dates. — Laws 2010, ch. 6 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 19, 2010, 90 days after the adjournment of the legislature.

61-23-34. Repealed.

History: Laws 2012, ch. 46, § 15; repealed by Laws 2013, ch. 3, § 1.

ANNOTATIONS

Repeals. — Laws 2013, ch. 3, § 1 repealed 61-23-34 NMSA 1978, as enacted by Laws 2012, ch. 46, § 15, relating to notice of boundary surveys for certain land grants, effective March 7, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the name of the "engineering and surveying scholarship" to the "engineering and surveying university support program"; provided that the engineering and surveying university support program may provide funding for equipment and related materials to support the education of engineering and surveying students at certain educational institutions, and raised the annual funding amount of the engineering and surveying university support program; in the section heading, deleted "scholarship" and added "university support"; and in Subsection A, after "surveying", deleted "scholarship" and added "university support", after "practice in New Mexico", deleted "in an" and added "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", after "amount", added "of funding provided pursuant to the program shall", and after "annually", deleted "one hundred thousand dollars ($100,000)" and added "two hundred fifty thousand dollars ($250,000)".

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed the name of the "engineering and surveying scholarship fund" to the engineering and surveying university support fund", and substituted each occurrence of "scholarship" with "university support" throughout the section.

ARTICLE 24
Hearing Aid Dealers and Fitters (Repealed.)

61-24-1 to 61-24-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 349, § 20, repealed 61-24-1 to 61-24-21 NMSA 1978, relating to hearing aid dealers and fitters. For present provisions, *see* 61-14B-1 to 61-14B-25 NMSA 1978.

ARTICLE 24A
Hearing Aid Dispensers (Repealed.)

61-24A-1 to 61-24A-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1996, ch. 57, § 27, repealed 61-24A-1 through 61-24A-21 NMSA 1978, as enacted and amended by Laws 1979, ch. 349, §§ 1 to 15, 17, 18 and Laws 1991, ch. 46, §§ 1 to 12, relating to the Hearing Aid Act, effective July 1, 1996. For present comparable provisions, *see* Chapter 61, Article 14B NMSA 1978.

Compiler's notes. — Laws 1996, ch. 51, § 13, effective March 5, 1996, amended § 61-24A-21 NMSA 1978. However, Laws 1996, ch. 57, § 27, effective July 1, 1996, repealed that section, and the amendment to 61-24A-21 NMSA 1978 was not set out.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 1998 amendment, effective March 5, 1998, substituted "Chapter 61, Article 24B NMSA 1978" for "This act" at the beginning of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 58 Am. Jur. 2d Occupations, Trades, and Professions §§ 87 to 89.

6 C.J.S. Architects §§ 2, 3, 7.

61-24B-2. Purpose of act. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, adds the definition of "landscape architect in training".

The 2001 amendment, effective June 15, 2001, in Subsection D, substituted "'landscape architecture'" means the art, profession or science of designing land improvements" for "'landscape architectural services' means the practice of landscape architecture"; deleted Paragraphs (1), (2) and (3) that listed the dominant purposes of the services of landscape architecture; and substituted "Chapter 61, Articles 15 and 23 NMSA 1978" for "Sections 61-15-2 and 61-23-6 NMSA 1978".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2001 amendment, effective June 15, 2001, substituted "shall practice landscape architecture" for "practice as a landscape architect".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, provides that the Landscape Architects Act does not prevent landscape architects in training from acting under the supervision of a landscape architect.

The 2001 amendment, effective June 15, 2001, added the Subsection A designation to the first paragraph and redesignated former Subsections A and B as Paragraphs A(1) and A(2); deleted "or any interstate railroad system; and" from the end of present Paragraph A(2); deleted "landscape designers, land planners, agriculturalists, soil conservationists, agronomists, horticulturists, foresters, tree experts, arborists, gardeners, contract landscape caretakers, landscape nurserymen, graders or contractors, or cultivators of land and any person making plans for property owned by himself" from the beginning of former Subsection C; inserted Paragraph A(3) and the Subsection designations B and C; and deleted "registered" preceding "landscape architect" in two places in present Subsection C.

The 1999 amendment, effective June 18, 1999, deleted "resident" following "consulting associates of a" in Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

The 2001 amendment, effective June 15, 2001, in Subsection A, changed the qualifications required for the three landscape architects on the board, who were formerly required to be registered landscape architects with at least ten years of experience, and two of which had to be registered within six months of the effective date of the Landscape Architects Act; in Subsection B, deleted the first sentence that read "Upon enactment of the Landscape Architects Act, appointments shall be made by the governor.", inserted "by the governor" following "appointed"; and substituted "beginning of a fiscal year" for "effective date of the Landscape Architects Act" in Subsection C.

The 1991 amendment, effective June 14, 1991, in the second sentence in Subsection A, substituted "three shall be registered" for "four of whom shall be registered", "two landscape architects" for "four landscape architects", and "two shall represent" for "one of whom shall represent" and made related stylistic changes and, in Subsection B, deleted "in such manner that two members shall be appointed for one-year terms, two members shall be appointed for two-year terms and one member shall be appointed for a three-year term" at the end of the first sentence and deleted "Thereafter" at the beginning of the second sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-24B-17 NMSA 1978.

Cross references. — As to the duties of the state board of examiners for professional architects, see 61-15-4 NMSA 1978.

As to the powers of the state board of registration for professional engineers and land surveyors, see 61-23-10 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of landscape architects is required to follow the provisions of the State Rules Act when promulgating rules; and in Subsection A, after "promulgate rules", added "in accordance with the State Rules Act to implement".

The 2007 amendment, effective June 15, 2007, adds new Subsection F to provide powers and duties of the board for architect in training certification.

The 2003 amendment, effective July 1, 2003, deleted former Subsection B, regarding employment of persons necessary to carry out the provisions of the Act, and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective June 15, 2001, in Subsection H, substituted "in cooperation" for "participate", "state board of licensure" for "state board of registration", "create" for "in creating", "the 'joint practice committee'" for "the 'architect-engineer-landscape architect joint practice committee'", and substituted the current goals of the committee beginning "to safeguard the life, health and property" and ending with "concerning the professions" for "to resolve disputes concerning these professions".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-24B-17 NMSA 1978.

The 2007 amendment, effective June 15, 2007, changes the education and experience required to qualify for registration as a landscape architect.

The 2001 amendment, effective June 15, 2001, in Subsections A and B, deleted "registered" following "supervision of a" and deleted "or a person who becomes a registered landscape architect within one year from the effective date of the Landscape

Architects Act; provided that" preceding "a master's degree"; and inserted "in a related field" following "university" in Paragraphs C(1) and (2).

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 125, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2022 amendment, effective May 18, 2022, revised provisions related to expedited registration, provided that the board of landscape architects shall issue an expedited certificate to practice as a landscape architect without an examination to a person 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, provided that the board shall expedite the issuance of certificates in accordance with Section 61-1-31.1 NMSA 1978 within thirty days, and required the board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are warranted; in the section heading, added "expedited registration"; and in Subsection D, after "The board", deleted "may" and added "shall", after "issue", deleted "a" and added "an expedited", after "issued by another", deleted "state if the standards of the other state are as stringent as those established by the board and" and added "licensing jurisdiction", after "if the

applicant", deleted "meets the qualifications required of a landscape architect in this state", and added the remainder of the subsection.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2001 amendment, effective June 15, 2001, deleted "successfully" preceding "passes" in Subsection A; and deleted Subsection E, regarding the certification of landscape architects in the first year after the effective date of the Landscape Architects Act.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 126, contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-24B-17 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, establishes fees for landscape architect in training certification.

The 1998 amendment, effective March 5, 1998, substituted ", re-registration, inactive status and late registration renewal" for "and reregistration" in the undesignated paragraph; substituted "one hundred dollars ($100)" for "fifty dollars ($50.00)" in Subsection A; substituted "three hundred dollars ($300)" for "one hundred fifty dollars ($150); and" in Subsection B; substituted "four hundred dollars ($400)" for "one hundred dollars ($100)" in Subsection C; and added Subsections D and E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the board of landscape architects is required to follow the provisions of the State Rules Act when promulgating rules; in the section heading, deleted "and regulations"; and after "The board shall make rules", deleted "and regulations necessary" and added "in accordance with the State Rules Act".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-24B-17 NMSA 1978.

Cross references. — As to sentencing for misdemeanors, see 31-19-1 NMSA 1978.

61-24B-17. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, extended the termination date for the board of landscape architects; and changed "July 1, 2019", to "July 1, 2025", and changed "July 1, 2020", to "July 1, 2026".

The 2013 amendment, effective June 14, 2013, changed the agency termination date from 2013 to 2019, the termination of the operations date from 2014 to 2020, and the repeal date from 2014 to 2020.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1997 amendment substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences. Laws 1997, ch. 46 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature.

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

ARTICLE 24C
Interior Designers

61-24C-1. Short title.

Chapter 61, Article 24C NMSA 1978 may be cited as the "Interior Designers Act".

History: Laws 1989, ch. 53, § 1; 2000, ch. 4, § 13.

ANNOTATIONS

The 2000 amendment, effective February 15, 2000, substituted "Chapter 61, Article 24C NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 34, 35, 39 to 41, 45 to 47, 58 to 62, 70 to 73.

53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 40, 50 to 66, 78, 81, 82.

61-24C-2. Findings.

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, prohibits the use of the designation of licensed interior designer by unlicensed persons.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "applicant" and "department" and removed the definition of "board" as used in the Interior Designers Act; deleted former Subsection A and added a new Subsection A; and added a new Subsection B and redesignated former Subsections B and C as Subsections C and D, respectively.

The 2007 amendment, effective June 15, 2007, defines "licensed interior designer".

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-24C-4 NMSA 1978, as enacted by Laws 1989, ch. 53, § 4, relating to interior design board created, members, terms, compensation, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, moved the administration, coordination and enforcement of the provisions of the Interior Designers Act from the interior design board to the department of regulation and licensing, and clarified language in the section; in the section heading, deleted "board" and added "department"; in the introductory clause and Subsection A, deleted "board" and added "department"; in Subsection B, deleted "and the establishment of ethical standards of practice for a licensed interior designer in New Mexico"; and deleted former Subsection E and redesignated former Subsections F and G as Subsections E and F, respectively.

Temporary provisions. — Laws 2023, ch. 190, § 52 provided that on July 1, 2023:

A. all functions, appropriations, money, records and files of the interior design board relating to the Interior Designers Act shall be transferred to the regulation and licensing department;

B. all contractual obligations of the interior design board relating to the Interior Designers Act shall be binding on the regulation and licensing department; and

C. the rules, orders and decisions of the interior design board relating to the Interior Designers Act shall remain in effect until repealed or amended.

The 2007 amendment, effective June 15, 2007, changes references from interior designer to licensed interior designer.

The 2003 amendment, effective July 1, 2003, deleted former Subsections C and D, concerning employment of director and contracting for office space and administrative services, and redesignated the subsequent subsections accordingly.

61-24C-6. Repealed.

History: Laws 1989, ch. 53, § 6; repealed by Laws 2023, ch. 190, § 53.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-24C-6 NMSA 1978, as enacted by Laws 1989, ch. 53, § 6, relating to compensation and expenses, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

61-24C-7. Repealed.

History: Laws 1989, ch. 53, § 7; repealed by Laws 2023, ch. 190, § 53.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-24C-7 NMSA 1978, as enacted by Laws 1989, ch. 53, § 7, relating to requirements for licensure, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2023 amendment, effective July 1, 2023, provided that applicants for licensure apply to the department of regulation and licensing, and required applicants to take and pass the national council for interior design qualification or other nationally recognized examination approved by the department and to have a nationally recognized certification; in the former introductory clause, after "shall apply to the", deleted "board" and added "department"; deleted "a nationally standardized examination. The board may adopt substantially all or part of the examination and grading procedures of the national council for interior design qualifications. Prior to examination, the applicant shall provide substantial evidence to the board that the applicant"; added "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"; and deleted former Subsections A through E.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, deleted former Subsections A through C and added new Subsections A and B.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, struck a provision requiring annual renewal of an interior designer license and made interior designer licenses valid for four years, increased the required number of hours of continuing education as a condition of license renewal, and clarified language in the section; in Subsection C, after "shall expire", deleted "annually" and added "four years after the date of issuance"; in Subsection D, after "evidence to the", deleted "board" and added "department"; after "not less than", deleted "eight" and added "twenty"; deleted "board. The board shall approve only continuing education that builds upon basic knowledge of interior design. The board" and added "department. The department"; and added "cases that the licensee provides evidence of an"; in Subsection E, deleted "at any time within two years from the date on which the license expired", and after "approval of the", deleted "board" and added "department"; deleted former Subsection F and redesignated former Subsection G as new Subsection F; and in Subsection F, substituted each occurrence of "board" with "department", and in Paragraph F(2), after "professional conduct", deleted "or been convicted of a felony".

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee and renewal fee for qualified military service members, their spouses and dependent children, and for certain veterans; in Subsection A, after "majority and", added "except as provided in Section 61-1-34 NMSA 1978"; and in Subsection C, after "renewal application", added "and except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, amends Subsection C providing for the annual expiration and renewal of licenses.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised the penalty provisions and clarified certain language; in Subsection A, in the introductory clause, deleted "After the results of the first examination held pursuant to the Interior Designers Act are announced, no" and after "shall", added "not"; in Paragraph A(3), after "evidence to the", deleted "board" and added "department", and after "or a", deleted "board member" and added "department employee"; and in Subsection B, after "provision of this section", deleted "is guilty of a misdemeanor and shall be sentenced under the provisions of the Criminal Sentencing Act to imprisonment in the county jail for a definite term of less than one year or to the payment of a fine of not more than one thousand dollars ($1,000) or to both imprisonment or fine, in the discretion of the judge" and added "shall be penalized pursuant to the provisions of the Uniform Licensing Act; 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.".

The 2007 amendment, effective June 15, 2007, changes the reference from interior designer to licensed interior designer.

61-24C-12. Repealed.

History: Laws 1989, ch. 53, § 12; 2007, ch. 245, § 7; repealed by Laws 2023, ch. 190, § 53.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-24C-12 NMSA 1978, as enacted by Laws 1989, ch. 53, § 12, relating to penalties levied by the board, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, eliminates the provision that permitted a person to use words or combinations of words other that "interior designer" or "interior design" no matter how similar the words or combinations of words might be.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, provided that fees authorized by the provisions of the Interior Designers Act shall be set by rule by the department of regulation and licensing; and after "set by rule of the", deleted "board" and added "department".

The 2021 amendment, effective June 18, 2021, added "Except as provided in Section 61-1-34 NMSA 1978, any".

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changes references from interior designer to licensed interior designer.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, changed the name of the interior design board fund to the interior design fund, moved the administration of the interior design fund from the interior design board to the department of regulation and licensing; in Subsection A, after "design", deleted "board"; in Subsection B, after "All", deleted "funds received by the board and"; in Subsection C, after "design", deleted "board", after "issued by the", deleted "secretary-treasurer" and added "superintendent", and after "of", deleted "the board" and added "regulation and licensing"; and in Subsection D, after each occurrence of "design", deleted "board".

The 2007 amendment, effective June 15, 2007, provides that all funds paid to the board are subject to appropriation by the legislature.

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.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-24C-17 NMSA 1978, as enacted by Laws 1993, ch. 83, § 5, relating to termination of agency life, delayed repeal, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, changed "This act" to "Chapter 61, Article 24D NMSA 1978".

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, defined "approved examination" as used in the Home Inspector Licensing Act; and added a new Subsection A and redesignated former Subsections A through K as Subsections B through L, respectively.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, required that the licensing examination that the New Mexico home inspectors board adopts be administered in compliance with the federal Americans with Disabilities Act of 1990; and in Subsection G, Paragraph G(6), after "adopt", deleted "and approve a licensing" and added "an approved", and after "testing service", deleted "as determined by the board" and added "in compliance with federal Americans with Disabilities Act of 1990 accommodations as required by law".

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico home inspectors board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection B, after "promulgated by the board", added "in accordance with the State Rules Act"; in Subsection F, after "provided by law and may", deleted "make and enforce rules" and added "promulgate rules in accordance with the State Rules Act", and after "provisions of", deleted "that" and added "the Home Inspector Licensing"; in Subsection G, Paragraph G(3), after "licenses to home inspectors", deleted "pursuant to the provisions of the Home Inspectors Licensing" and added "in accordance with the Uniform Licensing"; and deleted Subsection H.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, provided that an applicant for a home inspectors license shall pass an approved examination and any New Mexico-specific licensing examinations as prescribed by the New Mexico home inspectors board; and in Subsection A, Paragraph A(6), after "pass", deleted "a national home inspector licensing" and added "an approved", and after "any additional", added "New Mexico-specific".

The 2021 amendment, effective June 18, 2021, removed proof of legal residency of the United States as a requirement for application for licensure as a home inspector; and in Subsection A, Paragraph A(2), after "eighteen years of age", deleted "and a legal resident of the United States", and in Paragraph A(4), after "Section", deleted "12 of the Home Inspector Licensing Act" and added "61-24D-12 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection C, added "except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 239, § 17 made Laws 2019, ch. 239 effective January 1, 2020.

ARTICLE 25
Massage Practitioners (Repealed.)

61-25-1 to 61-25-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1981, ch. 241, § 35, repealed 61-25-1 to 61-25-14 NMSA 1978, relating to the regulation of massage practitioners, effective April 8, 1981.

ARTICLE 26
Polygraphers (Repealed.)

61-26-1 to 61-26-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 212, § 23A repealed 61-26-1 to 61-26-15 NMSA 1978, as enacted or amended by Laws 1973, ch. 28, §§ 1 to 11 Laws 1974, ch. 78, § 32, and Laws 1989, ch. 152, § 1 to 12, regulating polygraphers, effective July 1, 1993. For present comparable provisions, *see* Chapter 61, Article 27A NMSA 1978.

Laws 1989, ch. 152, § 13 had previously repealed 61-26-13 NMSA 1978, as enacted by Laws 1979, ch. 75, § 7, relating to transfer of appropriations and property of former polygraphy board, effective June 16, 1989.

ARTICLE 27
Private Investigators (Repealed.)

61-27-1 to 61-27-49. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 212, § 23B repealed 61-27-1 to 61-27-49 NMSA 1978, as enacted by Laws 1965, ch. 247, §§ 1 to 49 and amended by Laws 1971, ch. 226 §§ 1 to 7 and Laws 1973, ch. 55, § 1, regulating private investigators, effective July 1, 1993. For present comparable provisions, *see* Chapter 61, Article 27A NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 was recompiled by the compiler as Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-1 NMSA 1978 was recompiled as § 61-27B-1 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-2 NMSA 1978 was recompiled as § 61-27B-2 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-3 NMSA 1978 was recompiled as § 61-27B-3 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler

as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-4 NMSA 1978 was recompiled as § 61-27B-4 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-5 NMSA 1978 was recompiled as § 61-27B-5 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigators Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-6 NMSA 1978 was recompiled as § 61-27B-7 NMSA 1978.

61-27A-7. Repealed.

History: Laws 1993, ch. 212, § 7; repealed by Laws 2007, ch. 115, § 37.

ANNOTATIONS

Repeals. — Laws 2007, ch. 115, § 37 repealed 61-27A-7 NMSA 1978, being Laws 1993, ch. 212, § 7, relating to license fees, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

61-27A-8. Repealed.

History: Laws 1993, ch. 212, § 8; repealed by Laws 2007, ch. 115, § 37.

ANNOTATIONS

Repeals. — Laws 2007, ch. 115, § 37 repealed 61-27A-8 NMSA 1978, being Laws 1993, ch. 212, § 8, relating to license renewal, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-9 NMSA 1978 was recompiled as § 61-27B-22 NMSA 1978.

61-27A-10. Repealed.

History: Laws 1993, ch. 212, § 10; 1999, ch. 272, § 34; repealed by Laws 2007, ch. 115, § 37.

ANNOTATIONS

Repeals. — Laws 2007, ch. 115, § 37 repealed 61-27A-10 NMSA 1978, being Laws 1993, ch. 212, § 10, relating to operation of business, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-11 NMSA 1978 was recompiled as § 61-27B-24 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigations Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-12 NMSA 1978 was recompiled as § 61-27B-25 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-13 NMSA 1978 was recompiled as § 61-27B-26 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-14 NMSA 1978 was recompiled as § 61-27B-27 NMSA 1978.

61-27A-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-27A-15 NMSA 1978, as enacted by Laws 1993, ch. 212, § 15, relating to review of record, effective September 1, 1998.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-16 NMSA 1978 was recompiled as § 61-27B-28 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-17 NMSA 1978 was recompiled as § 61-27B-29 NMSA 1978.

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-18 NMSA 1978 was recompiled as § 61-27B-30 NMSA 1978.

61-27A-19. Repealed.

History: Laws 1993, ch. 212, § 19; repealed by Laws 2007, ch. 115, § 37.

ANNOTATIONS

Repeals. — Laws 2007, ch. 115, § 37 repealed 61-27A-19 NMSA 1978, being Laws 1993, ch. 212, § 19, relating to deadly weapons, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Recompilations. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act". The act was renamed as the "Private Investigations Act". To permit future new sections of the Private Investigators Act to be inserted in between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 has been recompiled by the compiler as a new Article 27B of Chapter 61 NMSA 1978. Former § 61-27A-20 NMSA 1978 was recompiled as § 61-27B-32 NMSA 1978.

61-27A-21. Repealed.

History: Laws 2000, ch. 4, § 16; 2005, ch. 208, § 19; repealed by Laws 2007, ch. 115, § 37.

ANNOTATIONS

Repeals. — Laws 2007, ch. 115, § 37 repealed 61-27A-21 NMSA 1978, being Laws 2000, ch. 4, § 16, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115 substantially revised the former "Private Investigators and Polygraphers Act", amending 14 sections, repealing 5 sections and enacting 21 new sections that were assigned NMSA 1978 compilation numbers between existing sections of the NMSA 1978. The former Private Investigators and Polygraphers Act was renamed as the "Private Investigations Act". To permit future new sections to be inserted between existing sections of the act, Article 27A of Chapter 61 of the NMSA 1978 was recompiled by the compiler as Article 27B of Chapter 61 NMSA 1978. For the prior law, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

The 2007 amendment, effective July 1, 2007, changes the title of the act to the from the "Private Investigators and Polygraphers Act" to the "Private Investigations Act".

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, deletes and adds definitions relating to private investigators and private patrol companies.

Standard of care. — Polygraphers are professionals subject to a malpractice standard of care, not just a "reasonable man" standard. *Lewis v. Rodriguez*, 1988-NMCA-062, 107 N.M. 430, 759 P.2d 1012.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, provided that it is unlawful for an individual without a valid registration issued by the department in accordance with the Private Investigations Act to provide instruction for other individuals to qualify for licensure as a security guard or other profession that requires licensure; in the section heading, added "or registration"; and added Subsection F.

The 2007 amendment, effective July 1, 2007, requires a license to act as a security guard, private investigations employee, private investigations manager or private patrol operations manager.

Under former law. — The proponent of polygraph evidence must show that the polygraph examiner was licensed. *State v. Sanders*, 117 N.M. 452, 872 P.2d 870 (1994) (now see Rule 11-707 NMRA).

Law reviews. — For note, "Lie Detector Evidence - New Mexico Court of Appeals Holds Voice-Stress Lie Detector Evidence Conditionally Admissible: Simon Neustadt Family Ctr., Inc. v. Bludworth," see 13 N.M.L. Rev. 703 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

53 C.J.S. Licenses § 34.

61-27B-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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, provided that the Private Investigations Act does not apply to an attorney's employee working under the direct supervision of the attorney when conducting private investigations, provided that a private investigator must complete a traffic crash reconstruction course approved by the department before offering or providing traffic crash reconstruction in New Mexico, and provided that skip tracing shall be offered or provided only by an employee of a state or local law enforcement agency, a private investigator or an attorney licensed to practice law in New Mexico or the attorney's employee working under the direct supervision of the attorney; in the section heading, added "limitations on unlicensed activities"; in Subsection B, in the introductory clause, added "The Private" preceding "Investigations Act", and in Paragraph B(4), added "or the attorney's employee working under the direct supervision of the attorney"; and added Subsections C and D.

The 2007 amendment, effective July 1, 2007, exempts individuals who patrol or provide security only on the premises of their employer, who provide temporary security at a private event that is not open to the public, who provide temporary security at athletic or youth events where the events occur under the auspices of a public or private school or nonprofit organization and exempt attorneys licensed in New Mexico who conduct private investigations while engaged in the practice of law.

Engineer investigating speed of cars in accident is exempt. — Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978) and therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860 (decided under former law) (now Rule 11-702 NMRA).

Full-time public school guards exempt. — A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigations Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87 (rendered under former law).

Part-time off-duty police officer checking identification not exempt. — An off-duty municipal police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 18, 27, 34 to 38.

53 C.J.S. Licenses §§ 35, 36.

61-27B-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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, added instructors to an existing list of occupations for which the department of regulation and licensing must promulgate registration rules; and in Subsection D, Paragraph D(2), after "private patrol employees", added "and instructors".

The 2022 amendment, effective May 18, 2022, clarified that the regulation and licensing department is required to follow the provisions of the Uniform Licensing Act when enforcing and administering the provisions of the Private Investigations Act and is required to follow the provisions of the State Rules Act when promulgating rules; in Subsection A, after "Private Investigations Act", added "in accordance with the Uniform Licensing Act"; in Subsection C, after "The department shall", deleted "adopt" and added "promulgate rules in accordance with the State Rules Act"; and in Subsection D, after "The department shall", deleted "adopt" and added "promulgate", and in Paragraph D(6), after "reciprocity with other", deleted "states and territories" and added "licensing jurisdictions".

The 2007 amendment, effective July 1, 2007, eliminates the advisory board; requires the regulation and licensing department to establish professional ethical standards and to adopt rules regarding matters listed in this section.

Cities prohibited from regulating certain investigative businesses and occupations. — With the exception provided by former Section 61-27-11 NMSA 1978, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 65-177.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 6 was enacted as 61-27A-5.1 NMSA 1978. It has been codified by the compiler as 61-27B-6 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed the composition of the private investigations advisory board, reducing the number of private investigators on the board and increasing the number of public members on the board; in Subsection C, in Paragraph C(1), after the paragraph designation, deleted "two" and added "one", and after "private", deleted "investigators" and added "investigator", in Paragraph C(4), after the paragraph designation, deleted "one member" and added "two members"; and in Subsection E, in the introductory clause, after "The public", deleted "member" and added "members", after "advisory board or", deleted "the public member's spouse" and added "their spouses", and in Paragraph E(1), after "Act", deleted "the Private Investigators and Polygraphers Act".

Temporary provisions. — Laws 2017, ch. 52, § 21, effective June 16, 2017, provided that in carrying out the statutory requirement to replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, removed "good moral character" from the requirements for licensure as a private investigator; in the section heading, after added "private investigator"; and in Subsection A, deleted former Paragraph A(2) and redesignated former Paragraphs A(3) through A(5) as Paragraphs A(2) through A(4), respectively.

The 2007 amendment, effective July 1, 2007, amends the requirement for licensure as a private investigator, requires applicants to meet all department requirements; requires that applicants be twenty-one years of age; and requires that applicants not have been convicted of an offense involving dishonesty, intentional violence, or illegal possession of a deadly weapon and have not been found to have violated professional ethical standards as defined by the department.

Engineer investigating speed of cars in accident is exempt. — Testimony by expert witness, a registered professional engineer, whether "as an engineer" or as a traffic expert concerning the accident and arriving at his own opinion as to the speed of the defendant's car was not controlled by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978) and therefore his testimony was not barred by the fact that he was not a licensed private investigator. *Dahl v. Turner*, 1969-NMCA-075, 80 N.M. 564, 458 P.2d 816, cert. denied, 80 N.M. 608, 458 P.2d 860 (decided under former law) (now see Rule 11-702 NMRA).

Full-time public school guards exempt. — A full-time security and patrol force to guard the Albuquerque public school system which is under the supervision and guidance of school authorities is exempt from the provisions of the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1970 Op. Att'y Gen. No. 70-87 (rendered under former law).

Part-time off-duty police officer checking identification not exempt. — An off-duty police officer or county sheriff's deputy cannot work part time checking identification cards at a liquor establishment (and being compensated by the liquor establishment) without being licensed by the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1974 Op. Att'y Gen. No. 74-15 (rendered under former law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 27.

Regulation of private detectives, private investigators, and security agencies, 86 A.L.R.3d 691.

53 C.J.S. Licenses §§ 26, 27.

61-27B-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.

ANNOTATIONS

Cross references. — For definition of "private investigation company", *see* 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 8 was enacted as 61-27A-6.1 NMSA 1978. It has been codified by the compiler as 61-27B-8 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

The 2023 amendment, effective July 1, 2023, removed provisions requiring a private investigation company to hold a surety bond; in Subsection A, deleted former Paragraph A(1) and redesignated former Paragraph A(2) as Paragraph A(1); deleted former Paragraph A(3) and redesignated former Paragraphs A(4) through A(7) as Paragraphs A(2) through A(5); and in Subsection B, in the introductory paragraph, deleted "The owner or the chief executive officer of", and after "A private investigation company", deleted "that provides personal protection or bodyguard services".

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.

ANNOTATIONS

Cross references. — For definition of "private investigations manager", *see* 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 9 was enacted as 61-27A-6.2 NMSA 1978. It has been codified by the compiler as 61-27B-9 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 10 was enacted as 61-27A-6.3 NMSA 1978. It has been codified by the compiler as 61-27B-10 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Cross references. — For definition of "private patrol company", *see* 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 11 was enacted as 61-27A-6.4 NMSA 1978. It has been codified by the compiler as 61-27B-11 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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 manger 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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 12 was enacted as 61-27A-6.5 NMSA 1978. It has been codified by the compiler as 61-27B-12 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Cross references. — For definition of "polygraph examiner", *see* 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 13 was enacted as 61-27A-6.6 NMSA 1978. It has been codified by the compiler as 61-27B-13 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

Prerequisites to admissibility at trial. — Stipulation by the parties to a polygraph test or the absence of objection thereto at trial are not prerequisites to the admission into evidence of the results of such tests. *State v. Dorsey*, 1975-NMSC-040, 88 N.M. 184, 539 P.2d 204 (decided under prior law) (now see Rule 11-707 NMRA).

Licensed examiner required. — The proponent of polygraph evidence must show that the polygraph examiner was licensed. *State v. Sanders*, 1994-NMSC-043, 117 N.M. 452, 872 P.2d 870 (decided under prior law) (now see Rules 11-702 and 11-707 NMRA).

Standard of care. — Polygraphers are professionals subject to a malpractice standard of care, not just a "reasonable man" standard. *Lewis v. Rodriguez*, 1988-NMCA-062, 107 N.M. 430, 759 P.2d 1012.

Law reviews. — For article, "The Admissibility of Scientific Evidence Under the New Mexico and Federal Rules of Evidence," see 6 N.M.L. Rev. 187 (1976).

For note, "Lie Detector Evidence - New Mexico Court of Appeals Holds Voice-Stress Lie Detector Evidence Conditionally Admissible: Simon Neustadt Family Center, Inc. v. Bludworth," see 13 N.M.L. Rev. 703 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 4.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

53 C.J.S. Licenses § 34.

For article, "Survey of New Mexico Law, 1982-83: Evidence," see 14 N.M.L. Rev. 161 (1984).

Physiological or psychological truth and deception tests, 23 A.L.R.2d 1306, 53 A.L.R.3d 1005, 47 A.L.R.4th 1202, 77 A.L.R.4th 927.

Validity and construction of statutes licensing or otherwise regulating operators of polygraph or similar devices, 32 A.L.R.3d 1324.

Validity and construction of statute prohibiting employers from suggesting or requiring polygraph or similar tests as condition of employment or continued employment, 23 A.L.R.4th 187.

Admissibility of lie detector test results, or of offer or refusal to take test, in attorney disciplinary proceeding, 79 A.L.R.4th 576.

61-27B-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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 14 was enacted as 61-27A-6.7 NMSA 1978. It has been codified by the compiler as 61-27B-14 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Cross references. — For definition of "private investigation employee", *see* 61-27B-2 NMSA 1978.

The 2023 amendment, effective July 1, 2023, included private patrol companies and private patrol employees within the scope of the section; in the section heading, added "or private patrol"; added a new Subsection B and redesignated former Subsections B through D as Subsections C through E, respectively; in Subsection C, in the introductory clause, after "private investigations", added "or private patrol"; deleted former Paragraph (2) and redesignated former Paragraphs (3) through (7) as Paragraphs C(2) through C(6), respectively; in Paragraph C(5), added "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 in Subsection D, after each occurrence of "private investigation company", added "or private patrol company", and after each occurrence of "private investigations employee", added "or private patrol employee".

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.

ANNOTATIONS

Cross references. — For definition of "security guard", *see* 61-27B-2 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 15 was enacted as 61-27A-6.8 NMSA 1978. It has been codified by the compiler as 61-27B-15 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 16 was enacted as 61-27A-6.9 NMSA 1978. It has been codified by the compiler as 61-27B-16 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 17 was enacted as 61-27A-6.10 NMSA 1978. It has been codified by the compiler as 61-27B-17 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 18 was enacted as 61-27A-6.11 NMSA 1978. It has been codified by the compiler as 61-27B-18 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, struck a provision requiring each applicant requesting registration as a level three security guard to have passed a psychological evaluation to determine suitability for carrying a firearm; and deleted former Paragraph B(8) and redesignated former Paragraph B(9) as new Paragraph B(8).

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 19 was enacted as a new section 61-27A-6.12 NMSA 1978. It has been codified by the compiler of the NMSA 1978 as a new section 61-27B-19 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 190, § 54 made Laws 2023, ch. 190, § 42 effective July 1, 2023.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 20 was enacted as 61-27A-7.1 NMSA 1978. It has been codified by the compiler as 61-27B-20 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, redesignated former Paragraphs A(1) and A(2) as Subsections A and B, respectively; in Subsection A, redesignated former Subparagraphs A(1)(a) through A(1)(c) as Paragraphs A(1) through A(3), respectively; in Subsection B, redesignated former Subparagraphs A(2)(a) through A(2)(c) as Paragraphs B(1) through B(3), respectively; added new Subsections C and D; redesignated former Paragraphs A(3) and A(4) as Subsections E and F, respectively; in Subsection E, redesignated former Subparagraphs A(3)(a) and A(3)(b) as Paragraphs E(1) and E(2), respectively; in Subsection F, redesignated former Subparagraphs A(4)(a) through A(4)(c) as Paragraphs F(1) through F(3), respectively; added a new Subsection G and redesignated former Paragraph A(5) as Subsection H; in Subsection H, in the introductory clause, after "polygraph examiners", added "and instructors"; redesignated former Subparagraphs A(5)(a) through A(5)(d) as Paragraphs H(1) through H(4), respectively; and deleted former Subsection B.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Compiler's note. — Laws 2007, ch. 115, § 21 was enacted as 61-27A-8.1 NMSA 1978. It has been codified by the compiler as 61-27B-21 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, changed license renewal requirements from annually to biennially; and in Subsection A, after "department", deleted "annually" and added "biennially".

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, adds new Subsections B to F to require a registrant to display a copy of his registration in the main New Mexico office of the company and in the branch office where the registrant works, carry or wear a registration card issued by the department, and immediately notify the department of changes of address and provides that a violation of this section is grounds for suspension of a license or registration.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 23 was enacted as 61-27A-10.1 NMSA 1978. It has been codified by the compiler as 61-27B-23 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2023 amendment, effective July 1, 2023, removed provisions requiring a private investigation company to file with the department a surety bond; changed the section heading from "Bond required" to "Liability insurance"; deleted former Subsection A ; deleted former subsection designation "B."; deleted "The owner or the chief executive officer of"; after "A private investigation company", deleted "that provides personal protection or bodyguard services or the owner or the chief executive office of" and added "or"; and deleted former Subsection C.

The 2007 amendment, effective July 1, 2007, requires a private investigation company to file a surety bond in the amount of $10,000 and to maintain a general liability certificate of insurance in an amount required by the department.

Face amount of bond represents total liability of surety regardless of the number of claims which may be filed against the licensee. 1965 Op. Att'y Gen. No. 65-187.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 48, 49, 55.

53 C.J.S. Licenses § 42.

61-27B-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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, prohibits the use of badges by private investigations managers, private investigations employees, private patrol operations managers and level three security guards.

Liability for malicious prosecution. — Since a defendant cannot be held liable for malicious prosecution unless he takes some active part in instigating or encouraging prosecution, a private investigator's submission of a copy of his report concerning the plaintiff's activities to the district attorney's office for possible further investigation, which he is authorized to do under this section, does not amount to the institution of criminal proceedings. *Zamora v. Creamland Dairies, Inc.*, 1987-NMCA-144, 106 N.M. 628, 747 P.2d 923.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, authorizes the department to reprimand or place on probation licensees and registrants on grounds that include dishonesty and violations of state or federal labor, tax or employee benefit law or rule.

Effect of gubernatorial pardon on eligibility for license. — An unconditional gubernatorial pardon allows a person convicted of a felony to be eligible for licensure as a private investigator. However, if authorized by statute or regulation, a pardoned felon's character in the acts underlined the conviction may be considered in certification or licensing. 1992 Op. Att'y Gen. No. 92-09.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2017 amendment, effective June 16, 2017, raised the maximum civil penalty for engaging in a practice regulated by the department of regulation and licensing without a license from $1,000 to $2,000; and in Subsection B, Paragraph B(2), after "not to exceed", deleted "one thousand dollars ($1,000)" and added "two thousand dollars ($2,000)".

The 2007 amendment, effective July 1, 2007, adds a new Subsection B that authorizes the department to impose penalties.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, adds a new Subsection B that requires the department to adopt rules for changes in the name or management of a private investigation company or private patrol company.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, permits local authorities to impose local ordinances on persons licensed or registered under the Private Investigations Act.

Cities prohibited from regulating certain investigative businesses and occupations. — With the exception of this section, cities may not regulate the businesses and occupations which are included in the Private Investigators Act (former Sections 61-27-1 to 61-27-49 NMSA 1978). 1965 Op. Att'y Gen. No. 65-176.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits § 130.

53 C.J.S. Licenses §§ 9 to 12.

61-27B-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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, creates the private investigations fund which is appropriated to the department and provides that no more than five percent of the fund shall be used for administration of the fund.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 31 was enacted as 61-27A-19.1 NMSA 1978. It has been codified by the compiler as 61-27B-31 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

The 2023 amendment, effective July 1, 2023, provided that a private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol employee must pass a psychological evaluation to determine suitability for carrying a firearm prior to receiving authorization to carry a firearm; and added "and successfully passing a psychological evaluation prescribed by the department to determine suitability for carrying a firearm".

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Recompilations. — For recompilation of this section, *see* compiler's note following 61-27B-1 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provides that licensees and registrants who are convicted of committing the violations listed in this section shall be sentenced pursuant to 31-19-1 NMSA 1978.

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.

ANNOTATIONS

Compiler's note. — Laws 2007, ch. 115, § 33 was enacted as a new section of the "Private Investigations Act". It has been codified by the compiler as 61-27B-33 NMSA 1978. *See* the compiler's note following 61-27B-1 NMSA 1978.

Delayed repeal. — For delayed repeal of the section, *see* 61-27B-36 NMSA 1978.

Effective dates. — Laws 2007, ch. 115, § 38, makes the section effective July 1, 2007.

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.

ANNOTATIONS

Delayed repeal. — For delayed repeal of the section, see 61-27B-36 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be fingerprinted only upon initial licensure or registration; in Subsection A, Paragraph A(2), after "fingerprinted", added "only upon initial licensure or registration".

61-27B-35. Repealed.

History: Laws 2007, ch. 115, § 36; repealed by Laws 2023, ch. 190, § 53.

ANNOTATIONS

Repeals. — Laws 2023, ch. 190, § 53 repealed 61-27B-35 NMSA 1978, as enacted by Laws 2007, ch. 115, § 36, relating to temporary provision, transition, effective July 1, 2023. For provisions of former section, *see* the 2022 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, extended the termination date of the private investigations advisory board; changed "July 1, 2023", to "July 1, 2029", and "July 1, 2024" to "July 1, 2030".

Laws 2023, ch. 15, § 4, effective June 16, 2023, and Laws 2023, ch. 190, § 50, effective July 1, 2023, enacted identical amendments to this section. The section was set out as amended by Laws 2023, ch. 190, § 50. *See* Section 12-1-8 NMSA 1978.

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

ARTICLE 28
Public Accountants (Repealed.)

61-28-1 to 61-28-34. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 10, § 30 repealed 61-28-1 to 61-28-34, as enacted by Laws 1947, ch. 115, § 20; Laws 1963, ch. 43, § 27; and as amended by Laws 1983, ch. 15, §§ 5, 7, 10; Laws 1987, ch. 236, §§ 1-29; Laws 1987, ch. 333, § 11; and Laws 1988, ch. 23, § 1, relating to public accountants, effective May 20, 1992. For present comparable provisions, *see* 61-28B-1 NMSA 1978 et seq.

ARTICLE 28A
Public Accountancy (Repealed.)

61-28A-1 to 61-28A-28. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 179, § 31 repealed 61-28A-1 to 61-28A-28 NMSA 1978, as enacted by Laws 1992, ch. 10, §§ 1, 2, 4 to 7, 10 to 12, 14, 16, 20 to 23, 25, 26 and 28 and Laws 1993, ch. 83, § 6, and as amended by Laws 1993, ch. 340, §§ 1 to 3 and 5 to 8 and Laws 1997, ch. 207, §§ 1 and 2, relating to public accountancy, effective July 1, 1999. For provisions of former sections, *see* the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, *see* 61-28B-1 NMSA et seq.

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.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, changes the statutory reference the act.

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

Funds collected to be deposited with state treasurer. — All funds collected by the state board of public accountancy under authority of this article (now Chapter 61, Article 28, NMSA 1978) are public funds which must be deposited with the state treasurer. *N.M. State Bd. of Pub. Accountancy v. Grant*, 1956-NMSC-068, 61 N.M. 287, 299 P.2d 464 (decided under prior law).

Contributions withdrawn only through appropriations by legislature upon warrants. — Although there may be no language in any statute conferring upon the state board of public accountancy authority to solicit members of its profession to make voluntary contributions, once such contributions are deposited in the state treasury, where they become commingled with other funds of the board, they can only be withdrawn through appropriations made by the legislature upon warrants drawn by the proper officer. *N.M. State Bd. of Pub. Accountancy v. Grant*, 1956-NMSC-068, 61 N.M. 287, 299 P.2d 464 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 1 et seq.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

Application of statute of limitations to actions for breach of duty in performing services of public accountant, 7 A.L.R.5th 852.

1 C.J.S. Accountants § 4 et seq.

61-28B-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, added the definition of "compilation" to, and clarified certain definitions in, the Public Accountancy Act; in Subsection A, in the introductory clause, after "the following", deleted "financial statement", and in Paragraph A(3), after "an", deleted "examination of prospective financial information" and added "engagement", and after "attestation engagements", added "adopted by the board"; added a new Subsection E and redesignated the succeeding subsections accordingly; in Subsection I, after "'licensee' means a", added "person", and after "accountant firm", added "authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law"; and in Subsection O, in the introductory clause, after "'report' means", deleted "an opinion or other writing that:" and added "a written communication issued by an accountant or an accountant firm that:", and deleted former Paragraphs O(1) through O(3) and added new Paragraphs O(1) and O(2).

The 2008 amendment, effective May 14, 2008, added Paragraph (4) of Subsection A and Subparagraph (a) of Paragraph (3) of Subsection N; deleted the definition of person and of specialty designation; and in Subsection O, changed the reference to the 1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

The 2000 amendment, effective July 1, 2000, added a new Subsection E and redesignated the remaining subsections accordingly.

Generally, as to public accountant. — A public accountant is one who provides accounting or auditing, as opposed to bookkeeping, services on a fee basis, per diem or otherwise, for more than one employer. 1947 Op. Att'y Gen. No. 47-5050.

Providing auditing services for credit union league members. — An individual not registered or licensed as an accountant, who is employed by the New Mexico credit union league, and provides auditing services on behalf of the league for member credit unions, does not hold himself out to the public as a public accountant, nor does he violate the public accountancy provisions. 1969 Op. Att'y Gen. No. 69-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 1 et seq.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

1 C.J.S. Accountants § 2.

61-28B-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

Transfers and references. — Laws 1999, ch. 179, § 30, effective July 1, 1999, provides that on July 1, 1999, all personnel, money, appropriations, property, records and other things of value belonging to the New Mexico state board of public accountancy shall be transferred to the New Mexico public accountancy board. All contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board. All references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall consist" for "consisting" following "is created" near the beginning of Subsection A.

Appointment to unexpired term. — Since plaintiff could serve on the accountancy board only for the remainder of the unexpired term to which she was appointed on January 24, 2002, as the appointing governor did not have authority to appoint plaintiff to a term beyond December 31, 2002, the succeeding governor had authority to appoint plaintiff's successor. *Roberts v. Richardson*, 2005-NMSC-007, 137 N.M. 226, 109 P.3d 765.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 C.J.S. Accountants § 9.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico public accountancy board is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for licensing and disciplinary matters; in Subsection A, Paragraph A(5), deleted "adopt and file" and added "promulgate rules", after "in accordance with", deleted "the Uniform Licensing Act and", and after "State Rules Act", deleted "rules"; and in Subsection B, added Paragraph B(3).

The 2007 amendment, effective June 15, 2007, adds Paragraph (2) of Subsection B.

The 2003 amendment, effective July 1, 2003, deleted former Paragraph A(1), concerning employment of director, and redesignated the subsequent paragraphs accordingly.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

61-28B-7. Repealed.

History: Laws 1999, ch. 179, § 7; 2004, ch. 34, § 1; repealed by Laws 2017, ch. 12, § 5.

ANNOTATIONS

Repeals. — Laws 2017, ch. 12, § 5 repealed 61-28B-7 NMSA 1978, as enacted by Laws 1999, ch. 179, § 7, relating to qualifications for a certificate as a certified public accountant, effective June 16, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2023 amendment, effective July 1, 2023, adjusted the length of time an applicant for a certificate as a certified public accountant has to pass all parts of the certification examination; and in Subsection E, after "Credit for any section passed shall be valid for eighteen months from the", deleted "actual", after "date the", deleted "applicant took that section" and added "passing score is released to the applicant", and after "which begins on the date that the first", deleted "section passed is taken" and added "passing scores are released to the applicant".

The 2020 amendment, effective May 20, 2020, required the New Mexico public accountancy board to offer examination for certification as a certified public accountant continuously via a computer-based testing system at a designated testing center, and removed certain limitations on testing; in Subsection C, deleted "After July 1, 2008"; in Subsection D, after "shall be offered", added "continuously", and after "testing system", deleted "at least four times per year at a designated testing center" and added "at a designated testing center"; in Subsection E, after "in any order", deleted "An applicant

may not take a failed test section within the same three-month examination window."; and deleted former Subsections F and G, which provided for credit for portions of the certificate examination, and redesignated the succeeding subsections accordingly.

The 2008 amendment, effective May 14, 2008, deleted former Subsection C and added a new Subsection C.

The 2004 amendment, effective March 2, 2004, rewrote Subsections D and E to provide for the examination to be offered four times a year by a computer-based testing system instead of at least twice a year and to change the number time period for passing all four sections of the exam, added new Subsections F, G and H and redesignated former Subsections G and H as Subsections I and J.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 15, 2007, 90 days after the adjournment of the legislature.

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, allowed a nonresident accountant to meet continuing education requirements in New Mexico if the nonresident accountant meets the requirements in the state where the nonresident accountant’s primary place of business is located; in the cathline, after "competency", added "nonresident maintenance of competency requirements"; in Subsection E, after "adjacent to", deleted "his" and added "the certificate holder’s"; and added a new Subsection F, and redesignated former Subsection F as Subsection G.

The 2005 amendment, effective July 1, 2005, provides that failure to pay a renewal fee is cause for the non-renewal of a certificate without a prior hearing, that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application and payment of the renewal fee and a reinstatement fee and upon approval by the board.

61-28B-10. Repealed.

History: Laws 1999, ch. 179, § 10; repealed by Laws 2008, ch. 30, § 7.

ANNOTATIONS

Repeals. — Laws 2008, ch. 30, § 7 repealed 61-28B-10 NMSA 1978, as enacted by Laws 1999, ch. 179, § 10, relating to the use of specialty designations by certificate holders, effective May 14, 2008. For provisions of former section, *see* the 2007 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the condition for the application of Subsection A that the applicant not qualify for reciprocity pursuant to the substantial equivalency standard and in Subsection B, changed the reference to the1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, expanded the type of services a nonresident accountant firm may offer to or render for a client in New Mexico without a permit; in Paragraph B(3), after "New Mexico but", deleted "performs" and added "offers or renders", after "for a client", deleted "whose principal place of business is", and after "New Mexico", deleted "except as provided in Subsection C of this section"; in Subsection C, in the introductory clause, after "A firm", deleted "without" and added "that does not have", after "New Mexico may", deleted "perform" and added "offer or render attest", after "services", deleted "described in Paragraph (2) of Subsection A of Section 61-28B-3 NMSA 1978", and after "for a client", deleted "whose principal place of business is"; in Paragraph C(1), deleted "it performs" and added "the firm offers or renders the", and added "provided that the firm can lawfully perform the services in the state where the person’s primary place of business is located"; in Paragraph C(2), deleted "a simple majority of the ownership of the firm belongs to holders of a certificate who are licensed in some state pursuant to" and added "the firm meets the requirements of"; in Paragraph C(3), after "the firm", deleted "has undergone a peer review pursuant to" and added "meets the requirements of"; in Subsection D, in the introductory clause, after "may perform other", added "nonattest"; in Paragraph H(2), after "accountant’s report", deleted "on the financial statements"; in Subsection L, after "accountant’s report", deleted "on the financial statements"; and in Subsection N, after

"requirements of this section", added "and Sections 61-28B-8 and 61-28B-13 NMSA 1978".

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the requirement that a firm hold a permit to provide attest services or use CPA and RPA titles; added Subsections B through D; in Paragraph (1) of Subsection H, provided that a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 is not required to obtain a certificate pursuant to Section 61-28B-9 NMSA 1978; included a licensee of another state who meets the requirements of Subsection A of Section 61-28B-26 NMSA 1978 in Subparagraph (a) of Paragraph (1) of Subsection H; and included a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978 in Paragraph (2) of Subsection H and in Subsection L.

The 2005 amendment, effective July 1, 2005, provides that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application, payment of the renewal fee and approval by the board.

The 2000 amendment, effective July 1, 2000, substituted "a simple majority" for "a minimum of sixty percent majority" at the beginning of Subsection E(1).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsections A and B, changed the reference to “Subsection C of this section and Section 61-28B-18 NMSA 1978” to the 1999 Public Accountancy Act; in Paragraph (2) of Subsection E, required employees to be supervised by a licensee pursuant to Section 61-28B-18 NMSA 1978; and added Subsections L and M.

The 2001 amendment, effective April 2, 2001, added the exception in Paragraph J(4).

The 2000 amendment, effective July 1, 2000, updated the internal references in Subsections A, B and C, rewrote Subsections H and I, added new Subsection J, and redesignated former Subsection J as present Subsection K.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 2 et seq.

Failure of accountant to procure license as affecting validity or enforceability of contract, 118 A.L.R. 651.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

1 C.J.S. Accountants § 5.

61-28B-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 10.

Validity, construction and application of statute or regulation restricting use of terms such as "accountant," "public accountant" or "certified public accountant," 4 A.L.R.4th 1201.

61-28B-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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the New Mexico public accountancy board may impose a civil penalty not to exceed two thousand dollars ($2,000) and assess certain costs against any person who engages in public accountancy without a license; and added Subsection E.

The 2007 amendment, effective June 15, 2007, increases the maximum administrative fine in Paragraph (4) of Subsection (B) from $1,000 to $10,000.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 6.

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

Regulation of public accountants, 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders, 35 A.L.R.4th 225.

Liability of independent accountant to investors or shareholders, 48 A.L.R.5th 389.

1 C.J.S. Accountants §§ 6 to 9.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

The 2017 amendment, effective June 16, 2017, required certain nonresident accountants who receive New Mexico practice privileges to meet the requirements of Section 61-28B-11 NMSA 1978; in Subsection A, added "Except as provided in Subsection D of this section"; in Subsection C, in the introductory clause, after "pursuant to this section", deleted "and the firm that employs the licensee simultaneously"; added a new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, after the first sentence, deleted "Notwithstanding the provisions of Sections 61-28B-15 and 61-28B-16 NMSA 1978", and after "board of accountancy in another state", added "in accordance with the provisions of the 1999 Public Accountancy Act".

The 2008 amendment, effective May 14, 2008, deleted former Subsections A through C and added new Subsections A through D.

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.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2007 amendment, effective June 15, 2007, adds Subsection G.

The 2004 amendment, effective March 2, 2004, amended Subsection A to increase the examination fee from two hundred twenty-five dollars ($225) to four hundred dollars ($400).

The 2002 amendment, effective July 1, 2002, substituted "two hundred twenty-five dollars ($225) per examination section" for "one hundred seventy-five dollars ($175) per examination application".

Delayed repeals. — For delayed repeal of this section, *see* 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-28B-29 NMSA 1978.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed "July 1, 2023" to "July 1, 2029" and changed "July 1, 2024" to "July 1, 2030".

The 2017 amendment, effective June 16, 2017, changed "July 1, 2018" to "July 1, 2024", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the prohibited activities; in the first sentence, after "engage in the business", added "or", and after "act in the capacity of", deleted "advertise or display in any manner or otherwise assume to engage in the business of, or act as an", added "real estate" and in the second sentence, after "with or without a New Mexico" added "real estate broker's".

The 2005 amendment, effective January 1, 2006, prohibits a person from engaging in business or acting as an associate broker or a qualifying broker without a license.

The 2001 amendment, effective July 1, 2001, substituted "a person to engage" for "any person, business association or corporation to engage"; deleted "real estate" preceding "broker"; deleted "New Mexico real estate" preceding "commission"; and added the last sentence of the subsection.

Brokerage can encompass sale of interest in real estate contract. — Commission had jurisdiction over real estate broker's sale of an interest in a real estate contract since broker was a real estate broker as defined in Section 61-29-2A(4) NMSA 1978 and represented himself as such and acted in that capacity. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Payment of a finder's fee to an unlicensed real estate broker prohibited. — Where a Chapter 7 trustee filed a motion to sell debtors' house, and where the terms of the proposed sale included a proposed finder's fee for creditor, an unlicensed real estate broker who introduced the buyers of the house to the trustee, the proposed finder's fee was prohibited by this section, because the creditor, as an unlicensed broker in New

Mexico, may not collect a finder's fee or any other compensation from the sale of real estate. *In re Waggoner*, 605 B.R. 222 (Bankr. D. N.M. 2019).

Generally, as to advertisements violating section. — It is a violation of this section for a person, business firm or corporation to advertise the disposition of real estate using the terms "Real Estate Agency," "Realty," "Agency" or "Broker" without first being licensed as a real estate broker as is defined in Section 61-29-2 NMSA 1978. It is not really important whether or not the person, business firm or corporation doing the advertising uses the terms "Real Estate Agency," "Realty," "Agency" or "Broker." The real question is: have they advertised themselves as offering a service which comes within the definition of a real estate broker and a real estate salesman? 1966 Op. Att'y Gen. No. 66-16.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Law reviews. — For note, "Vendor and Purchaser - Increased Risks of Forfeiture and Malpractice Resulting from the Use of Real Estate Contracts: Albuquerque National Bank v. Albuquerque Ranch Estates, Inc.," see 15 N.M.L. Rev. 99 (1985).

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

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 12.

Validity of statute or ordinance requiring real estate brokers to procure license, 39 A.L.R.2d 606.

Application of state antitrust laws to activities or practices of real estate agents or associations, 22 A.L.R.4th 103.

Attorney's right to act as real estate broker without having been licensed as such, 23 A.L.R.4th 230.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

Real estate brokers: statute or regulation forbidding use of prizes, gifts, or premiums as inducement to secure customers, 62 A.L.R.4th 1044.

Broker's liability for fraud or misrepresentation concerning development or nondevelopment of nearby property, 71 A.L.R.4th 511.

Liability of vendor or real-estate broker for failure to disclose information concerning off-site conditions affecting value of property, 41 A.L.R.5th 157.

12 C.J.S. Brokers §§ 14, 18.

61-29-1.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-1.1 NMSA 1978, relating to registration of time share projects and licensing of salespersons, enacted by Laws 1986, ch. 97, § 2, has been recompiled as 47-11-2.1 NMSA 1978.

61-29-2. Definitions and exceptions.

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.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, defined "property management" as used in Chapter 61, Article 29 NMSA 1978; and in Subsection A, added new Paragraph A(15) and redesignated the succeeding paragraphs accordingly.

The 2019 amendment, effective June 14, 2019, defined "auctioneer" as used in Chapter 61, Article 29 NMSA 1978, and exempted an auctioneer working under the control of a qualifying broker from the licensure requirements, and provided requirements for the agreement between the auctioneer and the qualifying broker; in Subsection A, added a new Paragraph A(4) and redesignated former Paragraphs A(4) through A(16) as Paragraphs A(5) through A(17), respectively; in Subsection B, after the first occurrence of "Paragraph", deleted "(14)" and added "(15)"; and in Subsection C, added Paragraph C(9).

The 2014 amendment, effective May 21, 2014, added definitions of "commercial real estate", "foreign broker", and "nonresident licensee" to provide for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; and in Subsection A, added Paragraphs (7), (10) and (13).

The 2013 amendment, effective June 14, 2013, changed the definition of "associate broker" and added the definition of "qualifying broker"; in Paragraph (3) of Subsection A, in the introductory sentence, after "qualifying broker", deleted "to participate in an activity described in Paragraph (4) of this subsection or"; added Subparagraphs (a) through (e) of Paragraph (3) of Subsection A; deleted former Paragraph (4) of Subsection A, which defined "broker" and "qualifying broker"; in Paragraph (6) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; in Paragraph (8) of Subsection A, after "means a", deleted "buyer, seller, landlord or tenant" and added "person"; added Paragraph (11) of Subsection A; deleted former Paragraph (13) of Subsection A, which defined "real estate salesperson"; and in Paragraph (2) of Subsection C, after "property and the investments", deleted "except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels".

The 2011 amendment, effective July 1 2011, in Subsection A, included property managers in the definition of "broker"; and in Subsection C, provided that Chapter 61, Article 29 NMSA 1978 applies when a sale constitutes a subdivision of property containing one hundred or more parcels.

The 2005 amendment, effective January 1, 2006, redefines “agency relationship” to mean the fiduciary relationship created solely by a written agreement between a person and a brokerage; defines “agent” to mean the brokerage authorized solely by a written agreement; defines “associate broker” to mean a person who is associated with or engaged under contract by a qualifying broker; defines “brokerage relationship” as the legal or contractual relationship between a person and a brokerage in a real estate transaction; redefines “licensee” to mean a person holding a qualifying broker’s or associate broker’s license; and defines “transaction broker” to mean a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

The 2003 amendment, effective January 1, 2004, substituted "contractual" for "contractural" following "means the legal or" near the middle of Paragraph A(1); deleted

"created pursuant to Section 61-29-4 NMSA 1978" at the end of Paragraph A(5); inserted "or a real estate salesperson's license" following "real estate broker's license" in the middle of Paragraph A(7); substituted "a person" for "anyone" following "licensee means" near the beginning of Paragraph A(8); deleted Paragraph A(9) and redesignated the subsequent paragraphs accordingly; and substituted "(10)" for "(11)" following "Paragraph" near the end of Subsection B.

Texas broker was acting as a broker in New Mexico. — Where plaintiff, who was a licensed real estate broker in Texas, agreed to buy a ranch in New Mexico and the owners agreed to pay plaintiff a six percent commission; defendants, who were licensed brokers in New Mexico, assisted plaintiff conduct due diligence in connection with the purchase of the ranch; plaintiff and defendants subsequently agreed that if defendants found a third-party purchaser of the ranch, that plaintiff would not buy the ranch and plaintiff and defendants would share the sales commission; defendants told plaintiff about a possible buyer of the ranch and plaintiff directed defendants to contact the owner of the ranch about the prospective buyer; the ranch was not listed for sale; and the only way defendants knew the ranch was for sale was through their contact with plaintiff, plaintiff was a broker within the meaning of Section 61-29-2 NMSA 1978 because plaintiff was a finder or middleman who brought the ranch owner and the buyer together with the assistance of defendants. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Broker buying or selling property for himself. — The commission lacks jurisdiction over a real estate broker who is buying or selling property for himself, unless he holds himself out as a broker. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Burden on broker when acting for himself. — A licensed broker has the burden of showing that there is no possibility of misunderstanding or confusion as to his status when he purports to act for himself. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Whether landowner made representation as to being real estate broker is factual determination to be made by the trier of fact. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or

seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Broker status not changed by power of attorney. — Where a real estate broker entered into a real estate transaction as a broker, he was not exempt from the jurisdiction of the commission under the "attorney in fact" exception in Subsection D (now C(4)), even though he was given the power of attorney to enable him to complete the transaction without the owners being present. *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Activities not excepted. — Activities did not fall within exception provided for in Subsection D (now C). *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

No license required for arranging investments. — Arranging investments in real estate contracts is not a transaction for which a real estate broker's or salesperson's license is required. *Garcia v. N.M. Real Estate Comm'n*, 1989-NMCA-034, 108 N.M. 591, 775 P.2d 1308, cert. denied, 108 N.M. 624, 776 P.2d 846.

A person who auctions the real estate of another person for compensation is acting as an associate or qualifying broker. — The Real Estate Brokers and Salesmen Act (act), 61-29-1 to 61-29-29 NMSA 1978, specifically lists auctioning or the offer to auction real estate, when performed for another and for compensation, as conduct that brings one within in the definition of associate broker and qualifying broker, and therefore a person who auctions or offers for auction the real estate of another person for compensation is acting as an associate or qualifying broker under the act and must possess a broker's license issued by the New Mexico real estate commission, regardless of whether the auctioneer is hired by the seller or by a licensed broker. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Rule governing advertisements applies to advertisements of real estate auctions. — The New Mexico real estate commission has adopted a rule governing real estate advertising that requires all real estate advertising be a true and factual representation of the property and real estate services being advertised, and because auctioning or offering for auction the real estate of another for compensation is a real estate service that requires a broker's license, it follows that advertisements regarding the sale of real estate by auction comes under this rule. *Necessity of a Real Estate Broker's License to Auction Real Estate* (5/24/16), Att'y Gen. Adv. Ltr. 2016-05.

Broker to supervise salespeople. — This section and Section 61-29-11 NMSA 1978 express a clear legislative mandate that brokers, as the persons principally responsible

to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

The exemption contained in Subsection D (now C(4)) applies only to those persons holding the power of attorney and who are not engaged in business as real estate brokers. 1965 Op. Att'y Gen. No. 65-122.

Law reviews. — For article, "Attachment in New Mexico - Part I," see 1 Nat. Res. J. 303 (1961).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 1.

Who is real estate broker within meaning of statute, 167 A.L.R. 774.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, 17 A.L.R.2d 904.

Duty of real estate broker to disclose that prospective purchaser is a relative, 26 A.L.R.2d 1307.

Payment to broker authorized to sell real property as payment to principal, 30 A.L.R.2d 805.

Power of real estate broker to execute contract of sale in behalf of principal, 43 A.L.R.2d 1014.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Power of real estate broker to bind principal by representations as to character, condition, location, quantity or title of property, 58 A.L.R.2d 10.

Liability of real estate broker for accepting note, check or property, rather than cash, as earnest money, 59 A.L.R.2d 1455.

Misrepresentation as basis of real estate broker's liability for damages or losses sustained by vendor responsible to vendee on account thereof, 61 A.L.R.2d 1237.

Modern view as to right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Right of attorney, as such, to act or become licensed to act as real estate broker, 23 A.L.R.4th 230.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

12 C.J.S. Brokers § 2.

61-29-3. Criminal offender's character evaluation.

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by Sections 61-29-1 through 61-29-18 NMSA 1978.

History: 1953 Comp., § 67-24-20.1, enacted by Laws 1974, ch. 78, § 29.

ANNOTATIONS

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Convicted felon, while on parole, is under no disqualification that would prevent him from applying for a license to practice barbering or to practice as a real estate broker or any other trade, profession or occupation in this state. 1958 Op. Att'y Gen. No. 58-214 (rendered under former law).

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.

ANNOTATIONS

Cross references. — For Uniform Licensing Act, *see* 61-1-1 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the State Rules Act when promulgating rules; and after "power and authority to", deleted "make" and added "promulgate rules in accordance with the State Rules Act", and deleted "Prior to a final action on a proposed change or amendment to the rules of the commission, the commission may publish notice of the proposed action in its official publication, distribute the publication to each active licensee and give the time and place for a public hearing on the proposed changes. The hearing shall be held at least thirty days prior to a proposed final action. Changes or amendments to the rules shall be filed in accordance with the procedures of the State Rules Act and shall become effective thirty days after notification to all active licensees of the filing of the changes or amendments.".

The 2005 amendment, effective January 1, 2006, requires that real estate commission members be a licensed associate broker or a qualifying broker; provides that in the event of vacancies, the governor shall appoint members to complete the unexpired terms; and provides authority to promulgate rules only.

2003 amendments. — Substantively identical amendments to this section were enacted by Laws 2003, ch. 22, § 1, effective June 20, 2003, and Laws 2003, ch. 408, § 30, effective July 1, 2003, deleting "called 'the commission' in Chapter 61, Article 29 NMSA 1978" following "real estate commission" at the end of the first sentence of the section; deleting "and regulations" following "amendments to the rules" near the beginning of the ninth sentence; and deleting "The commission may employ any staff it deems necessary to assist in carrying out its duties and in keeping its records" following "changes or amendments." at the end of the section. Chapter 408, § 30 also made minor grammatical changes. This section is set out as amended by Laws 2003, ch. 408, § 30. See 12-1-8 NMSA 1978.

The 1990 amendment, effective May 16, 1990, inserted "and as otherwise provided by law" following "Chapter 61, Article 29 NMSA 1978" in the sixth sentence.

Commission members subject to discretionary removal. — Since the governor may remove any person appointed by him or his predecessor, he can remove any member of the real estate commission at any time without notice or hearing. 1963 Op. Att'y Gen. No. 63-134.

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

53 C.J.S. Licenses § 9.

61-29-4.1. Additional powers of commission; continuing education programs; minimum requirements.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, clarified the continuing education requirements; and in the second sentence, after "requirements prior to", deleted "the effective date of this 2011 act" and added "July 1, 2011" and after "successfully complete", added "a minimum".

The 2011 amendment, effective July 1 2011, required licensees over the age of sixty-five who were not exempt from the requirement prior to the enactment of Laws 2011, ch. 85 to comply with continuing education requirements.

The 2005 amendment, effective January 1, 2006, requires the real estate commission to adopt rules to provide for continuing education courses and for areas of specialty or expertise, but did not change the second sentence that requires the real estate commission to promulgate regulations to require the completion of thirty six hours of instruction every three years.

The 1993 amendment, effective June 18, 1993, deleted the A designation from the beginning of the section.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, increased the limit on liability insurance premiums; and in Subsection B, in the second sentence, after "shall not exceed", deleted "three hundred dollars ($300)" and added "five hundred dollars ($500)".

The 2008 amendment, effective July 1, 2008, increased the maximum annual premium from $200 to $300.

The 2005 amendment, effective January 1, 2006, increases the amount for the maximum annual premium that may be charged each licensee for coverage under a group professional liability insurance policy obtained by the real estate commission.

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.

ANNOTATIONS

The 2019 amendment, effective July 1, 2020, provided that applicants for licensure shall be required to provide fingerprints only upon initial licensure; in Subsection A, Paragraph A(1), after "provide fingerprints", added "only upon initial licensure", and after "criminal history", added "background".

The 2011 amendment, effective July 1 2011, rewrote the section to require fingerprinting and criminal history background checks of applicants for licensure.

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, requires the secretary of the real estate commission to keep a register of persons licensed as associate brokers and qualifying brokers.

The 2001 amendment, effective July 1, 2001, substituted "Chapter 61, Article 29 NMSA 1978" for "this act" and "salespersons" for "salesmen".

61-29-5.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-5.1 NMSA 1978, relating to a register of time share projects and applicants for certificates of registration, enacted by Laws 1986, ch. 97, § 13, has been recompiled as 47-11-11.1 NMSA 1978.

61-29-6. Meeting of the commission.

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, made style changes.

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.

ANNOTATIONS

2003 amendments. — Identical amendments to this section were enacted by Laws 2003, ch. 22, § 2, effective June 20, 2003, and Laws 2003, ch. 408, § 31, effective July 1, 2003, deleting the former second and third sentences concerning the appointment of an administrator, employment of staff and purchase of supplies. The section is set out as amended by Laws 2003, ch. 408, § 31. See NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 53 C.J.S. Licenses § 37.

61-29-8. License fees; disposition.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2011 amendment, effective July 1 2011, imposed a fee for examination services and changed the fee for a copy of the list of brokers from twenty dollars to the actual cost of the list, but not more than fifty dollars.

The 2005 amendment, effective January 1, 2006, specifies the fees for the issuance and re-issuance of qualifying broker’s and associate broker’s licenses and eliminates the provision for a proportionate refund of fees for the issuance and renewal of licenses for less that a three year period.

The 2003 amendment, effective June 20, 2003, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places in Subsection A(2); in Subsection A(3) added "real estate" preceding "salesperson's license issued" near the beginning, substituted "two hundred seventy dollars ($270)" for "one hundred eighty dollars ($180)" in two places; in Subsection A(10), substituted "for each license reissued for a real estate salesperson" for "when a license must be reissued for a salesperson" at the beginning, deleted "the licensed broker or successor licensed broker as the case may be shall pay to the commission as the affected salesperson's license reissue" near the middle, and inserted "to be paid by the licensed broker or successor broker as the case may be" following "twenty dollars $20.00" near the middle; and added Paragraphs A(11), (12), and (13).

The 2001 amendment, effective July 1, 2001, substituted "a fee not to exceed" for "a fee of" throughout the section; in Subsection A, inserted "established and" in the preliminary language; increased the examination fee in Paragraph (1) from sixty dollars

to ninety-five dollars; deleted "set by the commission" following "a fee" in Paragraphs (7) to (9); deleted "additional" preceding "license law" in Paragraph (8); substituted "hard copy or electronic list" for "additional directory"; deleted Paragraph (10), relating to the fee for supplements to the directory, and renumbered the remaining paragraph accordingly; inserted "an amount not to exceed" preceding "twenty dollars" in the present Paragraph (10); and substituted "executive secretary of the commission or his designee" for "president and secretary of the commission" in Subsection C.

The 1995 amendment, effective July 1, 1995, in Subsection A, increased the licensing fees from sixty dollars to one hundred and eighty dollars and deleted "annual" preceding "renewal" in Paragraphs (2) and (3), added the proviso at the beginning of Paragraph (4), added Paragraph (11), and made minor stylistic changes throughout the subsection; and added Subsection D.

The 1992 amendment, effective May 20, 1992, substituted the present section catchline for "License fees and disposition thereof "; substituted "sixty dollars ($60.00)" for "thirty dollars ($30.00)" in Subsection A(1); substituted "sixty dollars ($60.00)" for "forty dollars ($40.00)" in Subsections A(2) and A(3); substituted "twenty dollars ($20.00)" for "ten dollars ($10.00)" in Subsections A(4) and A(5); added Subsections A(6) to A(10); added present Subsection B; redesignated former Subsection B as present Subsection C; and in Subsection C, restructured the former four sentences as a single sentence, substituted "carrying out the provisions" for "paying the expenses of the commission incurred under the provisions" near the middle of the subsection, and made stylistic changes throughout the subsection.

The 1990 amendment, effective May 16, 1990, in Subsection B, divided the subsection into four sentences, deleted "special" before "fund" in the present second sentence and substituted "or as otherwise provided by law" for "and shall be paid out of the fund in the state treasury" at the end thereof and, in the present third sentence, added "Expenditures shall be made from the fund" at the beginning and deleted "provided that" at the end.

Cash balances not to revert to general fund. — Any possible or theoretical cash balances credited to the "real estate commission fund," which have accumulated pursuant to this section as the result of the collection of license fees and examination fees, should not revert to the general fund at the end of the licensing year. 1960 Op. Att'y Gen. No. 60-124.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 8.

Validity of statute or ordinance requiring real estate broker to procure license, 39 A.L.R.2d 606.

53 C.J.S. Licenses §§ 22, 71.

61-29-9. Qualifications for license.

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.

ANNOTATIONS

Cross references. — For age of majority, *see* 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for licensure as a qualifying broker or associate broker; and in Subsection B, after "license shall", deleted "be a legal resident of the United States and".

The 2017 amendment, effective January 1, 2018, authorized the real estate commission to require an applicant for a qualifying broker's license to complete additional educational courses, restricted a qualifying broker from supervising an associate broker until the qualifying broker has had an active associate or qualifying broker's license or equivalent real estate license for at least four years, and provided an exemption for certain licensees; in Subsection C, after "administration course", added "and any additional educational courses required by the commission by rule"; and added a new Subsection D and redesignated the succeeding subsection accordingly.

The 2013 amendment, effective June 14, 2013, provided for nonresident broker licensing; in Paragraph (1) of Subsection B, after "furnish the commission with", deleted "a certificate of completion of", after "ninety", deleted "classroom", after "hours of", added "classroom", and after "classroom instruction", deleted "in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course" and added the remainder of the sentence; in Paragraph (2) of Subsection B, in the first sentence, added "in the case of an out-of-state applicant", after "commission with a", deleted language which provided for minimum continuing education requirements for out-of-state applicants and added the remainder of the sentence and added the second and third sentences; in Subsection C, after "broker's license shall have", deleted "been actively engaged in the real estate business as an associate broker or real estate salesperson" and added "passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license", and after "shall furnish the commission", deleted the remainder to the sentence which required the applicant to provide proof that the applicant had competed one hundred twenty hours of prelicensing courses and added "with a certificate of completion of the commission-approved thirty-hour brokerage office administration course"; and deleted former Subsection D, which provided the requirements for a salesperson to qualify for an associate broker's license.

The 2011 amendment, effective July 1 2011, removed corporations, partnerships and associations from broker licensing.

The 2005 amendment, effective January 1, 2006, specifies the qualifications for qualifying and associate broker licenses; eliminates the requirement that an applicant shall have been a real estate sales person; and requires that applicants complete ninety classroom hours of instruction, thirty hours of which are broker basic courses or provide a certificate that the applicant is a licensed real estate broker in another state and has completed ninety classroom hours in basic real estate courses; eliminates the requirements that the applicant furnish proof of equivalent experience; eliminates provisions for the real estate salesperson's license; requires that an applicant for a qualifying broker's license shall have been engaged in the real estate business as an associate broker or salespersons fro two years and have completed one hundred twenty hours of real estate courses; provides that the holder of a salesperson's license shall automatically qualify for an associate broker's license; and provides that to be eligible for a qualifying broker's license, a salesperson who automatically obtains an associate broker's license must pass a real estate broker's examination.

The 2003 amendment, effective July 1, 2003, deleted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" following "age of majority" near the middle of Subsection B; and added Subsection B(5).

The 2001 amendment, effective July 1, 2001, in Subsection B, deleted "real estate" preceding "broker's license" and inserted "have passed the real estate examination approved by the commission and shall" in the introductory language; substituted "a broker basics course" for "ninety classroom hours of instruction in basic real estate courses" in Paragraph (1); inserted "thirty hours of which shall have been a broker basics course" at the end of Paragraphs (3) and (4); inserted "have passed the real estate examination approved by the commission" in Subsection C; and substituted "may" for "shall be entitled to" in the second sentence of Subsection D.

The 1999 amendment, effective June 18, 1999, in the introductory language of Subsection B, substituted "and, except as provided in Section 61-29-14 NMSA 1978, be a resident of New Mexico" for "and have been an actual bona fide resident of New Mexico for six months next preceding the filing of application"; deleted "in New Mexico" following "salesperson" in Subsection B(1); and deleted "and be a resident of New Mexico preceding the filing of application" following "age of majority" in Subsection C.

Persons of "good repute". — The "good repute" requirement is interpreted to relate to honesty and trustworthiness. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965 .

Suit for commission to be in name of licensed broker. — As an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, or that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. The corporation itself must be licensed to bring suit. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Section expressly authorizes broker to hold more than one license, provided that person is actively engaged in the real estate business of the partnership, corporation or other business association for which he is the qualifying party. The statute does not authorize an individual to have more than one license in an individual capacity. 1980 Op. Att'y Gen. No. 80-22.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, Section 61-29-10 NMSA 1978 specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

When license under Mobile Housing Act (now Manufactured Housing Act) required. — When a real estate broker or salesperson acts as the agent for another person in the sale, exchange, lease or purchase of a mobile housing unit which is not attached to real property he is no longer engaging in the real estate business as defined in the Real Estate Licensing Act. Rather, he is engaged in the business of acting as an agent for another in the sale of a mobile housing unit and must be licensed as a dealer under the Mobile Housing Act (now Manufactured Housing Act). 1982 Op. Att'y Gen. No. 82-12.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

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.

ANNOTATIONS

Cross references. — For age of majority, see 28-6-1 NMSA 1978.

The 2005 amendment, effective January 1, 2006, provides for applications and examinations of applicants for licenses to act as qualifying broker and as associate broker.

The 2001 amendment, effective July 1, 2001, in Subsection A, deleted "New Mexico real estate" preceding "commission"; deleted "or has his place of business" following "resides" in Paragraph (1); in Paragraph (2), substituted "triennial" for "annual", deleted "which shall not be refunded in any event" from the end of the paragraph; in Subsection B, substituted "approved by" for "prepared by or under the supervision of" in the first sentence; removed the distinction between examinations for brokers and those for salesmen and deleted provisions that only applied to one examination or the other; in Subsection C, deleted "either as a broker or salesman" following "real estate business", inserted "approved" preceding "examination"; in Subsection E, substituted "brokers or salespersons" for "real estate brokers or salesmen" in two places, and substituted "activities authorized pursuant to" for "enabled under the provisions of" in the last sentence.

License required to sue for commission. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Apprenticeship not necessary. — There is nothing in this article requiring that an apprenticeship be served before an applicant can apply for a broker's license; to the contrary, this section specifically sets out the means to be used by the commission in determining applicant's reputation and competency. 1963 Op. Att'y Gen. No. 63-110.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers § 12.

12 C.J.S. Brokers § 19.

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.

ANNOTATIONS

The 2003 amendment, effective January 1, 2004, inserted present Subsections B and C and redesignated former Subsection B as present Subsection D; in present Subsection D deleted "and responsibilities" following "governing the rights" near the

beginning and substituted "a brokerage in those brokerage relationships that are subject to the jurisdiction of the commission" for "the brokerage in an agency relationship" at the end.

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that prior to the time a licensee prepares or presents a document that will be a written agreement, the licensee must provide a list of the licensee's duties.

The 2003 amendment, effective January 1, 2004, substituted "Licensee's Duties - Disclosure" for "Brokerage Relationship; Disclosure" in the heading; designated the former first paragraph as Subsection A and added Subsection B; and substituted "at the time when the parties enter into an express written agreement, a list of the licensee's duties that are in accordance with requirements established by the commission" for "at the first substantive contact a brokerage relationship disclosure in accordance with requirements established by the commission" at the end of Subsection A.

Transaction brokers duty of care includes disclosing the licensing status of recommended contractors. — Where defendant signed a listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, the district court did not err in concluding that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer or in concluding that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, because the New Mexico real estate commission's established reasonable care as a duty for transaction brokers; this duty includes disclosing the licensing status for recommended contractors. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

District judge did not err in awarding attorney fees where there was a connection between negligence claims and listing agreement. — Where defendant signed a

listing agreement with plaintiffs to be their transaction broker for the sale of their home, and where, after a home inspection revealed problems with portions of the roof, defendant volunteered to find a roofer to perform the work, and where the roofer, who was not licensed or insured, performed the work negligently, causing a fire that destroyed plaintiffs' home, and where the district court concluded that defendant owed statutory duties independent of the listing agreement regarding the recommendation and procurement of the roofer and that the fire and plaintiffs' damages were a natural and continuous result from defendant's recommendation of an unqualified roofer, the district court did not err in awarding attorney fees based on the listing agreement's attorney fee provision, because plaintiffs' negligence claims were related to the parties listing agreement and resulted in litigation, as contemplated by the attorney fees provision. *LM Insurance v. I Do ABQ*, 2023-NMCA-021.

61-29-10.3. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 36, § 4 repealed 61-29-10.3, as enacted by Laws 1999, ch. 127, § 4, relating to brokerage nonagency relationships, effective January 1, 2004. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, provided for the surrender of suspended and revoked licenses; and added Subsection C.

The 2005 amendment, effective January 1, 2006, requires that an associate broker’s license show the name of the qualifying broker by whom the associate broker is engaged; requires the real estate commission to send the associate broker’s license to the qualifying broker by which the associate broker is engaged; requires the qualifying broker to display the associate broker’s license at the brokerage; provides that the associate broker’s license remains in the custody of the qualifying broker as long as the associate broker is engaged by the qualifying broker; provides that the revocation of a qualifying broker’s license suspends the license of every associate broker engaged by the qualifying broker; requires qualifying brokers to conduct brokerage business under the trade name and at the address registered with the real estate commission; requires that the qualifying broker’s license and the licenses of associate brokers be displayed at the brokerage office; and provides that if an associate broker ceases to be engaged by the qualifying broker, the qualifying broker must send the associate broker’s license to the real estate commission to be held in inactive status.

The 2003 amendment, effective June 20, 2003, in Subsection C, deleted "of one hundred dollars ($100)" at the end of the sixth sentence; in Subsection D, substituted "within this state a fixed office that conforms" for "a fixed office within this state which shall be so located as to conform" following "broker shall maintain" near the beginning of the first sentence, and inserted "real estate" preceding "salesperson" near the middle of the third sentence.

The 2001 amendment, effective July 1, 2001, deleted "permanent" preceding "license" in Subsection A; in Subsection B, deleted "real estate" preceding "broker" in two places; in Subsection C, substituted the reactivation provision and conditions thereto for suspended licenses for the provision that a new license will be issued in the event that the real estate salesperson's license is suspended, and will be free if re-issued in the same year it was granted; in Subsection D, deleted "under Chapter 61, Article 29 NMSA

1978" following "operated by a licensed broker", inserted "who is a natural person", deleted "or under contract to" following "associated with", deleted "except a licensed branch office" following "any other address", in Subsection E, deleted "immediately" preceding "deliver" and inserted "within forty-eight hours" in the first sentence, substituted "an inactive license" for "such license" in the second sentence; and deleted Subsection F, concerning the renewal of licenses within a certain time period in order to coordinate certain requirements.

The 1995 amendment, effective July 1, 1995, in Subsection C, rewrote the first sentence which read "Every license shall be subject to annual renewal on the last day of the licensee's month of birth", made a related change in the third sentence, and deleted "annual" and "annually" preceding "renewal" throughout the subsection; made a stylistic change in Subsection D; and added Subsection F.

The 1993 amendment, effective June 18, 1993, inserted "or his spouse" and "the person" preceding "is suffering" in the sixth sentence and substituted "that person or his spouse's" for "the person's" in the seventh sentence, in Subsection C; deleted "for cancellation" from the end of the first sentence, inserted the second sentence, and substituted "to the commission" for "for a cancellation" in the last sentence, in Subsection E; and made stylistic changes in Subsections C and D.

Fiduciary duties of salesperson extended to broker. — Because a real estate salesperson must work under a broker, when a principal buyer or seller engages a real estate salesperson as an agent, the principal also engages the salesperson's qualifying broker as an agent, thus extending the fiduciary duty owed to the principal buyer or seller up the salesperson's chain of command to the broker. Although agency fiduciary obligations and liabilities may extend from a salesperson to the qualifying broker, the fiduciary duties of one real estate salesperson are not attributable to another salesperson operating under the same qualifying broker unless one salesperson is at fault in appointing, supervising or cooperating with the other. *Moser v. Bertram*, 1993-NMSC-040, 115 N.M. 766, 858 P.2d 854.

Brokers must supervise their salespeople. — Section 61-29-2 NMSA 1978 and this section express a clear legislative mandate that brokers, the persons principally responsible to the public, actually be in a position to supervise the actions of their salespeople. At the same time, the statutes do not require the broker himself to engage in business full-time. 1980 Op. Att'y Gen. No. 80-22.

Relicensing of out-of-state broker returning to state. — An individual who has been licensed as a resident real estate broker in the state of New Mexico, and who has established a residence in another state or country may subsequently return to New Mexico and be relicensed as a real estate broker upon payment of the necessary fee and filing of the required bond and meeting any other needed requirements without applying for and taking a broker's examination as required of applicants who have not previously been licensed as real estate brokers, provided that the real estate board in its discretion desires to waive the examination. 1958 Op. Att'y Gen. No. 58-186.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 21, 24, 26, 27, 29.

12 C.J.S. Brokers §§ 16, 20.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the New Mexico real estate commission is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, added "In accordance with the Uniform Licensing Act".

The 2011 amendment, effective July 1 2011, permitted the payment of a commission to a qualified broker or another state if, pursuant to Section 61-29-16.1 NMSA 1978, the nonresident broker has entered in to a transaction-specific contract with a resident broker and has consented to being sued in New Mexico.

The 2005 amendment, effective January 1, 2006, permits the real estate commission to issue license with limitations or conditions if the applicant or licensee has obtained a license by false or fraudulent representations or performed or attempted to perform the prescribed acts specified in this section and provides that an unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker is not cause for revocation of a qualifying broker’s license unless the qualifying broker had guilty knowledge of the act.

The 2001 amendment, effective July 1, 2001, inserted the Subsection A and B designations and redesignated former Subsections A to K as Paragraphs A(1) to A(11); deleted "real estate" preceding "broker" throughout the section; in Subsection A, substituted "refuse to issue or may suspend" for "refuse a license for cause or suspend", and "an applicant or licensee has:" for "is deemed to be guilty of:" in the introductory language; substituted "with whom he is associated" for "with whom he is licensed" in Paragraph (4), inserted "after securing signatures of all parties to the transaction" in Paragraphs (8) and (9); deleted "in the interests of the public and in conformance with the provisions of Chapter 61, Article 29 NMSA 1978" from the end of Paragraph (10); substituted "committed an act" for "any other conduct" in Paragraph (11); and added Paragraph (12).

The 1991 amendment, effective June 14, 1991, substituted "in Chapter 61, Article 29 NMSA 1978" for "herein" in the introductory paragraph; substituted the language beginning with "unlicensed person" for "person other than his principal" at the end of Subsection C; and made minor stylistic changes in Subsections E and K.

Revocation for "substantial misrepresentations". — The commission may suspend a license on the grounds that the licensee misrepresented to prospective buyers both the size of the property in question and the age of the roof. *Wolfley v. Real Estate Comm'n*, 1983-NMSC-064, 100 N.M. 187, 668 P.2d 303.

If the subjects of misrepresentations on application forms are material, i.e., "substantial misrepresentations", the real estate commission can, absent intervening equities, revoke the license even though there is no actual or intentional fraud. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

The test of whether a misrepresentation is substantial is if it operates as an inducement to the real estate commission to do that which it should not otherwise have done. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Where a license to sell real estate was revoked for false or fraudulent representations in applications with respect to unpaid liens or judgments, but the real estate commission's findings and conclusions did not resolve in any meaningful way whether licensee intended to deceive and to induce the commission to act in reliance upon a misrepresentation of fact known by him to be untrue, and there were no specific findings and conclusions by the commission to afford the supreme court a clear understanding that the decision was based upon false representations relevant and material to facts bearing upon the good repute and competence of the licensee in the public interest, the cause was remanded to the commission with express directions to enter proper findings of fact and conclusions of law, together with a final order. *Padilla v. Real Estate Comm'n*, 1987-NMSC-056, 106 N.M. 96, 739 P.2d 965.

Substantial evidence to support commission's suspension of broker's license based on Paragraph A(5). *Elliott v. N.M. Real Estate Comm'n*, 1985-NMSC-078, 103 N.M. 273, 705 P.2d 679.

Broker to have knowledge of building code and zoning ordinances. — It is incumbent upon the broker to have a general knowledge of the building code and the zoning ordinances which deal with the particular property being offered for sale or which is being purchased. *Amato v. Rathbun Realty, Inc.*, 1982-NMCA-095, 98 N.M. 231, 647 P.2d 433.

Nonresident broker may share in commission. — This section modifies Sections 61-29-1 and 61-29-16 NMSA 1978 to the extent that a nonresident broker may, in a limited situation, share in a commission. He may only do so, however, through cooperation with a New Mexico licensed broker. *Hayes v. Reeves*, 1977-NMSC-092, 91 N.M. 174, 571 P.2d 1177.

Generally, as to establishing custodial, trust or escrow accounts. — No regulation of the real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Jurisdiction where landowner claims acting as broker. — Under Section 61-29-2 NMSA 1978 if a landowner represents to either the buyer or seller that he is acting as a broker, the real estate commission has jurisdiction over the transaction. *Poorbaugh v. N.M. Real Estate Comm'n*, 1978-NMSC-033, 91 N.M. 622, 578 P.2d 323.

Hiring of note broker for sale of real estate contract. — Because the seller of a real estate contract, who hired a note broker to handle the sale, was not acting as a real estate broker during the sale, the commission lacked jurisdiction to revoke the seller's

license for misrepresentation. *Vihstadt v. Real Estate Comm'n*, 1988-NMSC-003, 106 N.M. 641, 748 P.2d 14.

Applicability of Paragraph A(3) prohibition. — The prohibition of Subsection C (now Paragraph A(3)) is applicable to a broker or salesman representing the seller of real estate giving the purchaser trading stamps, free down payments on the property, moving costs, etc., when it can be shown that the real estate broker or salesman gave one or more of the items listed to the purchaser of the property as an integral part of a transaction involving the purchase and sale of the property. 1963 Op. Att'y Gen. No. 63-28 (rendered prior to 1991 amendment).

Payment of commission to buyer who is not principal prohibited. — Subsection C (now Paragraph A(3)) precludes a licensed salesman or broker from paying any portion of his commission to a buyer who is not his principal, regardless of disclosure to the principal of the arrangement. 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

In order to properly make sense of the reference in Subsection C (now Paragraph A(3)) to "paying," and to give effect to the legislative intent indicated by that reference, the words "to or" may be read into that subsection preceding "from any person." 1981 Op. Att'y Gen. No. 81-25 (rendered prior to 1991 amendment).

Criminal Offender Employment Act to be followed in suspension or revocation action. — The provisions of the Criminal Offender Employment Act must be followed by the real estate commission in any action by the commission to suspend or revoke a broker's or salesperson's license because of a conviction of a felony or misdemeanor involving moral turpitude. 1982 Op. Att'y Gen. No. 82-02.

Law reviews. — For article, " 'To Purify the Bar': A Constitutional Approach to Non-Professional Misconduct," see 5 Nat. Res. J. 299 (1965).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 10, 21 to 29.

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

Suspension or revocation of real estate broker's license on ground of discrimination, 42 A.L.R.3d 1099.

Revocation or suspension of real estate broker's license for violation of statutes or regulations prohibiting use of unlicensed personnel in carrying out duties, 68 A.L.R.3d 530.

Real estate broker's liability for misrepresentations as to income from, or earnings of, property, 81 A.L.R.3d 717.

Validity and application of regulation prohibiting licensed real-estate broker from negotiating sale or lease with owner known to have exclusive listing agreement with another broker, 17 A.L.R.4th 763.

Real-estate broker's rights and liabilities as affected by failure to disclose agreement to loan purchase money to purchaser, 17 A.L.R.4th 788.

Revocation or suspension of real estate broker's license for conduct not connected with business as broker, 22 A.L.R.4th 136.

Real estate broker's or agent's misrepresentation to, or failure to inform, vendor regarding value of vendor's real property, 33 A.L.R.4th 944.

Grounds for revocation or suspension of license of real-estate broker or salesperson, 7 A.L.R.5th 474.

12 C.J.S. Brokers §§ 16, 19, 21 to 24.

61-29-13. Provision for hearing before suspension or revocation of license.

The commission shall, before suspending or revoking any license, set the matter down for a hearing pursuant to the provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978].

History: 1953 Comp., § 67-24-30, enacted by Laws 1959, ch. 226, § 12; 1979, ch. 94, § 4.

ANNOTATIONS

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

53 C.J.S. Licenses § 50 et seq.

61-29-14. Repealed.

ANNOTATIONS

Repeals. — Laws 2003, ch. 22, § 7 repealed 61-29-14 NMSA 1978, as enacted by Laws 1959, ch. 226, § 13, relating to nonresident brokers, effective June 20, 2003. For provisions of former section, *see* the 2002 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "Maintenance" for "Publication" in the section heading; substituted "The commission shall maintain a list" for "The commission shall, at least annually, publish"; and substituted "maintain" for "prepare" in the last sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers § 14.

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that no action to collect a commission or compensation by a person as a qualifying broker or an associate broker shall be maintained unless the person was licensed as a qualifying broker or an associate broker on the date cause of action arose and requires that suits against a member of the public be in the name of the qualifying broker.

Section upholds legislative intent that brokers be licensed. — A person who simply brings two parties together in a real estate transaction must be licensed to sue for the recovery of a commission. To rule otherwise would be to violate the clear intent of the

legislature in requiring that real estate "brokers" or salespersons be licensed. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Texas broker barred from collecting a commission. — Where plaintiff, who was a licensed real estate broker in Texas, knew that an unlisted ranch was for sale; plaintiff and defendants, who were licensed real estate brokers in New Mexico, orally agreed to work together as co-brokers in the sale of the ranch and to share the commission on the purchase price; plaintiff and defendants never entered into a transaction-specific written agreement to share the commission; and plaintiff brought the sellers and the buyers together with the assistance of defendants, plaintiff was barred from collecting a real estate commission, because plaintiff was acting as a broker without a valid New Mexico broker's license or a written, foreign broker's agreement in violation of Section 61-29-16 NMSA 1978. *PC Carter Co. v. Miller*, 2011-NMCA-052, 149 N.M. 660, 253 P.3d 950.

Meaning of "arose". — The word "arose" used in this statute is used in its usual and ordinary meaning and denotes past completed action, not past continuing action. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

Person claiming commission must prove license. — The statute casts no burden upon a defendant to prove absence of a license but does place upon one claiming a real estate commission the burden of establishing that he was duly licensed when the alleged cause of action arose and the inadvertent statement relative to the burden of proof in *Southwest Motel Brokers, Inc. v. Alamo Hotels, Inc.*, 1963-NMSC-091, 72 N.M. 227, 382 P.2d 707, *overruled by Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Finding that plaintiff held license required. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Section did not apply where plaintiff was not acting as a real estate broker. — A judgment for recovery of a real estate commission without a finding that the plaintiff held either a broker's or salesman's license when the cause of action arose is erroneous, but if the real estate commission is not derived from the sale of real property, or if the person was not acting as a real estate broker, then this provision does not apply, and therefore where plaintiff, a business consulting company, brought an action against the owner of property for breach of contract, fraudulent inducement and unjust enrichment based on services plaintiff rendered in the sale of property and in the sale of water from the property, summary judgment for the property owner was not warranted, because plaintiff had no role in the negotiations, did not introduce the buyers to the sellers, and had no first-hand knowledge of the deal's details. Plaintiff was therefore not acting as a real estate broker during the sale of the property or during the water sale negotiations. *Tyler Group Partners, LLC v. Madera*, 543 F. Supp. 3d 1184 (D. N.M. 2021).

Section prohibits action in quantum meruit to recover value of services rendered by person who is required to have license, in the absence of such license. *Bank of N.M. v. Freedom Homes, Inc.*, 1980-NMCA-064, 94 N.M. 532, 612 P.2d 1343.

An unlicensed real estate broker or salesperson cannot recover a commission in an action in quantum meruit. *Watts v. Andrews*, 1982-NMSC-080, 98 N.M. 404, 649 P.2d 472.

Suit by corporation. — Since an action to recover a real estate commission may only be brought in the name of the licensed broker, evidence showing corporation may be entitled to a license, and that an officer thereof had a license, was insufficient to enable corporation to bring suit in its own name. *Star Realty Co. v. Sellers*, 1963-NMSC-140, 73 N.M. 207, 387 P.2d 319.

Action for breach of contract. — This section did not prevent real estate broker from maintaining action for breach of contract where broker was not licensed at time he entered into exclusive sales representation agreement with defendant but became licensed prior to breach of this agreement by defendant. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In estimating the commission on an exchange of real estate the actual and not the trade value of the property received in exchange should be taken as the basis, unless the contract of employment provides for some other basis, such as a fixed and agreed valuation of the property given in exchange. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Allegation of licensing effective against motion to dismiss. — Allegation that the party seeking relief was licensed at the time the work or service was performed satisfies the requirements of this section as against a motion to dismiss. *Lakeview Invs., Inc. v. Alamogordo Lake Vill., Inc.*, 1974-NMSC-027, 86 N.M. 151, 520 P.2d 1096.

In order to satisfy the requirements of this section as against a motion to dismiss, the party seeking relief must allege that he was licensed at the time the work or service was performed. *Bosque Farms Home Ctr., Inc. v. Tabet Lumber Co.*, 1988-NMSC-027, 107 N.M. 115, 753 P.2d 894.

Parol evidence rule is fully applicable together with all the exceptions recognized in connection with any other writing in connection with written listing agreements. Parol evidence may not be received when its purpose and effect is to contradict, vary, modify or add to a written agreement, but is generally admissible to supply terms not in the written contract, to explain ambiguities in the written agreement, or to show fraud, misrepresentations or mistake. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Compensation rule distinguished from that in fraud. — The rule applicable in determining the right of an agent to recover compensation from his principal differs from

that which is applied when fraud is claimed as between a vendor and purchaser. *Maine v. Garvin*, 1966-NMSC-140, 76 N.M. 546, 417 P.2d 40.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 217 to 222.

Failure, when refusing offer to purchase land, to state, as ground therefor, broker's failure to introduce or disclose name of customer, as affecting right to assert such ground in defense of broker's action for compensation, 156 A.L.R. 605.

Rights and obligations of real estate broker employed to sell property as affected by option to purchase for himself, 164 A.L.R. 1378.

Real estate broker's right to commission on sale, exchange or lease of property listed without statement of price or other terms, 169 A.L.R. 380.

Want of license as affecting broker's recovery of compensation for services, 169 A.L.R. 767.

Condemnation of property as affecting broker's right to compensation, 170 A.L.R. 1422.

Subagent, right of broker as against employer to commission on sale by, 3 A.L.R.2d 532.

Relative rights and liabilities of vendor and his broker to down payment or earnest money forfeited by vendee for default under real estate contract, 9 A.L.R.2d 495.

Real estate broker's right to commission where purchaser refuses to go through with the executory contract because of reckless misrepresentation made to him by broker respecting property, 9 A.L.R.2d 504.

Right of real estate broker to commission where customer repudiates or fails to complete contract or promise which is oral or not specifically enforceable, 12 A.L.R.2d 1410.

Effect of statement of real estate broker to prospective purchaser that property may be bought for less than list price as breach of duty to vendor, so as to bar claim for commission, 17 A.L.R.2d 904.

What deviation in prospective vendee's proposal from vendor's terms precludes broker from recovering commission for producing a ready, willing, and able vendee, 18 A.L.R.2d 376.

Broker's right to commission on sales consummated after termination of employment, 27 A.L.R.2d 1348.

Nondisclosure or misrepresentation of sale price of other property as affecting broker's rights as against principal, 32 A.L.R.2d 728.

Liability of broker to prospective purchaser for refund of deposit or earnest money where contract fails because of defects in vendor's title, 38 A.L.R.2d 1382.

Broker's right to commission where owner sells property to broker's customer at less than stipulated price, 46 A.L.R.2d 848.

Conveyance of real property to mortgagee or lien holder as constituting "sale or exchange" rendering owner liable for commissions to broker having exclusive agency or exclusive right to sell, 46 A.L.R.2d 1116.

Broker's right to commission for selling part of property, 47 A.L.R.2d 680.

Liability of vendor's real-estate broker or agent to purchaser or prospect for misrepresenting or concealing offer or acceptance, 55 A.L.R.2d 342.

Broker's return of deposit to purchaser as waiver of right to demand commission from seller, 69 A.L.R.2d 1244.

Commission on sale rejected by principal because of buyer's fraud or misrepresentation, 79 A.L.R.2d 1055.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, co-adventurers, employees, or other associates, 8 A.L.R.3d 523.

Real estate broker's right to compensation as affected by failure or refusal of principal's spouse to join in contract of sale, 10 A.L.R.3d 665.

Broker's right to commission from principal upon procuring third party taking an option, 32 A.L.R.3d 321.

Right of real estate broker to commission where listing contract is for sale of property and it is subsequently leased to one with whom broker had negotiated, 42 A.L.R.3d 1430.

Construction of provision in real estate broker's listing contract that broker shall receive commission on sale after expiration of listing period to one with whom broker has "negotiated" during listing period, 51 A.L.R.3d 1149.

Real estate broker's right to commission for procuring lessee where lease terminates before contemplated term, 54 A.L.R.3d 1171.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold includes real property, 82 A.L.R.3d 1139.

Right of real estate broker to recover commission from seller-principal where buyer defaults under valid contract of sale, 12 A.L.R.4th 1083.

Real estate broker's right to recover commission from seller where sale fails because of seller's failure to deliver good title - modern cases, 28 A.L.R.4th 1007.

Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

What constitutes financial ability to perform within rule entitling broker to commission for producing ready, willing, and able purchaser of real property, 87 A.L.R.4th 11.

12 C.J.S. Brokers §§ 132 to 135.

61-29-16.1. 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.

ANNOTATIONS

The 2014 amendment, effective May 21, 2014, provided for foreign brokers acting as qualifying or associate brokers with respect to commercial real estate; in the catchline, deleted "nonresident" and added "foreign"; in Subsection A, deleted the entire former language of the subsection which provided for service of process on associate brokers and qualifying brokers who had license application addresses outside New Mexico; added a new Subsection A; in Subsection B, after "a referral from a", deleted "nonresident" and added "foreign", and after "brokerage and the", deleted "nonresident" and added "foreign".

The 2013 amendment, effective June 14, 2013, required transaction-specific referral agreements at the time of referral; in the title, deleted "Foreign brokers; nonresident licensees", and added "Nonresident brokers; consent to service; referral fees"; deleted former Subsection A, which required nonresident brokers to enter into transaction-specific contracts with New Mexico brokers prior to commencing real estate activity; and added Subsection B.

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.

ANNOTATIONS

Effective dates. — Laws 2014, ch. 27 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 21, 2014, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Repeals and reenactments. — Laws 1965, ch. 304, § 8, repeals 67-24-34, 1953 Comp., relating to penalties for violations by brokers, and enacts the above section.

The 2014 amendment, effective May 21, 2014, provided that foreign brokers conducting business in New Mexico are not in violation of Article 61, Chapter 29 NMSA 1978 if they have entered into transaction-specific agreements; and in Subsection A, in the first sentence, after "license issued by the commission", added "or pursuant to Section 61-29-16.1 NMSA 1978".

The 2013 amendment, effective June 14, 2013, revised the penalties for violations of the licensure requirements; in Subsection A, in the first sentence, after "Any person who", deleted "violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars ($5,000) or by imprisonment for a definite term of eighteen months, or both" and added the remainder of the sentence and added the second sentence; in Subsection B, after "occurred or will occur", deleted "shall" and added "may"; and in Subsection B, after "occurred or is occurring", deleted "shall" and added "may".

The 2011 amendment, effective July 1 2011, changed a violation from a misdemeanor offense to a fourth degree felony and changed the fine from five hundred dollars to five thousand dollars and the term of imprisonment from a term of not more than six months to a definite term of eighteen months.

The 1993 amendment, effective June 18, 1993, substituted "Chapter 61, Article 29 NMSA 1978" for "Sections 67-24-19 through 67-24-35 New Mexico Statutes Annotated, 1953 Compilation" in two places in Subsection A and in Subsection B; and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 72, 73.

Right to private action under state statutes or regulations governing real estate brokers or salesmen, 28 A.L.R.4th 199.

53 C.J.S. Licenses § 82.

61-29-17.1. Recompiled.

ANNOTATIONS

Recompilations. — Former 61-29-17.1 NMSA 1978, relating to disciplinary action by the New Mexico real estate commission concerning time share projects, enacted by Laws 1986, ch. 97, § 14, has been recompiled as 47-11-11.2 NMSA 1978.

61-29-17.2. 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.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, permitted the commission to impose a civil penalty in the amount of the total commissions received for an unlicensed activity and required civil penalties to be deposited into the real estate recovery fund.

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that nothing in Chapter 61, Article 29 NMSA 1978 shall affect the power of municipalities to license and regulate qualifying brokers and associate brokers.

Severability. — Laws 1959, ch. 226, § 19, provides for the severability of the act if any part or application thereof is held invalid.

Meaning of "this act". — See same catchline in notes to 61-29-7 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 Am. Jur. 2d Brokers §§ 6 to 8.

53 C.J.S. Licenses §§ 10, 11.

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.

ANNOTATIONS

Repeals. — Laws 2011, ch. 85, § 11 repealed 61-29-19 NMSA 1978, as enacted by Laws 1978, ch. 203, § 2, relating to the termination of agency life, effective July 1, 2011. For provisions of former section, *see* the 2010 NMSA 1978 on *NMOneSource.com.*

Laws 2011, ch. 30, § 8, effective June 17, 2011, also amended 61-29-19 NMSA 1978 by changing the termination, operation and repeal dates. The section was set out as repealed by Laws 2011, ch. 85, § 11. *See* 12-1-8 NMSA 1978.

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.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 35, § 21 makes the act effective January 1, 2006.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, after "Section" changed "1 through 10 of this act" to "61-29-20 through 61-29-29 NMSA 1978".

Law reviews. — For article, "Survey of New Mexico Law, 1979-80: Property," see 11 N.M.L. Rev. 203 (1981).

For annual survey of New Mexico Law of Property, see 20 N.M.L. Rev. 373 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 12 C.J.S. Brokers §§ 11, 12.

61-29-21. Fund created.

There is created in the state treasury a fund which shall be known as the "real estate recovery fund" to be administered by the real estate commission in accordance with the provisions of the Real Estate Recovery Fund Act [61-29-20 to 61-29-29 NMSA 1978]. All money received by the real estate commission pursuant to the Real Estate Recovery Fund Act shall be credited to the real estate recovery fund. The state treasurer may invest money in the real estate recovery fund in United States bonds or treasury certificates under such rules and regulations as may be prescribed by the state board of finance, provided that no investments shall be made which will impair the necessary liquidity required to satisfy judgment payments awarded pursuant to the Real Estate Recovery Fund Act. All interest earned from such investments shall be credited to the fund to pay any future judgments only.

History: Laws 1980, ch. 82, § 2.

ANNOTATIONS

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.

ANNOTATIONS

The 2011 amendment, effective July 1 2011, lowered the minimum balance of the real estate recovery fund from two hundred fifty thousand dollars to one hundred fifty thousand dollars.

The 2003 amendment, effective June 20, 2003, deleted "On and after the effective date of the Real Estate Recovery Fund Act" from the beginning of Subsections A and B; and added the last sentence of Subsection C.

The 1993 amendment, effective June 18, 1993, purported to amend this section but made no change.

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.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, clarified the procedures for recovery pursuant to the Real Estate Recovery Fund Act, and increased recovery limits; in Subsection A, after "disposition of real estate", added "or property management", after "qualifying broker or associate broker", deleted "and the termination of all proceedings, including appeals in connection with the judgment, file a verified petition with the commission for payment", after "from", added "a court of competent jurisdiction, file a verified petition with the commission for recovery pursuant to the Real Estate Recovery Fund Act", after "The real estate recovery fund", added "reimburses the claimant", after "for", added "unpaid", after "included in the judgment", deleted "and unpaid", after "but not more than", deleted "ten thousand dollars ($10,000)" and added "fifty thousand dollars ($50,000)", after "licensee", added "during one calendar year", and after "shall not exceed", changed "thirty thousand dollars ($30,000)" to "one hundred thousand dollars ($100,000)"; in Subsection B, after "A copy of the", added "verified", after "petition", added "with the judgment attached", and after "upon the commission", added "by the United States postal service certified return receipt or"; added new Subsection C and redesignated former Subsection C as Subsection D; in Subsection D, after "upon the commission", added "and the licensee", deleted former Paragraphs C(3) through C(5) and redesignated former Paragraph C(6) as Paragraph D(3), in Paragraph D(3), deleted subsection designation "(a)" and deleted former Subparagraphs C(6)(b) and C(6)(c); and added Subsection E.

The 2005 amendment, effective January 1, 2006, provides that a person who has obtained a judgment against a qualifying broker or an associate broker under this section may petition the real estate commission for payment from the real estate recover fund.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Real estate broker's rights and liabilities as affected by failure to disclose financial information concerning purchaser, 34 A.L.R.4th 191.

Real-estate broker's liability to purchaser for misrepresentation or nondisclosure of physical defects in property sold, 46 A.L.R.4th 546.

61-29-24. Commission; 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.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, revised procedures related to hearings on petitions for recovery pursuant to the Real Estate Recovery Fund Act; in the section heading, after "Commission", deleted "review"; after "the same manner", added "and with the same authority", and after "Uniform Licensing Act", deleted "including Sections 61-1-9 through 61-1-11 NMSA 1978. Review of the commission's decision shall be in the manner provided by Section 61-1-20 NMSA 1978".

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.

ANNOTATIONS

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.

ANNOTATIONS

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.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, provides that of the real estate commission pays a judgment against a qualifying broker or an associate broker from the real estate recovery fund, the real estate commission may revoke, suspend or refuse to renew the license of the qualifying or associate broker.

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.

ANNOTATIONS

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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Grounds for revocation or suspension of license of real estate broker or salesperson, 7 A.L.R.5th 474.

ARTICLE 29A
Thanatopractice (Recompiled.)

61-29A-1 to 61-29A-25. Recompiled.

ANNOTATIONS

Recompilations. — Former Chapter 61, Article 29A NMSA 1978, relating to Thanatopractice License Law, was recompiled as Chapter 61, Article 32 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

ARTICLE 30
Real Estate Appraisers

ANNOTATIONS

Recompilations. — Former Chapter 61, Article 30 NMSA 1978, relating to Utility Operators Certification Act, was recompiled as Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article heading.

61-30-1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 1992 amendment, effective May 20, 1992, substituted "Chapter 61, Article 30 NMSA 1978" for "Sections 1 through 23 and Section 28 of this Act".

61-30-2. Purpose and legislative intent. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

Cross references. — For the federal Real Estate Appraisal Reform Amendments, *see* 12 U.S.C. §§ 3331 through 3352.

The 2014 amendment, effective May 21, 2014, added definitions to provide for compliance with federal law, appraisal management companies, trainees, an appraisal subcommittee, and uniform standards of professional appraisal practice; in Subsection A, added Paragraph (2); added Subsections D, F and G; added Subsection N; in Subsection S, after "means a person who", deleted "holds a current, valid general certificate or a current, valid residential certificate issued pursuant to the provisions of the Real Estate Appraisers Act" and added the remainder of the sentence; in Subsection T, after "state licensed", added "residential" and after "means a person who", deleted "holds a current, valid license issued pursuant to the provisions of the Real Estate Appraisers Act; and" and added the reminder of the sentence; deleted former Subsection Q, which defined "state apprentice real estate appraiser"; and added Subsections U and V.

The 2003 amendment, effective July 1, 2003, deleted "or real estate appraisal" following "rendering an unbiased appraisal" at the end of Subsection B; deleted "or real estate appraisal" following "of an appraisal" near the middle of Subsection D; in Subsection G deleted "12 U.S.C. 3301, et seq.," following "Examination Council Act of 1978," near the middle, and deleted ", 12 U.S.C. 3331 through 3351" at the end; and substituted "apprentice" for "registered" following "state" near the beginning of Subsection Q.

The 1993 amendment, effective June 18, 1993, deleted former Subsection G, which defined "commission", redesignating the remaining subsections accordingly; and deleted "limited to appraisals of residential real estate involving non-complex transactions of a transaction value of less than one million dollars ($1,000,000) and complex transactions of a transaction value of less than two hundred fifty thousand

dollars ($250,000) as provided under the terms of the federal Real Estate Appraisal Reform Amendments, which license is" after "valid license" in Subsection P.

The 1992 amendment, effective May 20, 1992, inserted "without regard to the complexity of the transaction" in Subsection L; added the limitation language in Subsection Q; added Subsection R; and made stylistic changes.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; and in Subsection B, in the first sentence, after "or act as, a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential", and in the second sentence, after "in the capacity of a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, inserted the Subsection A designation and added Subsection B.

The 1993 amendment, effective June 18, 1993, deleted "commission and" before "board".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, prescribed duties for the appraisal subcommittee; provided for compliance with federal law; in Subsection G, after "regulation and licensing department", added the remainder of the sentence; in Subsection G, added Paragraphs (1) through (5); and added Subsection H.

The 2011 amendment, effective July 1, 2011, in Subsection A, provided that members of the board will be appointed by the governor; and in Subsection E, provided that one member who is not a public member or a real estate appraiser may be appointed to represent the business of appraisal management.

Temporary provisions. — Laws 2011, ch. 19, § 2 provided that current members of the real estate board shall continue to serve in their current term of office. One member who is a representative of an appraisal management company shall be appointed for an initial thee-year term. Thereafter, appointment to that position shall be for a five-year term.

The 2003 amendment, effective July 1, 2003, added "The board shall be administratively attached to the regulation and licensing department." following the first sentence of Subsection A.

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, in Subsection A, increased the number of members from seven to nine; deleted former Subsections B through G, relating to the qualifications and terms of the members and the composition of the board after the initial terms; inserted present Subsections B through E; and redesignated former Subsection H as present Subsection F.

The 1992 amendment, effective May 20, 1992, in Subsection A, substituted "consisting of seven members" for "consisting initially of seven members, for a period of three years after appointment, and thereafter five members"; in Subsection B, inserted "real estate"

in the first sentence and added the last two sentences; and, in Subsection D, inserted "state" at the second occurrence of the word in the first sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

61-30-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 269, § 22 repealed 61-30-6 NMSA 1978, as amended by Laws 1992, ch. 54, § 4, concerning the powers and duties of the board, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2022 amendment, effective May 18, 2022, clarified that the real estate appraisers board is required to follow the provisions of the State Rules Act when promulgating rules; and in Subsection A, deleted "adopt" and added "promulgate", and after "rules", deleted "necessary" and added "in accordance with the State Rules Act".

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees, appraiser management companies, and compliance with federal law; in Subsection C, after "who qualify to be", deleted "state apprentices", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; in Subsection D, after "approve applications for", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", after "state licensed", added "residential", and after "state certified real estate appraisers", deleted language which provided for the preparation and grading of examinations for state licensed and certified real estate appraisers; in Subsection E, after "licensing and certification", deleted "under" and added "pursuant to"; in Subsection I, after "professional responsibility for", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; and added Subsections K, N and O.

The 2003 amendment, effective July 1, 2003, in Subsection C, substituted "state apprentice real estate appraisers, state" for "registered" following "who qualify to be" near the middle and substituted "real estate appraisers or state" for "and" preceding "certified real estate appraisers" near the end; in Subsection D, substituted "apprentice" for "registered" preceding "real estate appraisers" near the beginning and inserted "state" preceding "certified real estate appraisers" near the middle; in Subsection I, substituted "apprentice real estate appraisers, state" for "registered" following "responsibility for state" near the middle, inserted "real estate appraisers" following "licensed" near the middle and inserted "state" preceding "certified real estate" near the end; and substituted "persons" for "individuals" following "addresses of the" near the middle of Subsection K.

The 1999 amendment, effective June 18, 1999, deleted "and for conducting disciplinary proceedings pursuant to the provisions of the Real Estate Appraisers Act" at the end of Subsection C; added the language beginning "and set minimum requirements" at the end of Subsections E and F; inserted "in accordance with the Uniform Licensing Act" in Subsection L; and made stylistic changes.

The 1993 amendment, effective June 18, 1993, substituted "Board" for "Commission" in the catchline; rewrote the introductory language; inserted "licensed or" in Subsection

D; and deleted former Subsection M, which read: "provide administrative assistance to the board by providing such facilities, equipment, supplies and personnel as are necessary to enable the board to perform its duties under the Real Estate Appraisers Act; and", redesignating former Subsection N as present Subsection M and making a related grammatical change.

The 1992 amendment, effective May 20, 1992, made a section reference substitution in the introductory language; inserted references to registration in Subsections C, E, F, I, K, and L; inserted "state registered real estate appraisers" in Subsection D; deleted "and will preclude members of the board from an ownership interest in any organization or company authorized to conduct approved courses or from conducting those programs while a member of the board" from the end of Subsection G; inserted "real estate" in Subsection I; and made stylistic changes.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; in Subsection A, after "by electing a", deleted "chairperson" and added "chair and", and after "vice", deleted "chairperson and secretary" and added "chair; in Subsection B, after "licensed or certified as", deleted "state apprentice", after "real estate", deleted "appraisers" and added "appraiser trainees", and after "state licensed", added "residential"; and in Subsection C, in the first sentence, after "members by the", deleted "chairperson" and added "chair".

The 2003 amendment, effective July 1, 2003, added "annually" following "among its members" at the end of the first sentence of Subsection A; and in Subsection B, substituted "apprentice real estate appraisers, state" for "registered" following "certified as state" near the middle, inserted "real estate appraisers" following "licensed" near the middle, and inserted "state" preceding "certified real estate" near the middle.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" near the end of Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" in two places in Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

2003 Multiple Amendments. — Laws 2003, ch. 328, § 6 and Laws 2003, ch. 408, § 33 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2003, ch. 408, § 33, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2003, ch. 328, § 6 and Laws 2003, ch. 408, § 33 are described below. To view the session laws in their entirety, *see* the 2003 session laws on *NMOneSource.com*.

Laws 2003, ch. 408, § 33, effective July 1, 2003, deleted "and employ such persons to assist the board" following "committees of the board" near the beginning of the section; and deleted "employees and" following "Compensation for" near the end of the section.

Laws 2003, ch. 328, § 6, effective July 1, 2003, deleted "and employ such persons to assist the board" following "committees of the board" near the middle of the first

sentence; and inserted "investigative contractors or consultant" following "Compensation for employees," near the beginning of the third sentence.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" and deleted "and commission" following "board", in the first sentence.

61-30-10. Registration, license or certification required; exceptions. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

Cross references. — For the federal Financial Institutions Reform, Recovery and Enforcement Act, *see* 12 U.S.C. § 1461 et seq.

The 2014 amendment, effective May 21, 2014, provided for the scope of practice of trainees and appraisers; provided for the exemption of qualifying and associate brokers from registration, licensing and certification; in Subsection A, after "first registering as", deleted "an apprentice" and added "a real estate appraiser trainee"; in Subsection C, at the beginning of the sentence, after "A", deleted "state apprentice", after "real estate appraiser", deleted "who is registered but does not hold a license or certificate" and added "trainee", after "appraiser trainee is", added "only", after "real property", deleted "provided that such appraisals are not described or referred to as being prepared by a ‘state certified real estate appraiser’" and added "under direct supervision of the supervisory appraiser", and after "general certificate", deleted "or by ‘state licensed real estate appraiser’; and", and after "state licensed", added "residential"; deleted former Subsection D, which authorized the holder of a license or residential certificate to prepare appraisals of nonresidential real estate subject to specified conditions; deleted Subsection E, which required real estate appraisers who perform in federally related transactions to meet the conditions for licensing; deleted former Subsection F, which exempted qualifying or associate brokers who give opinions of the price of real estate to financial institutions from the requirement of registration, licensing or certification; added Subsections D and E; and in Subsection H, after "an appraisal report", added "except appraisal reviews as defined by the uniform standards of professional appraisal practice".

The 2013 amendment, effective June 14, 2013, provided an exemption for real estate brokers who give an opinion of the price of real estate for purposes of marketing, selling, purchasing, leasing or exchanging the real estate or for the purpose of providing a financial institution with a collateral assessment of real estate; deleted former Subsection F, which provided an exemption for real estate brokers who give an opinion of the price of real estate for purposes of listing, marketing, sale, lease or exchange of real estate, or conducting a market analysis, or rendering specialized services; and added a new Subsection F.

The 2003 amendment, effective July 1, 2003, inserted "as an apprentice" following "without first registering" near the middle of Subsection A; in Subsection C, substituted "apprentice" for "registered" following "A state" near the beginning, and inserted "is registered but" following "appraiser who" near the beginning; substituted "a real estate" for "an" following "Recovery and Enforcement Act" near the middle of Subsection E; inserted "real estate" following "shall not apply to" near the beginning of Subsection G; and in Subsection I, substituted "as defined in" for "under" following "specialized service" near the middle, and deleted "of the Real Estate Appraisers Act" following "Section 61-30-3 NMSA 1978" near the middle.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsection A and in the introductory language of Subsection B; and added present Subsections E and I, redesignating former Subsections E through G as present Subsections F through H.

The 1992 amendment, effective May 20, 1992, inserted references to registration in the catchline and Subsections A, E, and F; rewrote Subsection C; and, in Subsection D, substituted "holder of a license or residential certificate is authorized to prepare" for "holder of a residential certificate shall be deemed to be licensed so as to permit the holder of the certificate to prepare" and inserted "by a general certified appraiser".

The 1991 amendment, effective June 14, 1991, added Subsection G and made minor stylistic changes in Subsections A and F.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a requirement for registration as a real estate appraiser trainee; and in Subsection B, after "trainee shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided qualifications for appraiser trainees; in the catchline, after "qualification for", deleted "state apprentice", and after "real estate", deleted "appraisers" and added "appraiser trainee"; in Subsection A, after "Registration as a", deleted "state apprentice", and after "real estate appraiser", added "trainee"; in Subsection B, after "registration as a", deleted "state apprentice", and after "real estate appraiser", added "trainee"; and in Subsection C, after "registration as a", deleted "state apprentice", after "real estate appraiser", added "trainee", after "trainee shall", deleted "have" and added "meet", and after "established for the", deleted "apprentice" and added "real estate appraiser trainee".

The 2003 amendment, effective July 1, 2003, substituted "state apprentice real estate appraisers" for "registration" in the section heading; inserted "as a state apprentice real estate appraiser" following "Registration" near the beginning of Subsection A; inserted "as a state apprentice real estate appraiser" following "registration" near the beginning of Subsection B; substituted "apprentice" for "registered" following "registration as a state" near the middle of Subsection C; deleted former Paragraph C(1), concerning hours of instruction; and substituted "the" for "(2) additional experience and" at the beginning of former Subsection C(2) and deleted "registered" preceding "apprentice" near the middle of this paragraph.

The 1999 amendment, effective June 18, 1999, substituted "seventy-five classroom hours" for "sixty classroom hours" in Subsection C(1), and rewrote Subsection C(2) which formerly read "such equivalent education in an activity closely related to or associated with real estate appraisal as the board determines by regulation".

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A, C(2), and D.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a requirement for licensure as a state licensed residential real estate appraiser; and in Subsection B, after "real estate appraiser shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided for residential real estate appraisers; in Subsection B, after "state licensed", added "residential"; and in Subsection C, after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, inserted "as a state licensed real estate appraiser" following "applicant for a license" near the beginning of Subsection B; added "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" at the end of Subsection C; deleted former Paragraphs C(1), C(2) and C(3), concerning experience, instruction and other equivalent educational activity; and substituted "Persons" for "Individuals" at the beginning of Subsection E.

The 1999 amendment, effective June 18, 1999, substituted "seventy-five classroom hours" for "sixty classroom hours" in Subsection C(2), and deleted the former first two sentences of Subsection E, which read "Holders of licenses issued before the effective date of this section shall have until October 1, 1993 to comply with the current requirements of this section. Should the requirements not be met by October 1, 1993, the license shall be surrendered to the board and a registration shall be issued therefor."

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A and D; deleted "two years of experience with" from the beginning of Paragraph (1) of Subsection C; and added Subsection E.

The 1992 amendment, effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico" following "United States" and made a section reference substitution; in Subsection C, added present Paragraph (1), redesignated former Paragraphs (1) and (2) as present Paragraphs (2) and (3), and deleted "approved by the board" following "real estate" in present Paragraph (2).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2021 amendment, effective June 18, 2021, removed legal residency of the United States as a qualification for certified classification as a state certified residential or general real estate appraiser; and in Subsection B, after "classification shall", deleted "be a legal resident of the United States, except as otherwise provided in Section 61-30-20 NMSA 1978, and".

The 2014 amendment, effective May 21, 2014, provided qualifications for certified residential and general real estate appraisers; in the catchline, after "Qualifications for", deleted "certificate", and added "certified residential and general real estate appraisers";

in Subsection A, deleted "Certificates" and added "Certified classification"; and in Subsection B, after "Each applicant for a", deleted "certificate as a", after "state certified", deleted "residential or general", and after "real estate appraiser", added "classification".

The 2003 amendment, effective July 1, 2003, inserted "as a state certified real estate appraiser" following "for a certificate" near the beginning of Subsection B; added present Subsection C and redesignated former Subsection C as present Subsection D; added "additional experience and education requirements as established for the general certification classification issued by the appraiser qualifications board of the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act" at the end of present Subsection D; and deleted former Paragraphs C(1) through C(3) and former Subsection D, concerning required education and experience.

The 1999 amendment, effective June 18, 1999, substituted "thirty months" for "two years" in Subsection C(1), substituted "sixty-five classroom hours" for "fifty classroom hours" in Subsection C(2), substituted "two thousand five hundred hours" for "two thousand hours" in Subsection D(1), substituted "one hundred five classroom hours" for "ninety classroom hours" and "ninety classroom hour" for "seventy-five classroom hour" in Subsection D(2), and deleted former Subsection F, which required that holders of residential certificates issued before the effective date of this section shall have until July 1, 1993 to obtain additional education.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsections A and E, and deleted "and commission" after "board" in the second sentence of Subsection F.

The 1992 amendment, effective May 20, 1992, in Subsection B, deleted "a bona fide resident of New Mexico" following "United States" and made a section reference substitution; in Subsection C, rewrote Paragraph (1), added the language beginning "which may include" to the end of Paragraph (2), and, in Paragraph (3), substituted "such additional experience and education requirements as may be established" for "the minimum criteria" and added "and adopted by regulation pursuant to the Real Estate Appraisers Act" to the end; in Subsection D, rewrote Paragraph (1), in Paragraph (2), substituted "ninety classroom hours" for "sixty classroom hours" near the beginning and added "which may include the seventy-five classroom hour requirement for the state licensed real estate appraiser" to the end, and rewrote Paragraph (3); and added Subsection F.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, permitted applications to be made in person or electronically; eliminated the requirement that examinations be given at least four times each year; in Subsection A, after "to the board in writing", added "either in person or electronically"; in Subsection B, in Paragraph (8), after "initiated against a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential"; and deleted former Subsection C, which required that the examination be given at least four times each year and in each congressional district and that notice of passing or failing be given not later than forty-five days after the examination.

The 2003 amendment, effective July 1, 2003, in Subsection B(8), substituted "apprentice real estate appraiser, state" for "registered" following "against a state" near the middle, inserted "real estate appraiser" following "licensed" near the middle and inserted "state" preceding "certified real estate" near the middle; substituted "forty-five" for "thirty" preceding "day following" near the end of Subsection C; and deleted "and regulations" following "in the rules" near the end of Subsection D.

The 1993 amendment, effective June 18, 1993, rewrote the catchline; substituted "registrations" for "registration" and "registration or a license or a" for "a license or" in Subsection A; substituted "board" for "commission" at the end of Subsection A, in the last sentence of Subsection C, and in Subsection D; deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" and inserted "licensure or" in Subsection B; and made a stylistic change in Subsection D.

The 1992 amendment, effective May 20, 1992, inserted "registration" near the beginning of Subsection A; inserted references to a license in Subsections B and D; and inserted "registered, licensed or" in Subsection B(8).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, changed provisions relating to payment of federal registry fees; and in Subsection D, at the beginning of the sentence, deleted "At the election of eligible holders of a registration, license, certificate who perform or seek to perform appraisals in federally related transactions under the federal real estate appraisal reform amendments", and deleted the former second sentence, which required the board to give notice of whether appraisers paid the federal registry fees and were eligible to perform in federally related transactions.

The 1999 amendment, effective June 18, 1999, substituted the language beginning "renewed every three years" for "subject to annual renewal on the last day of the registration, license or certificate holder's month of birth" at the end of Subsection B; assigned the Subsection C designation, and added the last sentence in that subsection; redesignated former Subsections C to H as Subsections D to I; substituted "triennially" for "annually" in Subsection D; and substituted "recommendations of the appraiser qualifications board of the appraisal foundation or the requirements of the appraisal subcommittee" for "appraiser qualifications board recommendations or appraisal subcommittee requirements" in Subsection I.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in two places in Subsections A and F, in the last sentence of Subsection B, in Subsections C and E, and in two places in the first sentence of Subection G, "or" for "and" preceding "certificate" in the second sentence of Subsection B, "registration" for "registered appraiser or" in Subsection D and the first sentence of Subsection G, "following" for "preceding" and "thirty days following" for "on" in Subsection D, and "in the board's" for "upon the advice and recommendation of the board, in its" in Subsection F; and added Subsection H.

The 1992 amendment, effective May 20, 1992, inserted "registration" or references to registration throughout the section; inserted "license or" in the third sentence in Subsection B, near the beginning of Subsection F, and near the middle of the first sentence in Subsection G; inserted "registered appraiser or" near the beginning of Subsections D and G; and made stylistic changes.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for appraiser trainees; in Subsection A, in the introductory paragraph, after "time when the applicant", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection A, in Paragraph (8), after "provided that the", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection A, in Paragraph (9), after "dealings as a", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection B, in the introductory paragraph,

after "the applicant or", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; and in Subsection B, in Paragraph (4), after "records to which the", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2011 amendment, effective June 17, 2011, in Subsection C, requires the board to process administrative complaints in accordance with federal law.

The 2003 amendment, effective July 1, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in two places in the introductory language of Subsections A and B, in Subsection A(6), and in the second sentence of Subsection C; deleted "upon the advice and recommendation of the board and after consultation with the board and" preceding "consistent with" and made a stylistic change in the introductory language of Subsections A and B; substituted "registration" for "registered appraiser or" in Subsection A(5); inserted "state registered, licensed or certified real estate" and made a stylistic change in Subsection B(4); and deleted "and commission" following "board" in the first sentence of Subsection C.

The 1992 amendment, effective May 20, 1992, inserted "registration" or references to registration in the catchline and throughout the section; made section reference substitutions near the beginning of Subsections A and B; inserted references to registered appraisers in the introductory language to Subsection A and in Subsection A(5); and substituted "applicant or state registered, licensed or certified real estate appraiser" for "applicant or license or certificate holder" in the introductory language to Subsection B.

Enforcement of settlement agreement. — Where the licensee entered into a settlement agreement with the board to settle complaints that had been filed against the licensee; the agreement permitted the board to determine whether the licensee violated the agreement; and if the licensee did violate the agreement, to revoke or suspend the licensee's license, impose a fine, or take other disciplinary action described in the Uniform Licensing Act, the licensee specifically agreed to the board's authority and waived objections to the board's decision to suspend the licensee's license for violation of the agreement. *Montano v. N.M. Real Estate Appraiser's Bd.*, 2009-NMCA-009, 145 N.M. 494, 200 P.3d 544.

Appellate review of board decision. — Where the district court engages in appellate review of a decision of the board, the district court may not consider facts that were not presented to the board; the district court must accord deference to the board's decision; and the district court may not substitute its judgment for the judgment of the board. *Montano v. N.M. Real Estate Appraiser's Bd.*, 2009-NMCA-009, 145 N.M. 494, 200 P.3d 544.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-30-24 NMSA 1978.

The 2019 amendment, effective July 1, 2020, provided that applicants for registration, or certified licensure or licensure shall be fingerprinted only upon initial licensure or registration, and clarified certain terms in the section; added "criminal history" or "history", preceding each occurrence of "background check" throughout the section; and in Subsection A, Paragraph A(2), after "fingerprinted", added "only upon initial licensure or registration".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for uniform standards of professional appraisal practice; and in Subsection A, in the first sentence, after "Each real estate appraiser", deleted "registered, licensed or certified under the Real Estate Appraisers Act" and added "trainee, state licensed residential real estate appraiser or state certified real estate appraiser"; in the second sentence, after "professional appraisal practice", added "and professional ethics", and at the end of the sentence, after "professional appraisal practice", deleted "promulgated by the appraisal foundation and as adopted by regulation under the Real Estate Appraisers Act", and added the third and fourth sentences.

The 2003 amendment, effective July 1, 2003, in Subsection A inserted "state apprentice real estate appraiser, state licensed real estate appraiser or state certified" following "Each" near the beginning, deleted "registered, licensed or certified under the Real Estate Appraisers Act" following "real estate appraiser" near the beginning and substituted "rule pursuant to provisions of" for "regulation under" near the end; and in Subsection B, substituted "rules" for "regulations" following "specified in its" near the beginning, deleted "state registered, licensed or certified" following "good standing to any" near the middle and substituted "in accordance with" for "under" preceding "the Real Estate Appraiser Act" near the end.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" in Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" in the first sentence in Subsection A and in Subsection B and added "and as adopted by regulation under the Real Estate Appraisers Act" to the end of Subsection A.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in Subsection A, in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2014 amendment, effective May 21, 2014, established fees for appraiser trainees and appraisal management companies; in Subsection A, in Paragraph (1), after "fee for", added "real estate appraiser trainee"; in Subsection A, in Paragraph (5), after "renewal fee", added "for a real estate appraiser trainee"; in Subsection A, in Paragraph (9), after "two hundred dollars ($200)", added "and an additional extension fee may be applied"; and added Subsection B.

The 2003 amendment, effective July 1, 2003, substituted "two hundred dollars ($200)" for "in the amount of one hundred dollars ($100)" in Subsection A; substituted "four hundred dollars ($400)" for "in the amount of two hundred dollars ($200)" in Subsection B; substituted "five hundred dollars ($500)" for "in the amount of two hundred fifty dollars ($250)" in Subsection C; substituted "two hundred dollars ($200)" for "in the amount of one hundred dollars ($100)" in Subsection D; in Subsection E, deleted "triennial" following "a" near the beginning and substituted "two hundred fifty dollars ($250)" for "in the amount of one hundred fifty dollars ($150)"; in Subsection F, deleted "triennial" following "a" and substituted "four hundred fifty dollars ($450)" for "in the amount of three hundred dollars ($300)"; in Subsection G, deleted "triennial" following "a" and substituted "five hundred dollars ($500)" for "in the amount of four hundred fifty dollars ($450)"; substituted "two hundred dollars ($200)" for "in the amount of one hundred dollars ($100)" in Subsection I; and substituted "fifty dollars ($50.00)" for "a fee in the amount of twenty-five dollars ($25.00)" in Subsection J.

The 1999 amendment, effective June 18, 1999, substituted "in the amount of one hundred dollars" for "shall not exceed one hundred dollars" in Subsection A; substituted "certification or license" for "certification and license" in Subsections D and E; and changed the renewal fees in Subsections E to F to be triennial instead of annual.

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" and added "not to exceed" to the end, in the introductory language; rewrote Subsections A, E, and I; deleted former Subsection J, which read: "for registration for temporary

practice, for each single appraisal assignment for more than one real property interest, the amount of one hundred dollars ($100); and"; redesignated former Subsection K as present Subsection J; inserted "registration" in Subsection J; and added present Subsection K, making a related grammatical change.

The 1992 amendment, effective May 20, 1992, substituted "registration" for "license" near the beginning of Subsection A and in Subsection E; made a section reference substitution in Subsection A; inserted "a license or" in Subsection B; inserted "and license" in Subsection D; and inserted "and license renewal" in Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for the use of the money in the appraiser fund; and in Subsection C, added the second sentence.

The 2009 amendment, effective June 19, 2009, added "and the Appraisal Management Company Registration Act".

The 1993 amendment, effective June 18, 1993, substituted "board" for "commission" throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for continuing education for appraiser trainees; in Subsection A, in the second sentence, after "require that every", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential"; in Subsection B, in the first sentence, after "in the area of the", deleted "state apprentice", after "real estate", deleted "appraiser's" and added "appraiser trainee's", and after "state licensed", added "residential"; and in the second sentence, after "shall also permit", deleted "state apprentice", after "real estate", deleted "appraiser's" and added "appraiser trainee'", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, substituted "rules" for "regulations" throughout the section; in Subsection A, substituted "apprentice real estate appraiser, state" for "registered" following "require that every state" near the middle, inserted "real estate appraiser" following "licensed" near the middle, inserted "state" preceding

"certified real estate appraiser" near the middle, and substituted "the continuing education requirements" for "thirty classroom hours of instruction every three years in courses" following "shall successfully complete" near the end; and in Subsection B, substituted "continuing education" for "the thirty classroom hours of instruction" following "certain part of" near the beginning, substituted "apprentice real estate appraiser's, state" for "registered" following "area of the state" near the middle of the first sentence, inserted "real estate appraiser's" following "licensed" near the middle of the first sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the first sentence, and substituted "apprentice real estate appraiser, state" for "registered" following "shall also permit state" near the beginning of the second sentence, inserted "real estate appraiser" following "licensed" near the middle of the second sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the second sentence.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "commission, upon the advice and recommendation of the board and after consultation with the" before "board" near the beginning and substituted "board" for "commission" at the end.

The 1992 amendment, effective May 20, 1992, inserted "registered" in the second sentence in Subsection A and "registration" near the beginning of Subsection B; and, in Subsection B, substituted "area of the state registered, licensed or certified real estate appraiser's specialty" for "area of the license holder's or certificate holder's specialty" and "permit state registered, licensed or certified real estate appraisers" for "permit licensed or certificate holders".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for reciprocity for nonresident applicants in conformity with federal law; in Subsection A, deleted all of the former language of the subsection which provided for reciprocity for nonresident applicants if the requirements of their state's laws were the same or similar to the requirements of the Real Estate Appraisers Act or if the nonresident conformed to the conditions of the act, for acceptance of examinations taken in other states, and for interstate agreements allowing reciprocity, and added the language of the current subsection; and in Subsection C, in the first sentence, after "actions as a", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", deleted "residential", and in the second sentence, after "to the nonresident", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, in Subsection A substituted "apprentice real estate appraiser, state" for "registered" following "applicant may become a" near the middle of the second sentence, inserted "real estate appraiser" following "licensed" near the middle of the second sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the second sentence, substituted "at the board's discretion if" for "provided" near the middle of the third sentence, and substituted "apprentice real estate appraisers, state" for "registered" following "beneficial to New Mexico" near the middle of the fourth sentence, inserted "real estate appraisers" following "licensed" near the middle of the fourth sentence, inserted "state" preceding "certified" near the middle of the fourth sentence and inserted "real estate" preceding "appraisers, the board may" near the middle of the fourth sentence; in Subsection B, substituted "apprentice real estate appraiser, state" for "registered" following "actions as a state" near the middle of the first sentence, inserted "real estate appraiser" following "licensed" near the middle of the first sentence, inserted "state" preceding "certified real estate appraiser" near the middle of the first sentence, substituted "apprentice real estate appraiser, state" for "registered" following "to the nonresident state" near the end of the second sentence, inserted "real estate appraiser" following "licensed" near the end of the second sentence, and inserted "state" preceding "certified real estate appraiser" near the end of the second sentence.

The 1993 amendment, effective June 18, 1993, rewrote Subsection A and substituted "board" for "commission" throughout Subsection B.

The 1992 amendment, effective May 20, 1992, inserted "registered" and "registration" throughout the section; and, in Subsection A, inserted "shall issue a registration, license or certificate" and substituted "greater conditions" for "lesser conditions" in the first sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2014 amendment, effective May 21, 2014, provided for compliance with federal law; in Subsection A, added the beginning of the introductory sentence through "Consumer Protection Act"; in Subsection A, Paragraph (1), after "six months", added

"with no more than one extension allowed"; in Subsection B, in the first sentence, after "actions as a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential", and in the second sentence, after "to the nonresident", deleted "state apprentice", after "real estate appraiser", added "trainee", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, in Subsection A substituted "apprentice real estate appraiser, state" for "registered" following "actions as a state" near the beginning of the first sentence, inserted "real estate appraiser" following "licensed" near the beginning of the first sentence, inserted "state" preceding "certified real estate appraiser" near the beginning of the first sentence, and substituted "apprentice real estate appraiser, state" for "registered" following "to the nonresident state" near the end of the second sentence, inserted "real estate appraiser" following "licensed" near the end of the second sentence, and inserted "state" preceding "certified real estate appraiser" near the end of the second sentence.

The 1993 amendment, effective June 18, 1993, in Subsection A, deleted "In accordance with 12 U.S.C. 3351" from the beginning, deleted former Paragraph (1), which read: "the property to be appraised is part of a federally related transaction, as defined in the federal real estate appraisal reform amendments", renumbered former Paragraphs (2) and (3) as present Paragraphs (1) and (2), deleted "and commission" after "board" in the introductory language and Paragraph (2), and inserted "real estate" before "appraiser" throughout the subsection, making a related stylistic change; and in Subsection B, deleted "and commission" after "board" near the beginning and substituted "board" for "commission" throughout.

The 1992 amendment, effective May 20, 1992, inserted "registration" in the introductory language to Subsection A and "registered" in two places in Subsection B.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-30-24 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the real estate appraisers board may impose a civil penalty not to exceed two thousand dollars ($2,000) against any person found to have acted without a license; in Subsection C, after "certified real estate appraiser", deleted "or" and added a period, and after the period, added "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)".

The 2014 amendment, effective May 21, 2014, provided penalties for appraiser trainees; and in Subsection C, in the first sentence, after "proceedings against a", deleted "state apprentice", after "real estate appraiser", added "trainee, a", and after "state licensed", added "residential".

The 2003 amendment, effective July 1, 2003, substituted "Civil and criminal penalties" for "Penalty" at the beginning of the section heading; substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" in Subsection A; and added Subsection C.

The 1993 amendment, effective June 18, 1993, deleted "commission, upon the advice and recommendation of the" before "board" in Subsection B.

61-30-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 269, § 22 repealed 61-30-23 NMSA 1978, as enacted by Laws 1990, ch. 75, § 23, providing for waiver of license requirements for 180 days after December 1, 1990 for certain applicants, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed "July 1, 2023" to "July 1, 2029" and changed "July 1, 2024" to "July 1, 2030".

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 2000 amendment, effective February 15, 2000, substituted "2005" for "1999" in the first sentence and "2006" for "2000" in the last two sentences.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2006 amendment, effective May 17, 2006, changed the short title to include all of Chapter 61, Article 31 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 4, 5, 14, 39 to 41, 45 to 47, 58 to 62, 72, 73.

Cause of action for clergy malpractice, 75 A.L.R.4th 750.

53 C.J.S. Licenses §§ 5, 7, 22, 30, 34 to 66, 82.

61-31-2. Repealed.

History: Laws 1989, ch. 51, § 2; repealed by Laws 2019, ch.143, 16.

ANNOTATIONS

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-2 NMSA 1978, as enacted by Laws 1989, ch. 51, § 2, relating to purpose, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, defined "client", "consultation", "continuing education", "licensed bachelor of social work", licensed clinical social worker", "licensed independent social worker", "licensed master of social work", "recognized association", "supervision", and "supervisor", and revised the definitions of certain terms, as used in the Social Work Practice Act"; in Subsection B, after "supervision by", deleted "an" and added "a licensed clinical social worker or licensed",

after "independent social worker", deleted "or a master social worker", and after "supervision by a", deleted "master" and added "licensed clinical social worker or licensed independent"; deleted former Subsection C, which defined "baccalaureate social worker", and redesignated former Subsection D as Subsection C; added new Subsections D through F and redesignated former Subsections E and F as Subsections G and H, respectively; deleted former Subsections G and H, which defined "independent social worker" and "master social worker", respectively; added new Subsections I through L and redesignated former Subsection I as Subsection M; in Subsection M, after "means", deleted "a code of ethics and rules adopted by the board, designed to protect the public and to regulate the professional conduct of social workers" and added "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"; and added Subsections N through P.

The 2006 amendment, effective May 17, 2006, made no changes.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

Cross references. — For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

The 2019 amendment, effective June 14, 2019, required licensure to practice as a clinical social worker, master of social work and a bachelor of social work; in Subsection A, Paragraph A(1), after "independent social worker", added "clinical social worker, master of social work or bachelor of social work", in Paragraph A(2), after "title or", deleted "represent himself as" and added "make any representation as being", and after "licensed social worker", added "of any type or level"; and in Subsection B, after "on or after", deleted "the effective date of the Social Work Practice Act" and added "July 1, 1989".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1992" for "July 1, 1991" in Subsection B.

"Effective date of the Social Work Practice Act". — The phrase "effective date of the Social Work Practice Act", referred to in Subsection B, means July 1, 1989, the effective date of Laws 1989, ch. 51.

61-31-4.1. 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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2019, ch. 143 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, prohibited the practice of social work, the holding out as a social worker and the use of the title of social worker without being licensed as a social worker; in the section heading, replaced "exemptions" with "Use of title; other professions"; and added a new Subsection A and subsection designation "B".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 1996 amendment, effective March 5, 1996, made a stylistic change in Subsection B and inserted "university" at the beginning of Paragraph B(5) and substituted "faculty" for "education practice" in that paragraph.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2021 amendment, effective June 18, 2021, required the board of social work examiners to maintain New Mexico residency during their appointment to the board; and in Subsection C, after "appointment', added "and maintain New Mexico residency during their appointment".

The 2019 amendment, effective June 14, 2019, removed certain criteria for being a member of the board of social work examiners, removed a provision prohibiting sitting board members from holding office in a professional organization of social workers, authorized board members to join professional organizations, provided that the governor may appoint certain board members from a pool of resumes submitted by individuals applying for membership, provided that the board may permit electronic participation in board meetings, and provided that the governor may remove any member from the board for a violation of the current professional code of ethics or professional standards; in Subsection C, in the introductory clause, after "within New Mexico" deleted "who are United States citizens", and after "New Mexico residents", deleted "for at least five years", in Paragraph C(1), after "These members", deleted "shall not hold office in any professional organization of social workers during their tenure on the board" and added the remainder of the paragraph; in Subsection E, after "social work professionals", added "or from a pool of resumes submitted to the governor by individuals applying for membership"; in Subsection I, added "The board may permit electronic participation in board meetings in accordance with the Open Meetings Act and board rules"; and in Subsection J, added new paragraph designations "(1)" through "(3)" and "(5)", and added Paragraph J(4).

The 2006 amendment, effective May 17, 2006, deleted the provision in Subsection D for appointment of initial members to the board and changed the word "executive" to "consecutive" in Subsection K.

The 1996 amendment, effective March 5, 1996, in Subsection C substituted "seven" for "ten" twice and inserted "geographic and", rewrote Paragraph C(1), deleted former Paragraph C(2) providing that one member shall hold a degree and be experienced in social work, and redesignated the following paragraphs accordingly, and substituted "three" for "five" at the beginning of Paragraph C(2); and rewrote Subsection L.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed certain authority from the board of social work examiners related to the supervision of persons seeking licensure as independent social workers, authorized the board to take certain steps in addressing violations of the Social Work Practice Act, authorized the board to develop criteria to approve appropriate supervision for those persons seeking licensure as a licensed independent social worker or a licensed clinical social worker, and authorized the board to determine the appropriate application of technology to social work practice; in Subsection B, deleted "written" preceding "examinations"; deleted former Subsection H, added new Subsections H and I and redesignated former Subsections I through L as Subsections J through M, respectively; and added Subsection N.

The 2006 amendment, effective May 17, 2006, deletes the requirement in Subsection B that written examinations include testing of the knowledge of New Mexico cultures; provides in Subsection I that the board may issue temporary licenses; and provides in Subsection J that the board may require a demonstration of awareness and knowledge of New Mexico cultures.

The 2003 amendment, effective July 1, 2003, substituted "61-31-19 MSA 1978" for "19 of the Social Work Practice Act" at the end of Subsection D; and deleted former Subsections L and M, concerning staff, office space and administrative support, and redesignated former Subsection N as present Subsection L.

61-31-9. Repealed.

History: Laws 1989, ch. 51, § 9; 2006, ch. 4, § 5; repealed by Laws 2019, ch. 143, § 16.

ANNOTATIONS

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-9 NMSA 1978, as enacted by Laws 1989, ch. 51, § 9, relating to requirements for licensure, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure examination be in writing; in the section heading, deleted "written"; and after "date and location of the", deleted "written".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided a public health emergency exception to an existing provision that provides that a provisional license is valid for a

period not to exceed one year; and added "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".

The 2019 amendment, effective June 14, 2019, limited provisional licenses to engage in social work to those individuals who hold a bachelor's degree or master's degree in social work; after "applicant for licensure", added "who holds a bachelor's degree or master's degree in social work", and after "except examination", deleted "as prescribed in Section 61-31-10 NMSA 1978" and added "pursuant to the Social work Practice Act".

The 2007 amendment, effective June 15, 2007, provides that a provisional license is valid for a period not to exceed one year.

61-31-12. Repealed.

History: Laws 1989, ch. 51, § 12; 1991, ch. 222, § 2; repealed by Laws 2019, ch. 143, § 16.

ANNOTATIONS

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-12 NMSA 1978, as enacted by Laws 1989, ch. 51, § 12, relating to licensure without written examination, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2023 amendment, effective July 1, 2023, provided expedited licensure for all license levels of social workers; in the section heading, added "expedited" and deleted "by credentials"; in Subsection A, added "Upon application of an out-of-state licensed social worker"; after "shall license", deleted "an" and added "a qualified"; and after "licensure level sought", deleted "provided the applicant" and added "as provided in Section 61-1-31.1 NMSA 1978"; deleted former Paragraphs A(1) through A(5); deleted former Subsection B; and added new Subsections B and D.

The 2021 amendment, effective June 18, 2021, removed discretionary language, and added mandatory language, related to the board of social work examiner's power to issue a license to a person who furnishes evidence to the board that the person has been licensed as a social worker by another state, territory of the United States, the District of Columbia or another country for two and one-half years, and revised qualifications for an applicant seeking a license pursuant to this section; in the section heading, after "credentials", deleted "reciprocity"; and in Subsection A, after "The board", changed "may" to "shall", and changed "five" to "two and one-half", throughout, in Paragraph A(3), after "of social work", deleted "approved by the board" and added "accredited by the council on social work education", and in Paragraph A(5), after "cultures", deleted "as determined by" and added "to".

The 2006 amendment, effective May 17, 2006, provides for the licensure of an applicant in the licensure level sought by the applicant in Subsection A; deletes the authority of the board to issue a license without written examination in Subsection A; requires that an applicant have held for a minimum of five years a valid social worker license from another licensing jurisdiction and deletes the requirement that the other licensing jurisdiction have requirements that equal or exceed the requirements in the Social Work Practice Act for the licensure level sought in Paragraph (1) of Subsection A; adds Paragraphs (2) through (5) of Subsection A to provide criteria for licensure; and adds Subsection B to provide that the applicant will not have to verify other qualifications if the criteria in Subsection A are met.

61-31-13.1. Repealed.

History: Laws 2006, ch. 4, § 8; repealed by Laws 2019, ch. 143, § 16.

ANNOTATIONS

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-13.1 NMSA 1978, as enacted by Laws 2006, ch. 4, § 8, relating to temporary licensure, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure examination be in writing; and in Subsection C, after "required to take", deleted "a written" and added "an".

The 2006 amendment, effective May 17, 2006, changed the renewal period from annually to biennially and authorized the board to provide for staggered biennial terms of licensure in Subsection A; authorized the board to prescribe the fee and evidence of continuing education required for license renewal in Subsection B; and changed Subsection C to eliminate the mandatory requirement that the board require a written examination for the renewal of a license that has been revoked for timely failure to renew.

The 1996 amendment, effective March 5, 1996, substituted "thirty-day" for "sixty-day" in Subsections B and D and substituted "three" for "six" and made a stylistic change in Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

The 2019 amendment, effective June 14, 2019, removed the requirement that the social work licensure examination be in writing, and made certain technical amendments; deleted "written" preceding each occurrence of "examination" throughout the section, and added "licensed" preceding each occurrence of "bachelor of social work", "master of social work", and "independent social worker".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

The 2017 amendment, effective June 16, 2017, prohibited the use of conversion therapy on a minor, provided that the board of social work examiners may deny, revoke or suspend a license held or applied for under the Social Work Practice Act if the licensee uses conversion therapy on a minor, and defined certain terms as used in this section; in Subsection A, added Paragraph A(10); in Subsection B, after "payment of costs for", deleted "such" and added "the"; and added Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

61-31-23. Repealed.

History: Laws 1989, ch. 51, § 23; repealed by Laws 2019, ch. 143, § 16.

ANNOTATIONS

Repeals. — Laws 2019, ch. 143, § 16 repealed 61-31-23 NMSA 1978, as enacted by Laws 1989, ch. 51, § 23, relating to injunctive proceedings, effective June 14, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-31-25 NMSA 1978.

When statutory privilege conflicts with constitutional or court rule privilege. — The supreme court's constitutional power of superintending control over all inferior courts carries with it the inherent power to regulate all pleading, practice and procedure affecting the judicial branch of government; with respect to privileges, if a statutory privilege is not consistent with a rule of the supreme court, the statutory privilege is not given effect and the constitutional or court rule privilege prevails. *State v. Strauch*, 2015-NMSC-009, *rev'g* 2014-NMCA-020.

The provisions of this section that arguably create social worker evidentiary privileges cannot prevent court-ordered disclosure of communications that would be mandated by the discovery and evidence rules of the supreme court; consequently, statements made to a social worker by an alleged child abuser in private counseling sessions are not protected from disclosure in a court proceeding as a result of the specific exception to the physician-patient and psychotherapist-patient evidentiary privilege in Rule 11-504(D)(4) NMRA, which provides that no privilege shall apply for confidential communications concerning any material that a social worker is required by law to report to a public agency. *State v. Strauch*, 2015-NMSC-009, *rev'g* 2014-NMCA-020.

Applicability of privilege in a child abuse and neglect case was not required to be addressed because the clear language of Rule 11-504 NMRA, this section, and Section 61-9A-27 NMSA 1978 permits disclosure. *State ex rel. Children, Youth & Families Dep't*, 2000-NMCA-035, 128 N.M. 813, 999 P.2d 1045, cert. denied, 129 N.M. 207, 4 P.3d 35.

Recognition of role licensed social workers play in providing treatment to victims of child abuse and neglect would be consistent with the legislature's recognition of the professional nature of their services. *State ex rel. Children, Youth & Families Dept. v. Frank G.*, 2005-NMCA-026, 137 N.M. 137, 108 P.3d 543, *aff'd*, 2006-NMSC-019, 139 N.M. 459, 134 P.3d 746.

Issue not preserved on appeal. — Where defendant argued that the statements he made to social workers, implicating himself in criminal sexual contact with a minor, are privileged, but he did not cite either this section or Jaffee v. Redmond, 518 U.S. 1, 135 L. Ed. 2d 337, 116 S. Ct. 1923 (1996), to support that argument in the trial court, he has not preserved the issue and may not raise it in an appellate court. *State v. Neswood*, 2002-NMCA-081, 132 N.M. 505, 51 P.3d 1159, cert. denied, 132 N.M. 551, 52 P.3d 411.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 81 Am. Jur. 2d Witnesses §§ 453, 541, 542.

97 C.J.S. Witnesses §§ 252, 254.

61-31-25. Termination of agency life; delayed repeal. (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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, extended the agency life of the board of social work examiners; after the first occurrence of July 1,", deleted "2021" and added "2031", and after the second and third occurrences of "July 1,", deleted "2022" and added "2032".

The 2015 amendment, effective June 19, 2015, extended the termination date for the social work examiners to July 1, 2021, and the repeal date to July 1, 2022.

The 2005 amendment, effective June 17, 2005, changed the termination, operation and repeal dates.

The 1997 amendment, effective June 20, 1997, substituted "2005" for "1997" in the first sentence, and substituted "2006" for "1998" in the second and third sentences.

The 1996 amendment, effective March 5, 1996, substituted "1997" for "1995" once and "1998" for "1996" twice in the section.

ARTICLE 32
Funeral Services

ANNOTATIONS

Recompilations. — Former Chapter 61, Article 29A NMSA 1978 was recompiled as this article by the compiler in 1990 to alphabetize the article headings.

61-32-1. Short title. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-1 NMSA 1978, as enacted by Laws 1978, ch. 185, § 1, giving the short title of the Thanatopractice License Law, and § 1 of that act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and after "cited as the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, updated the statutory reference.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 38 Am. Jur. 2d Funeral Directors and Embalmers §§ 3 to 28.

Civil liability of undertaker in connection with transportation, burial, or safeguarding of body, 53 A.L.R.4th 360.

Recoverability of compensatory damages for mental anguish or emotional distress for breach of service contract, 54 A.L.R.4th 901.

61-32-2. Purpose. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-2 NMSA 1978, as enacted by Laws 1978, ch. 185, § 2, giving the purpose of Thanatopractice License Law, and § 2 of that act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the board of thanatopractice to the board of funeral services and in the second sentence, after "board", deleted "of thanatopractice" and added "of funeral services".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-3 NMSA 1978, as amended by Laws 1983, ch. 137, § 1, containing definitions, and § 3 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, defined "embalmer" and "funeral arranger", and revised the definitions of "embalming" and "practice of funeral service", as used in the Funeral Services Act; added a new Subsection L and redesignated former Subsections L through P as Subsections M through Q, respectively; in Subsection M, after "practitioner", added "licensed embalmer"; added a new Subsection R and redesignated former Subsections Q through BB as Subsections S through DD, respectively; and in Subsection CC, after "practitioner", added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated definitions to conform to the conversion of associate funeral services practitioner and assistant funeral services practitioner licenses to intern licenses; in the introductory sentence and in Subsections H, R, S, W and AA substituted "Funeral Services Act" for "Thanatopractice Act"; deleted former Subsection A, which defined "assistant funeral services practitioner"; deleted former Subsection B, which defined "associate funeral services practitioner", in Subsection A, after "board of", deleted "thanatopractice" and added "funeral services"; in Subsection I, after "quickly as possible, without", added "a direct disposer performing or arranging"; in Subsection L, after "body by a licensed funeral service practitioner", deleted "a licensed associate funeral service practitioner"; added Subsection T; in Subsection AA, after "funeral service practitioner", deleted "associate funeral service practitioner, assistant funeral service practitioner"; and deleted former Subsection DD, which defined "thanatopractice".

The 1999 amendment, effective June 18, 1999, inserted "at a funeral establishment or commercial establishment, licensed pursuant to the Thanatopractice Act" in Subsections A and B; substituted "that act" for "the Thanatopractice Act" in Subsections A, B, and J; added Subsections D, O, and P; redesignated former Subsections D to M and N to AA as Subsections E to N and Q to DD, respectively; substituted "supervising funeral service practitioner" for "supervisor" in Subsections L and V; substituted "includes bone fragments" for "may include bone fragments" in Subsection F; inserted "at a direct disposition establishment, licensed pursuant to the Thanatopractice Act" in Subsection J; substituted "direct control of the person being trained" for "control of the

person being supervised" in Subsection L; deleted "or release of custody of the body to the family or personal representative or other legal representative" from the end of Subsection M; deleted "a licensed assistant funeral service practitioner" preceding "or a licensed funeral service intern" in Subsection N; substituted "licensed to be" for "licensed pursuant to the Thanatopractice Act who is" and added the language beginning "at a funeral establishment" in Subsection T; deleted "by the board" following "person licensed" and substituted the language beginning "at a funeral establishment" for language which specifically described funeral establishments in Subsection U; substituted "in the establishment with the person being trained" for "with the person being supervised" in Subsection V; deleted "and graded" preceding "by the board" in Subsection X; and substituted "post-death" for "post-dead" in Subsection DD.

The 1995 amendment, effective April 5, 1995, substituted "a dead human body" for "the dead body" in Subsection F, and in Subsection M, added all the language following "dead human body".

Salesmen of insurance funding funeral plans. — A person licensed to sell life insurance specifically designed to fund funeral plans need not be licensed to practice funeral service. 1987 Op. Att'y Gen. No. 87-60.

61-32-4. License required. (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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-4 NMSA 1978, as enacted by Laws 1978, ch. 185, § 4, creating the state board of thanatopractice of the state of New Mexico, and § 4 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, required funeral arrangers and embalmers to be licensed under the Funeral Services Act; in Subsection A, after each occurrence of "funeral service practitioner", added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated references to former licenses that have been converted to intern licenses; in Subsections A, B and C, substituted "Funeral Services Act" for "Thanatopractice Act"; in Subsection A, in Paragraph (1), after "funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner" and in Paragraph (2), after "use the title to", deleted "represent himself as" and added "make any representation as being", after "representation as being a funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner", and after "practice as a funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner"; and in Subsection B, after "funeral service practitioner", deleted "associate funeral service practitioner, assistance funeral service practitioner".

The 2003 amendment, effective July 1, 2003, inserted the Subsection A designation; redesignated part of former Subsection A and Subsections B and C as Paragraphs A(1) to (3); inserted "assistant funeral service practitioner" following "funeral service practitioner" in Paragraph A(2); inserted "a" following "a commercial establishment" in Paragraph A(3); and added present Subsections B and C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-5 NMSA 1978, as enacted by Laws 1978, ch. 185, § 5, concerning board duties and powers, and § 5 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the board; required that a health care practitioner be from the office of the state medical investigator; in Subsection A, after "board of", deleted "thanatopractice" and added "funeral services"; in Subsection C, in the second sentence, after "health care practitioner", added the phrase "from the office of the state medical investigator"; and in Subsection E, after "shall be reimbursed", added "per diem and mileage".

The 1999 amendment, effective June 18, 1999, in the first sentence of Subsection D, deleted "staggered" preceding "terms of four years" and deleted language at the end, which stated that board members appointed and serving under prior law at the effective date of the Thanatopractice Act shall serve out the terms for which they were appointed, and in Subsection H, substituted the last sentence for language at the end of the first sentence, which read, "and any member failing to attend, after proper notice, three meetings shall automatically be recommended for removal as a board member unless excused for reasons set forth in board regulations".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-6 NMSA 1978, as enacted by Laws 1978, ch. 185, § 6, concerning the secretary of the board, and § 6 of the act enacted a new section, effective June 18, 1993.

The 2022 amendment, effective May 18, 2022, clarified that the board of funeral services is required to follow the provisions of the State Rules Act when promulgating rules and is required to follow the provisions of the Uniform Licensing Act for disciplinary matters; and in Subsection A, Paragraph A(1), deleted "adopt in accordance with the provisions of the Uniform Licensing Act, and file" and added "promulgate rules", in Paragraph A(2), deleted "adopt" and added "promulgate", and in Paragraph A(3), after "pursuant to", deleted "Section 61-1-3 NMSA 1978" and added "the Uniform Licensing Act".

The 2021 amendment, effective June 18, 2021, provided an exception, related to the waiver of fees for military service members and veterans, to the board of funeral service's power to establish fees to carry out the provisions of the Funeral Services Act; and in Subsection A, Paragraph A(4), added "except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective June 16, 2017, removed the provision which provided the board of funeral services the authority to impose a fine not to exceed five thousand dollars ($5,000) and to assess costs for each violation of the Funeral Services Act; in Subsection A, in Paragraph A(7), after the semicolon, added "and", and deleted Paragraph A(8) and redesignated former Paragraph A(9) as Paragraph A(8).

The 2012 amendment, effective July 1, 2012, changed the name of the act and the thanatopractice fund; in Subsection A, in Paragraphs (1) and (4) through (7) and in Subsection B, substituted "Funeral Services Act" for "Thanatopractice Act"; and in Subsection A, in Paragraph (1), after "rules", deleted "and regulations" and in Paragraph (8), after "deposited in the", deleted "thanatopractice" and added "funeral services".

The 1999 amendment, effective June 18, 1999, in Subsection A, substituted "pursuant to Section 61-1-3 NMSA 1978" for "including license denial, suspension or revocation, or the issuance of a fine, reprimand or other remedial action" in Paragraph (3); deleted former Paragraph (8), which set out the board's power to take administrative action with regard to the Thanatopractice Act; redesignated former Paragraph (9) as Paragraph (8), and in that paragraph, inserted "for each violation"; and added Paragraph (9).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-7 NMSA 1978, as amended by Laws 1983, ch. 137, § 2, providing for an inspector and board representation, and § 7 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection A, after "provisions of the", deleted "Thanatopractice" and added "Funeral Services".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-8 NMSA 1978, as enacted by Laws 1978, ch. 185, § 8, concerning applicability of the

Criminal Offender Employment Act, 28-2-1 to 28-2-6 NMSA 1978, and § 8 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection B, deleted "Thanatopractice" and added "Funeral Services".

The 2003 amendment, effective July 1, 2003, rewrote Subsection B.

The 1999 amendment, effective June 18, 1999, deleted "or through prior arrangement" following "business hours" in Subsection A, added Subsection B, redesignated former Subsection B as Subsection C, and in that subsection, substituted the language beginning "upon approval of the attorney general" for "whose services shall be paid by the board upon the approval of the attorney general".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-9 NMSA 1978, as amended by Laws 1989, ch. 187, § 1, concerning the issuance of licenses, and § 9 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, provided the requirements for licensure for funeral arrangers and embalmers; in the section heading, added "funeral arranger; embalmer"; in Subsection A, added a new Paragraph A(4) and redesignated former Paragraphs A(4) and A(5) as Paragraphs A(5) and A(6), respectively; and added new Subsections B and C and redesignated former Subsection B through E as Subsections D through G, respectively.

The 2012 amendment, effective July 1, 2012, changed the educational requirements for licensure as a funeral service practitioner and a direct disposer; permitted issuance of a funeral service intern license for a multi-establishment enterprise; converted assistant funeral services practitioner and associate funeral services practitioner licenses to intern licenses; in the title, after "direct disposer", deleted "associate funeral service practitioner;" and added "conversion of certain licenses"; in Subsection A, deleted former Paragraphs (5) and (6), which required an applicant for a funeral service practitioner license to have graduated from an accredited institution and to have completed at least sixty semester hours of academic and professional instruction in an institution of higher education or to have passed an examination, and added Paragraph (5); in Subsection B, in Paragraph (3), in the second sentence, after "funeral service intern is", deleted "not ambulatory and is", after "issued", added "only", and after "establishment", deleted "only" and added the remainder of the sentence; in Subsection C, deleted former Paragraph (2) which required an applicant for a direct disposer license to have graduated from high school or the equivalent and added Paragraph (2); deleted former Subsection D, which provided for an assistant funeral service practitioner license; deleted former Subsection E, which provided for an associate funeral service practitioner license; and added Subsection D.

The 2003 amendment, effective July 1, 2003, substituted "making of at least fifty funeral arrangements and" for "and assisted in the" following "least fifty bodies" in Paragraph A(2); and added Subsection F.

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted "to be a funeral service practitioner" in Paragraph (3), deleted "of thanatopractice" following "required by the board" in Paragraph (6), deleted language at the end of Paragraph (6), which provided that a funeral service intern need not satisfy provisions of Paragraph (5) if he has successfully completed examinations required by the board for practice as an associate funeral service practitioner and funeral service practitioner; in Subsection B, substituted "board rules" for "the board" in Paragraph (3) and added Paragraphs (4) and (5); in Subsection D, substituted "June 18, 1993" for "the effective date of the Thanatopractice Act"; and in Subsection E, deleted former Paragraphs (2) to (4), relating to satisfactory evidence that a person has served as a licensed funeral service intern for not less than twelve months while under the supervision of a licensed funeral service practitioner, has graduated from high school or the equivalent, and has successfully completed at least sixty semester hours of academic and professional instruction in an accredited college or university, redesignated former Paragraphs (5) and (6) as Paragraphs (2) and (3), and deleted "to be an associate funeral service practitioner" preceding "prescribed" in Paragraph (2).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-10 NMSA 1978, as enacted by Laws 1978, ch. 185, § 10, limiting the practice of funeral service, and § 10 enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, provided that the board of funeral services may license an applicant as a funeral service practitioner, funeral arranger, or embalmer if the applicant presents proof that the applicant is currently licensed in good standing in another jurisdiction; and after "provided the applicant", deleted "has actively practiced five out of the last ten years in another state, territory or foreign nation as a licensed funeral service practitioner, or its equivalent" and added "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".

The 2003 amendment, effective July 1, 2003, deleted "has met educational requirements equal to or exceeding those established pursuant to the Thanatopractice Act or" following "provided the applicant".

The 1999 amendment, effective June 18, 1999, substituted "equal to" for "substantially equivalent to" near the middle and "actively practiced five out of the last ten years in another state, territory or foreign nation" for "at least five consecutive years experience in another state or territory" near the end.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-11 NMSA 1978, as enacted by Laws 1978, ch. 185, § 11, limiting the practice of direct disposition, and § 11 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Paragraph (3) of Subsections A, B, C and D substituted "Funeral Services Act" for "Thanatopractice Act".

The 2003 amendment, effective July 1, 2003, substituted "necessary drainage and ventilation and" for "the" following "be present with" in Subparagraph A(2)(c); substituted "a license shall not" for "no license shall" at the beginning of Paragraphs A(3) and B(3); substituted "comply with the following minimum requirements" for "have" at the end of Paragraph B(2); added the Subparagraph B(2)(a) designation; in Subparagraph B(2)(a), inserted "shall be present" near the beginning, inserted "drainage and ventilation and necessary" preceding "instruments and supplies"; added Subparagraph B(2)(b); substituted "allowed for a direct disposer and shall comply with the following minimum requirements" for "of direct disposition and shall maintain" at the end of Paragraph C(2); rewrote Subparagraph C(2)(a); deleted former Subparagraph C(2)(b) which read: "necessary drainage and ventilation"; substituted "shall be present for sheltering of dead human bodies prior to burial or other disposition or transportation" for "for sheltering prior to disposition and" at the end of present Subparagraph C(2)(b); added present Subparagraphs C(2)(c) and (e); substituted "primarily devoted to the practice allowed for

a crematory and shall comply with the following minimum requirements" for "and shall have appropriate facilities and equipment devoted to cremation and pulverization" at the end of Paragraph D(2); and added Subparagraphs D(2)(a) to (c) and Subsection E.

The 1999 amendment, effective June 18, 1999, deleted "including specific sanitary or physical requirements for licensure" from the end of Subsections A(3), B(3), C(3), and D(3).

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-12 NMSA 1978, as amended by Laws 1989, ch. 187, § 2, concerning license renewal and revival, and § 12 of the act enacted a new section, effective June 18, 1993.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-13 NMSA 1978, as enacted by Laws 1978, ch. 185, § 13, concerning licensure under prior law, and § 13 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, required establishments that no longer employ a full-time funeral service practitioner to cease the practice of funeral service and direct disposition and to return the establishment license to the board; in Subsection A, in the first sentence, after "full-time", deleted "licensee in charge" and added "funeral service practitioner" and added the last sentence; and in Subsection B, after "special requirements for", deleted "multi-unit establishment that" and added "multi-establishment enterprises where the establishments".

The 1999 amendment, effective June 18, 1999, inserted "provided" in Subsection A, and added Subsection D.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-14 NMSA 1978, as amended by Laws 1989, ch. 187, § 3, concerning assistant funeral service practitioners, and § 14 of the act enacted a new section, effective June 18, 1993.

The 1999 amendment, effective June 18, 1999, added the last sentence in Subsection D, deleted former Subsection E, which read "A funeral service intern shall be employed a minimum average of thirty hours per week by the establishment. Proof of employment hours shall be provided to the board upon request", and redesignated former Subsections F and G as Subsections E and F.

61-32-14.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 204, § 32 repealed 61-32-14.1 NMSA 1978, as amended by Laws 1989, ch. 187, § 4, concerning associate funeral service practitioners, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

61-32-15. Repealed.

History: 1978 Comp., § 61-32-15, enacted by Laws 1993, ch. 204, § 15; repealed by Laws 2012, ch. 48, § 26.

ANNOTATIONS

Repeals. — Laws 2012, ch. 48, § 26 repealed 61-32-15 NMSA 1978, as enacted by Laws 1993, ch. 204, § 15, relating to associate funeral service practitioners limitations, effective July 1, 2012. For provisions of former section, *see* the 2011 NMSA 1978 on *NMOneSource.com.*

61-32-16. Repealed.

History: 1978 Comp., § 61-32-16, enacted by Laws 1993, ch. 204, § 16; repealed by Laws 2012, ch. 48, § 26.

ANNOTATIONS

Repeals. — Laws 2012, ch. 48, § 26 repealed 61-32-16 NMSA 1978, as enacted by Laws 1993, ch. 204, § 16, relating to assistant funeral service practitioners scope of practice and limitations, effective July 1, 2012. For provisions of former section, *see* the 2011 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-17 NMSA 1978, as enacted by Laws 1978, ch. 185, § 17, concerning direct disposition establishment permits, and § 17 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsection A, after "provided in the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, added the Subsection A designation, and in that subsection, added "Except as otherwise provided in the Thanatopractice Act", and deleted the last sentence, which read "In doing so, the direct disposer shall not conduct, direct or provide facilities for a funeral, graveside service, committal service or memorial service, whether public or private, and the body shall not be embalmed prior to the disposition unless embalming is required by the place of disposition"; and added Subsection B.

The 1995 amendment, effective April 5, 1995, substituted "conduct, direct or provide facilities for a" for "provide or participate in a" near the middle.

61-32-17.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 204, § 32 repealed 61-32-17.1 NMSA 1978, as enacted by Laws 1983, ch. 137, § 4, concerning crematory permits, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-18 NMSA 1978, as amended by Laws 1989, ch. 187, § 6, concerning funeral establishment permits, and § 18 of the act enacted a new section, effective June 18, 1993.

The 2003 amendment, effective July 1, 2003, inserted "minimum" in Subparagraph A(1)(c) and inserted "act" following "any activity, or" in Subsection B.

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 decendent'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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Cross references. — For right to authorize cremations, see 24-12A-1 and 24-12A-2 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-19 NMSA 1978, as enacted by Laws 1978, ch. 185, § 19, concerning funeral service practices, and § 19 of the act enacted a new section, effective June 18, 1993.

The 2011 amendment, effective June 17, 2011, authorized a person designated on a United States department of defense record of emergency data form to direct the disposition of the remains of a decedent who left no written instructions and who died while serving in the armed forces, reserve forces or national guard.

The 1999 amendment, effective June 18, 1999, added "disposition of cremains" in the section heading; inserted "and the permission of next of kin or any other person shall not be required for such authorization" in the second sentence of Subsection C; substituted "A licensed establishment or crematory" for "A crematory authority" and "place of disposition of the cremains for a period of not less than seven years" for "disposition of the cremains by the crematory for a period of not less than five years" in Subsection G; and substituted "persons giving the authorization will hold harmless an establishment" for "they will hold harmless an establishment" and inserted "following the return of the cremains to the establishment" in Subsection I.

The 1995 amendment, effective June 16, 1995, substituted "June 18, 1993" for "the effective date of this section" in Subsection C and inserted "adult" in Paragraph F(2).

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 ennichement 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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2003 amendment, effective July 1, 2003, inserted the second sentence in Subsection A; in Subsection B, inserted "by its agent to return the cremains to the person that initiated the cremation services contract or" following "not been instructed", and deleted "or person that initiated the cremation services contract" following "to the establishment".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-20 NMSA 1978, as enacted by Laws 1978, ch. 185, § 20, concerning direct disposition practices, and § 20 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed embalmer within the provisions of the section; after each occurrence of "funeral service practitioner," added "embalmer".

The 2012 amendment, effective July 1, 2012, changed the name of the act; eliminated references to the associate funeral service practitioner; in Subsection A, after "in accordance with the", deleted "Thanatopractice" and added "Funeral Services"; in Subsection B, after "except by a funeral service practitioner", deleted "an associate funeral service practitioner"; and in Subsection E, in the first sentence, after "embalmed, the funeral service practitioner", deleted "or associate funeral service practitioner".

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "or release or receipt by the establishment or crematory" following "hours after death", deleted "or regulation" following "by board rule", inserted "state" following "office of the" twice; and substituted "A dead human body shall not" for "No dead human body shall" preceding "be embalmed" in Subsections B and C.

The 1999 amendment, effective June 18, 1999, inserted "within twenty-four hours after the embalming procedure" and the language beginning "described the elapsed time" in the first sentence of Subsection E, and added Subsection F.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-21 NMSA 1978, as enacted by Laws 1978, ch. 185, § 21, concerning embalming, and § 21 of the act enacted a new section, effective June 18, 1993.

The 2001 amendment, effective June 15, 2001, added the proviso that certain licensees over the age of sixty-five are not required to meet continuing education requirements in Subsection B, and extended the grace period from thirty days to sixty days in Subsection C.

The 1999 amendment, effective June 18, 1999, in Subsection C, deleted the first sentence, which read "A license not renewed on or before the expiration date is considered lapsed and is no longer valid" and changed the grace period from ninety days to thirty days, and in Subsection D, substituted "expired and invalid. A holder of an expired license shall" for "considered expired and the license holder shall".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-22 NMSA 1978, as amended by Laws 1983, ch. 137, § 6, concerning investigations, enforcement, and criminal penalties, and § 22 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed funeral arranger and licensed embalmer within the provisions of the section; in Subsection A, after "funeral service practitioner," added "funeral arranger, embalmer".

The 2012 amendment, effective July 1, 2012, permitted funeral service interns to be placed on inactive status and in Subsection A, after "funeral service practitioner", deleted "associate funeral service practitioner" and added "funeral service intern".

The 2003 amendment, effective July 1, 2003, substituted "the" for "his" following "may request that" in Subsection A; deleted "or regulation" following "by board rule" in Subsection C; in Paragraph C(1), substituted "licensee" for "practitioner" near the beginning, inserted "or direct disposition" following "of funeral service"; and substituted "A license shall not" for "No license shall" at the beginning of Subsection E.

The 1999 amendment, effective June 18, 1999, deleted "Funeral service practitioner;" from the beginning of the section heading; in Subsection A, inserted "associate funeral service practitioner or direct disposer" in the first sentence, added the exception at the beginning, and deleted "unless the practitioner is under investigation or disciplinary proceedings have been initiated" from the end of the second sentence; inserted "or continued" in Subsection D; and added Subsection E.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-23 NMSA 1978, as amended by Laws 1983, ch. 137, § 7, containing additional prohibitions, and § 23 of the act enacted a new section, effective June 18, 1993.

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and added "Except as provided in Section 61-1-34 NMSA 1978".

The 2017 amendment, effective June 16, 2017, provided that all fines collected by the board of funeral services be deposited in the current school fund; in the catchline,

added "and fines"; after "establish by", deleted "regulation" and added "rule", after "reasonable fees", added "and fines", and added the last sentence.

The 1999 amendment, effective June 18, 1999, deleted "provided that no one fee shall exceed five hundred dollars ($500)" at the end of the first sentence, and substituted "in accordance with Section 61-32-26 NMSA 1978" for "in the thanatopractice fund" in the second sentence.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-24 NMSA 1978, as enacted by Laws 1978, ch. 185, § 24, construing the Thanatopractice License Law, and § 24 of the act enacted a new section, effective June 18, 1993.

The 2019 amendment, effective July 1, 2019, included a licensed funeral arranger and licensed embalmer within the provisions of the section; and in Subsection C, in the introductory clause, after "funeral service practitioner", added "embalmer, funeral arranger".

The 2012 amendment, effective July 1, 2012, changed the name of the act; imposed liability on a transferee establishment for nonprofessional service charges incurred by a transferor establishment that transfers a body to the transferee establishment for funeral services; in Subsection B, Paragraph (5), after "provisions of the", deleted "Thanatopractice" and added "Funeral Services", in Paragraph (8), in the first sentence, after "to effect the release", deleted "when" and added "whether or not" and added the second sentence, and in Paragraph (16), after "service", deleted "direct disposition"; in Subsection C, in the introductory sentence, after "funeral service practitioner", deleted "associate funeral service practitioner, assistant funeral service practitioner" and in Paragraph (2), after "permitting", deleted "an associate funeral service practitioner, assistant funeral service practitioner or" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services"; in Subsection D, in the introductory sentence, after "direct disposer licensee", deleted "or applicant" and after "direct disposition establishment licensee", deleted "or applicant"; and in Subsection E, in Paragraph (1), after "engaging or", deleted "holding oneself out" and added "making any representation".

The 2003 amendment, effective July 1, 2003, deleted "or regulation" near the end of Paragraph B(5) and substituted "rules" for "regulations" near the end of Paragraph C(2).

The 1999 amendment, effective June 18, 1999, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective April 5, 1995, substituted "conducting, directing or providing facilities for" for "engaging in" in Paragraph (3) of Subsection C and made minor stylistic changes throughout the section.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

Repeals and reenactments. — Laws 1993, ch. 204, § 32 repealed former 61-32-25 NMSA 1978, as amended by Laws 1987, ch. 333, § 13, providing for the delayed repeal of this article, and § 25 of the act enacted a new section, effective June 18, 1993.

The 2012 amendment, effective July 1, 2012, changed the name of the act; in Subsections A, B and C, after "No person licensed", deleted "under" and added "pursuant to the provisions of the" and after "provisions of", deleted "Thanatopractice" and added "Funeral Services"; and in Subsection B, after "embalmed as provided in the", deleted "Thanatopractice" and added "Funeral Services".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2017 amendment, effective June 16, 2017, specified that fees and costs collected by the board of funeral services or the department of regulation and licensing pursuant to provisions of the Funeral Services Act be deposited with the state treasurer for credit

to the funeral services fund; in Subsection B, after "All", deleted "money" and added "fees and costs".

The 2012 amendment, effective July 1, 2012, changed the name of the act and the thanatopractice fund; in Subsection A, after "state treasury the", deleted "thanatopractice" and added "funeral services"; in Subsection B, after "provisions of the", deleted "Thanatopractice" and added "Funeral Services" and after "credit to the", deleted "thanatopractice" and added "funeral services"; and in Subsection C, after "Money in the", deleted "thanatopractice" and added "funeral services" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services".

The 1999 amendment, effective June 18, 1999, in Subsection B, substituted "or collected by the board or the department pursuant to provisions of" for "by the board under" in the first sentence, and inserted "at the end of any fiscal year" in the last sentence; and deleted "meeting the necessary expenses incurred in" following "purpose of" in Subsection C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act; after the "required or permitted", deleted "under" and added "pursuant to the provisions of" and after "provisions of the", deleted "Thanatopractice" and added "Funeral Services".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 1999 amendment, effective June 18, 1999, substituted "subject to the Inspection of Public Records Act" for "confidential" and deleted the last sentence, which read "All data communication and information acquired by the board relating to complaints is confidential and shall not be disclosed unless formal disciplinary action is initiated under the Uniform Licensing Act or absent an order of a court of competent jurisdiction."

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act and eliminated reference to the associate funeral service practitioner and the assistant funeral service practitioner; and in Subsection A, after "funeral service practitioner", deleted "an associate funeral service practitioner, assistant funeral service practitioner".

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2012 amendment, effective July 1, 2012, changed the name of the act and in Subsections A, B and C, substituted "Funeral Services" for "Thanatopractice".

The 1999 amendment, effective June 18, 1999, in the introductory language, substituted "who commits any of the following acts" for "who violates any provision of the Thanatopractice Act" and "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" for "not to exceed one thousand dollars ($1,000) or imprisonment or both", and added Subsections A to C.

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.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the board of funeral services may impose a fine not to exceed two thousand dollars against any person found to have acted without a license in violation of the Funeral Services Act; after the section heading, added "The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding", after "impose a fine", added "in an amount not to exceed two thousand dollars ($2,000)", and after "costs", deleted "as set forth in the Funeral Services Act".

The 2012 amendment, effective July 1, 2012, changed the name of the act; authorized the board to assess costs; after "impose a fine", added "and costs" and substituted "Funeral Services" for "Thanatopractice" throughout the section.

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.

ANNOTATIONS

Effective dates. — Laws 2012, ch. 48 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2012, 90 days after the adjournment of the legislature.

Delayed repeals. — For delayed repeal of this section, *see* 61-32-31 NMSA 1978.

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.

ANNOTATIONS

The 2023 amendment, effective June 16, 2023, changed "July 1, 2023" to "July 1, 2029" and changed "July 1, 2024" to "July 1, 2030".

The 2017 amendment, effective June 16, 2017, changed "July 1, 2017" to "July 1, 2023", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2012 amendment, effective July 1, 2012, changed the name of the act and the name of the board; in the first sentence, after "The board of", deleted "thanatopractice" and added "funeral services" and in the second sentence, after "July 1, 2018, the" deleted "Thanatopractice" and added "Funeral Services".

The 2011 amendment, effective June 17, 2011, extended the life of the thanatopractice board from July 1, 2011 to July 1, 2017 and changed the sunset date from July 1, 2012 to July 1, 2018.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

The 1999 amendment, effective June 18, 1999, substituted "July 1, 2005" for "July 1, 1999" in the first sentence, and "July 1, 2006" for "July 1, 2000" in the last sentence.

ARTICLE 33
Utility Operators

ANNOTATIONS

Recompilations. — This article, formerly designated Chapter 61, Article 30 NMSA 1978, was redesignated as Chapter 61, Article 33 NMSA 1978 by the compiler in 1990 to alphabetize the article headings.

61-33-1. Short title.

Chapter 61, Article 33 NMSA 1978 may be cited as the "Utility Operators Certification Act".

History: 1953 Comp., § 67-40-1, enacted by Laws 1973, ch. 394, § 1; recompiled as 1978 Comp., § 61-33-1; Laws 1992, ch. 44, § 1.

ANNOTATIONS

The 1992 amendment, effective March 6, 1992, substituted "Chapter 61, Article 33 NMSA 1978" for " This act".

61-33-2. Definitions.

As used in the Utility Operators Certification Act [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.

ANNOTATIONS

Cross references. — For the federal Clean Water Act of 1977, *see* 33 U.S.C.S. § 1251 et seq.

Repeals and reenactments. — Laws 1992, ch. 44, § 2 repealed former 61-33-2 NMSA 1978, as amended by Laws 1977, ch. 253, § 67, and enacted a new section, effective March 6, 1992.

The 2005 amendment, effective July 1, 2005, changes "commission" to "department", "water supply systems" to "public water supply systems" and "wastewater facilities" to "public wastewater facilities" in Subsection A; deletes the former definition of "certified supervisor" as a person certified by the commission to operate water supply systems or wastewater facilities and who performs on-site coordinations, direction and inspection of the operations of public wastewater or public water supply facilities; deletes former provision of Subsection B which included the department in the definition of the "commission" when the department acted under the Utility Operators Certification Act; defines "domestic liquid waste treatment unit" in Subsection E to include 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; deletes aerobic treatment units as being included in a "domestic liquid waste treatment unit" in Subsection E; and adds Subsection F to define "operate".

The 2001 amendment, effective June 15, 2001, in Paragraph I(1) inserted "through pipes or other constructed conveyances" and deleted "piped" preceding "water".

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.

ANNOTATIONS

Cross references. — For water quality control commission, *see* 74-6-3 NMSA 1978.

The 2022 amendment, effective May 18, 2022, required the department of environment to promulgate rules in accordance with the State Rules Act and to issue, renew, suspend or revoke licenses or discipline a license in accordance with the Uniform Licensing Act; and in Subsection B, added Paragraphs B(5) and B(6).

The 2005 amendment, effective July 1, 2005, changes "commission" to "department" in Subsection A, deletes the former provision of Subsection A which provided that the commission may delegate the administration and enforcement of the Utility Operator Certification Act to the department except adoption of regulations and conduct of

hearings; adds Subsections B(1) through (4) to provide the duties of the department with respect to approval and accreditation of schools and training programs, examinations, agreements and contracts and financial and technical assistance.

The 1992 amendment, effective March 6, 1992, designated the formerly undesignated provisions as Subsection A, deleted "water quality control" preceding "commission" in Subsection A, and added Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 569; 61A Am. Jur. 2d Pollution Control § 129; 78 Am. Jur. 2d Waterworks and Water Companies §§ 1, 38.

39A C.J.S. Health and Environment §§ 45, 46, 131.

61-33-4. Powers and duties of commission.

The commission 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.

ANNOTATIONS

Cross references. — For the Uniform Licensing Act, see 61-1-1 NMSA 1978.

The 2005 amendment, effective July 1, 2005, provides that the commission may adopt rules relating the administration and enforcement of the Utility Operators Certification Act; deletes the former provision in subsection A that the rules classify systems and facilities into categories for each type of utility; changes "plant operators" to "operators" in Subsection B; deletes the former provision in Subsection B that standards and criteria relate to qualifications and abilities to supervise systems and facilities; deletes the former provisions of Subsection C which related to the approval and accreditation of schools and training program and which provided that the board be appointed from certified public waste supply system operators and public wastewater facility operators provides in Subsection C that the board shall classify public water systems and public wastewater facilities and advise the department; deletes former Subsection D which related to the examinations; deletes former Subsection E which related to agreements and contracts; deletes former Subsection F which related to financial and technical assistance; deletes the former provision; adds Subsection E to provide that the commission shall adopt rules providing criteria for identifying the minimum number of certified operators to operate various classifications of public water supply systems and public wastewater facilities to protect human health, public welfare or the environment.

The 1992 amendment, effective March 6, 1992, substituted "that" for "which" and deleted "four" preceding "categories" in the introductory paragraph of Subsection A, inserted ", collection systems" in Subsection A(4), substituted "Certification" for "Certifications" in the first sentence of Subsection G, substituted "public water supply systems" for "water systems" several times throughout the section, and inserted "public" preceding "wastewater facilities" several times throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 64 Am. Jur. 2d Public Utilities § 9.

61-33-5. Application requirements; fees; 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.

ANNOTATIONS

Cross references. — For age of majority, *see* 12-2A-3 and 28-6-1 NMSA 1978.

For the Parental Responsibility Act, *see* Chapter 40, Article 5A NMSA 1978.

The 2021 amendment, effective June 18, 2021, provided for the waiver of certified operator certification fees for military service members and veterans; and in Subsection A, Paragraph A(3), added "except as provided in Section 61-1-34 NMSA 1978".

The 2005 amendment, effective July 1, 2005, changes "public waste supply system operator or public wastewater facility operator" to "certified operator" in Subsection A; changes "commission" to "department" in Subsections A(1) through (3); deletes the former provision in Subsection A(3)(a) the certification is for a public water supply

system operator or a public wastewater facility operator; increases the fee in Subsection A(3)(a) from $25 to $100; deletes the $10 fee for issuance of a certificate in Subsection A(3); deletes the reference to the annual renewal of a certificate in Subsection A(3)(b); provides that the renewal of a certificate shall be after a period set by rule in Subsection A(3)b); increases the fee for renewal of a certificate in Subsection A(3)(b) from $10 to $40; increases the fee for issuance of a certificate by endorsement from $25 to $100; deletes the former provision in Subsection B that the fund shall be used to make necessary refunds and that at the end of each month fees in the fund after refund shall be transferred to the general fund; provides in Subsection B that the fund shall be used to administer and enforce the Utility Operators Certification Act, 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 a fiscal year shall not revert and earnings shall be credited to the fund; changes "commission" to "department" in Subsection C; deletes the former provision in Subsection C that certification related to a public water supply system operator or public wastewater facility operator who met the qualifications in Subsection A(2) of this section; provides in Subsection C that the operator must submit evidence satisfactory to the department that the applicant has reached the age of majority; and adds Subsection D to provide that fees shall not be increased more than once each year, the first increase shall not result in a fee greater than $30 and subsequent increases shall not be more than five percent of existing fees.

The 1992 amendment, effective March 6, 1992, redesignated former Subsection A(4) as present Subsection B while making minor stylistic changes therein, redesignated former Subsection B as present Subsection C, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deletes former references to public water supply system and public wastewater facility; provides that it is unlawful to allow the operation of a system or facility unless it is operated or supervised by a certified operator who meets or exceeds the appropriate certification level.

The 1992 amendment, effective March 6, 1992, deleted "present plant operators" at the end of the section catchline, deleted the former Subsection A designation at the beginning of the section, substituted "it is" for "it shall be", substituted "public water supply system" for "water system" several times throughout the section, inserted "public" preceding "wastewater facility" several times throughout the section, deleted "for public or commercial use serving twenty-five hundred persons or more after July 1, 1976" preceding "unless", and deleted former Subsection B relating to present plant operators.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 1, 4.

53 C.J.S. Licenses § 30.

61-33-7. Suspension and revocation.

The 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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changes "commission" to "department"; provides that the department may suspend or revoke a certification; changes "is guilty of" to "committed" in Subsections A and B; deletes the former provision in Subsection B that the operator was grossly incompetent in the supervision of the class of system or facility that he is certified to supervise or operate; deletes the former references to public water system operator or public wastewater facility operator in Subsection C,

deletes the former references to public water system operator or public wastewater facility operator in Subsection D; and provides in Subsection D that the operator performed in a capacity of a higher classification of certified operator than the operator is certified, except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level.

The 1992 amendment, effective March 6, 1992, added Subsection E, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 58 to 62.

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

53 C.J.S. Licenses § 50 et seq.

61-33-8. Prohibitions; penalty.

A. It is unlawful for any person not certified as 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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, deletes references in Subsection A to public water supply system and public wastewater facility and to the supervisor of such systems and facilities; provides in Subsection A that it is unlawful to perform prohibited action except under the direct supervision of a certified operator who meets or exceeds the appropriate certification level for that classification of system or facility; and deletes the former provision of Subsection B which provided that it is unlawful for a persons who operates a public water supply system or public wastewater facility to employ a supervisor or operator who is not certified.

The 1992 amendment, effective March 6, 1992, substituted "person who operates a public water supply system or public wastewater facility" for "person, instrumentality of the state or instrumentality of any political subdivision of the state expending any public funds" in Subsection B, substituted "public water supply system" for "water system" several times throughout the section, and inserted "public" preceding "wastewater facility" several times throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61A Am. Jur. 2d Pollution Control § 594.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 A.L.R.3d 1258.

61-33-9. Variance procedures.

A. The commission shall establish by regulation a variance procedure for public water supply system and public wastewater facility operating authorities.

B. Any variance procedure established by the commission shall not allow an operating authority more than six months to obtain the service of a certified operator, except the commission may give a variance not to exceed eighteen months if the operator in charge is involved in a training course that will bring his level of competency to the level required within the eighteen-month period.

History: 1953 Comp., § 67-40-9, enacted by Laws 1973, ch. 394, § 9; recompiled as 1978 Comp., § 61-33-9; Laws 1992, ch. 44, § 9.

ANNOTATIONS

The 1992 amendment, effective March 6, 1992, twice inserted "public" in Subsection A.

61-33-10. Enforcement; compliance orders.

A. Whenever, on the basis of any information, the 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.

ANNOTATIONS

The 2005 amendment, effective July 1, 2005, changed "commission" to "department"; provided in Subsection E that a complete record of the proceedings shall be made and preserved; provided in Subsection F that if a hearing officer is appointed, the hearing officer shall forward a recommendation to the secretary of environment; added Subsection H to provide that an aggrieved party may appeal the decision of the secretary to the commission and that the commission may receive oral or written argument; and provided in Subsection I that all penalties shall be credited to the current school fund.

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.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, added the NMSA chapter and article for the Signed Language Interpreting Practices Act; and at the beginning of the sentence, deleted "Sections 1 through 17 of this act" and added "Chapter 61, Article 34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified that the signed language interpreting practices board is required to follow the provisions of the State Rules Act when promulgating rules; and in Subsection A, Paragraph A(2), after "promulgate rules", added "in accordance with the State Rules Act", and in Paragraph A(4), after "promulgate rules", deleted "pursuant to the State Rules Act".

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided an exception to the licensure fee for qualified military service members, their spouses and dependent children, and for certain veterans; and in the introductory clause, added "Except as provided in Section 61-1-34 NMSA 1978".

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

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.

ANNOTATIONS

Effective dates. — Laws 2007, ch. 248 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 15, 2007, 90 days after the adjournment of the legislature.

61-34-17. Repealed.

History: Laws 2007, ch. 248, § 17; repealed by Laws 2013, ch. 166, § 10.

ANNOTATIONS

Repealed. — Laws 2013, ch. 166, § 10 repealed 61-34-17 NMSA 1978, as enacted by Laws 2007, ch. 248, § 17, relating to the delayed repeal of the Signed Language Interpreting Practices Act, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 *NMOneSource.com*.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, excluded the practice of naturopathic medicine from the definition of complementary and alternative healing methods and treatments as used in the Unlicensed Health Care Practice Act, and provided that "naturopathy" does not include the practice of naturopathic medicine; in Subsection B, in the introductory clause, added "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", and in Paragraph B(15), added "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".

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 141, § 10 made the Unlicensed Health Care Practice Act effective July 1, 2009.

Severability. — Laws 2009, ch. 141, § 9 provided that if any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 20 recompiled and amended former 61-36-1 NMSA 1978 as 61-3B-1 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-2 NMSA 1978 as 61-3B-2 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 21 recompiled and amended former 61-36-3 NMSA 1978 as 61-3B-3 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-4 NMSA 1978 as 61-3B-4 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 105 recompiled former 61-36-5 NMSA 1978 as 61-3B-5 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Recompilations. — Laws 2022, ch. 39, § 22 recompiled and amended former 61-36-6 NMSA 1978 as 61-3B-6 NMSA 1978, effective May 18, 2022.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 1 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 2 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 3 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 4 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 5 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 6 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 7 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 8 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 9 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 10 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 11 effective January 1, 2021.

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.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, removed "administrative penalties" from the scope of the section; in the section heading, deleted "and administrative penalties"; and after "All fees", deleted "and administrative penalties".

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 13 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 14 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 15 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 16 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 17 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 18 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 19 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 20 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 21 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 22 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 23 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 24 effective January 1, 2021.

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.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 46, § 27 made Laws 2020, ch. 46, § 25 effective January 1, 2021.

ARTICLE 38
Elevator Safety (Recompiled)

61-38-1. Recompiled.

History: Laws 2023, ch. 197, § 1; recompiled as § 60-13B-1 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-2. Recompiled.

History: Laws 2023, ch. 197, § 2; recompiled as § 60-13B-2 NMSA 1978..

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-3. Recompiled.

History: Laws 2023, ch. 197, § 3; recompiled as § 60-13B-3 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-4. Recompiled.

History: Laws 2023, ch. 197, § 4; recompiled as § 60-13B-4 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-5. Recompiled.

History: Laws 2023, ch. 197, § 5; recompiled as § 60-13B-5 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-6. Recompiled.

History: Laws 2023, ch. 197, § 6; recompiled as § 60-13B-6 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-7. Recompiled.

History: Laws 2023, ch. 197, § 7; recompiled as § 60-13B-7 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-8. Recompiled.

History: Laws 2023, ch. 197, § 8; recompiled as § 60-13B-8 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-9. Recompiled.

History: Laws 2023, ch. 197, § 9; recompiled as § 60-13B-9 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-10. Recompiled.

History: Laws 2023, ch. 197, § 10; recompiled as § 60-13B-10 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-11. Recompiled.

History: Laws 2023, ch. 197, § 11; recompiled as § 60-13B-11 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-12. Recompiled.

History: Laws 2023, ch. 197, § 12; recompiled as § 60-13B-12 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-13. Recompiled.

History: Laws 2023, ch. 197, § 13; recompiled as § 60-13B-13 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-14. Recompiled.

History: Laws 2023, ch. 197, § 14; recompiled as § 60-13B-14 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.

61-38-15. Recompiled.

History: Laws 2023, ch. 197, § 15; recompiled as § 60-13B-15 NMSA 1978.

ANNOTATIONS

Compiler's notes. — Laws 2023, ch. 197, §§ 1 through 15, the Elevator Safety Act, effective July 1, 2025, were formerly compiled as 61-38-1 through 61-38-15 NMSA 1978, and have been recompiled as 60-13B-1 through 60-13B-15 NMSA 1978 by the compiler.