

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 16 DENTISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR
SUSPENSION FOR DISCIPLINARY ACTIONS

16.5.16.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[9/30/1996; 16.5.16.1 NMAC - Rn & A, 16 NMAC 5.16.1, 12/14/2000]

16.5.16.2 SCOPE: The provisions of Section 16.5.16 NMAC apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a dentist licensed by the board.
[9/30/1996; 16.5.16.2 NMAC - Rn, 16 NMAC 5.16.2, 12/14/2000]

16.5.16.3 STATUTORY AUTHORITY: Section 16.5.16 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21 NMSA 1978 (1996 Repl. Pamp.).
[9/30/1996; 16.5.16.3 NMAC - Rn, 16 NMAC 5.16.3, 12/14/2000]

16.5.16.4 DURATION: Permanent.
[9/30/1996; 16.5.16.4 NMAC - Rn, 16 NMAC 5.16.4, 12/14/2000]

16.5.16.5 EFFECTIVE DATE: September 30, 1996, unless a later date is cited at the end of a section.
[9/30/1996; 16.5.16.5 NMAC - Rn, 16 NMAC 5.16.5, 12/14/2000; A, 07/19/2010]

16.5.16.6 OBJECTIVE: To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to further define actions by a licensee which are considered incompetent or unprofessional practice.
[9/30/1996; 16.5.16.6 NMAC - Rn, 16 NMAC 5.16.6, 12/14/2000]

16.5.16.7 DEFINITIONS:

A. "Addiction" means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

B. "Chronic pain" means a pain state which is persistent and in which the cause of the pain cannot be removed or otherwise treated.

C. "Direct reference" means a phone number or website where names and contact information of the licensee can be referenced.

D. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.

E. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage, or described in terms of such inflammation or damage.

F. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.

G. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

[9/30/1996; 16.5.16.7 NMAC - Rn, 16 NMAC 5.16.7, 12/14/2000; A, 1/9/2012; A, 07-17-13; A, 3/25/2016]

16.5.16.8 COMPLAINTS: Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board and committee. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act, the Dental Health Care Act or the Impaired Dentists and Dental Hygienists Act.

[9/13/1969...5/31/1995; 16.5.16.8 NMAC - Rn, 16 NMAC 5.16.8, 12/14/2000; A, 06/14/2012]

16.5.16.9 ACTIONS:

A. The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the Act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

B. The board may reprimand, censure, or require licensees to fulfill additional continuing education hours within limited time constraints for violations of the Act or Rules.

[9/13/1969, 4/29/1982, 5/31/1995; 16.5.16.9 NMAC - Rn, 16 NMAC 5.16.9, 12/14/2000]

16.5.16.10 GUIDELINES: The board shall use the following as guidelines for disciplinary action.

A. “Gross incompetence” or “gross negligence” means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients.

B. “Unprofessional conduct” means, but is not limited to because of enumeration:

(1) performing, or holding oneself out as able to perform, professional services beyond the scope of one’s license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the dental profession;

(2) failure to refer a patient, after emergency treatment, to his/her regular dentist and inform the latter of the conditions found and treated;

(3) failure to release to a patient copy of that patient’s records and x-rays within 15 business days regardless whether patient has an outstanding balance;

(4) failure to seek consultation whenever the welfare of the patient would be safeguarded or advanced by referral to individuals with special skills, knowledge, and experience, including:

(a) an owner dentist or supervisor causing an employee dentist to make a referral for dental treatment based on contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by referral to another practitioner, and failure to notify the patient of such contractual obligations for referrals;

(b) an owner dentist or supervisor causing an employee dentist to use a dental laboratory due to contractual obligations when, in the judgment of the treating dentist, the welfare of the patient would be safeguarded or advanced by the use of another dental laboratory.

(5) failure to advise the patient in simple understandable terms of the proposed treatment, the anticipated fee, the expectations of success, and any reasonable alternatives;

(6) failure of a dentist to comply [with the following advertising guidelines, no person shall:

~~(a) practice dentistry under the name of a corporation, company, association, limited liability company, or trade name without full and outward disclosure of his/her full name, which shall be the name used in his/her license or renewal certificate as issued by the board, or his/her commonly used name;~~

~~(b) practice dentistry without displaying his/her full name as it appears on the license issued by the board on the entrance of each dental office;~~

~~(c) fail to include in all advertising media for the practice (excluding building signage and promotional items), in a reasonably visible and legible manner, the dentist’s names(s), address and telephone number or direct reference where the name of the dentist(s) can be found as defined in Section 16.5.16.7 NMAC;~~

~~(d) advertise an offer for goods or services that does not meet the following requirements:~~

~~(i) for a printed advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), shall be no smaller than twenty percent of the largest font contained in the advertisement;~~

~~(ii) for an audio advertisement, all applicable conditions and restrictions of an offer, as well as the direct reference to the licensee(s), must be stated at the same volume and speed as the offer language;~~

~~(iii) advertise a practice in a false, fraudulent or misleading manner; if the name of the practice or office contains one of the American dental association recognized specialties and only a general dentists performs that service, the advertisement, signage, or broadcast media must say “services provided by a general dentist”, so as not to imply that a specialist is performing such procedures; and~~

~~(iv) advertise as a specialist unless the dentist is licensed by the board to practice the specialty or unless the dentist has earned a post graduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by commission on dental~~

~~accreditation (CODA) in one of the specialty areas of dentistry recognized by the American dental association.] with advertising and specialty recognition rules as defined in 16.5.1.29 NMAC.~~

- (7) failure to use appropriate infection control techniques and sterilization procedures;
- (8) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another dentist licensed or applying for licensure by the board;
- (9) accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a dental partnership, association, HMO or DMO, or similar association shall not be construed as fee-splitting, nor shall compensating dental hygienists or dental assistants on a basis of percentage of the fee received for the overall service rendered be deemed accepting a commission;
- (10) prescribe, dispense or administer drugs outside the scope of dental practice;
- (11) charge a patient a fee which is not commensurate with the skill and nature of services rendered, such as to be unconscionable;
- (12) sexual misconduct;
- (13) breach of ethical standards, an inquiry into which the board will begin by reference to the most current code of ethics of the American dental association;
- (14) the use of a false, fraudulent or deceptive statement in any document connected with the practice of dentistry;
- (15) employing abusive billing practices;
- (16) fraud, deceit or misrepresentation in any application;
- (17) violation of any order of the board, including any probation order;
- (18) injudicious prescribing, administration, or dispensing of any drug or medicine;
- (19) failure to report to the board any adverse action taken by any licensing board, peer review body, malpractice insurance carrier or any other entity as defined by the board or committee; the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental or professional association or society, in lieu of, and while under disciplinary investigation by any authority;
- (20) negligent supervision of a dental hygienist or dental assistant;
- (21) cheating on an examination for licensure; or
- (22) failure to comply with the terms of a signed collaborative practice agreement;
- (23) failure of a dentist of record, or consulting dentist, to communicate with a collaborative practice dental hygienist in an effective professional manner in regard to a shared patient's care as defined in Section 16.5.17 NMAC;
- (24) assisting a health professional, or being assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;
- (25) failure to make available to current patients of record a reasonable method of contacting the treating dentist or on-call service for dental emergencies; dental practices may refer patients to an alternate urgent care or emergency facility if no other option is available at the time, or if the contacted dentist deems it necessary for the patient's well-being;
- (26) conviction of either a misdemeanor or a felony punishable by incarceration;
- (27) aiding and abetting a dental assistant, expanded function dental auxiliary or community dental health coordinator who is not properly certified;
- (28) patient abandonment;
- (29) habitually addicted as defined in Section 61.5A-21 4 & 6 or Subsection C and D of Section 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, Section (30-31-1 NMSA 1978) or habitual or excessive use or abuse of alcohol;
- (30) failure of the licensee to furnish the board within 10 business days of request, its investigators or representatives with information requested by the board;
- (31) failure to appear before the board when requested by the board in any disciplinary proceeding;
- (32) failure to be in compliance with the Parental Responsibility Act Section 40-5A-3 NMSA 1978 seq.;
- (33) fraudulent record keeping;
- (34) failure to properly install amalgam separator as defined in Section 16.5.58 NMAC;
- (35) failure to properly operate and maintain amalgam separator as defined in 16.5.58 NMAC;
- and
- (36) failure to properly dispose of amalgam waste as defined in Section 16.5.58 NMAC.

[9/13/1969, 10/21/1970, 4/11/1981, 3/9/1989, 3/11/1989, 10/16/1992, 5/31/1995, 6/4/1996, 2/14/2000; 16.5.16.10 NMAC - Rn & A, 16 NMAC 5.16.10, 12/14/2000; A, 07/16/2007; A, 07/19/2010; A, 01/09/2012; A, 06/14/2012; A, 07/17/2013; A, 01/04/2014; A, 01/15/2015; A, 3/25/2016; A, 3/15/2017, A, 3/18/2018; A, xx/xx/2019]

16.5.16.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue investigative subpoenas and to employ experts with regard to pending investigations.
[5/31/1995; 16.5.16.11 NMAC - Rn, 16 NMAC 5.16.11, 12/14/2000; A, 07/16/2007; A, 07/17/2008]

16.5.16.12 REVOCATION OF LICENSE FOR DISCIPLINARY ACTIONS: A licensee whose license is revoked for disciplinary actions shall:

- A.** provide proof of written notification of practice closure to all patients currently under active treatment;
- B.** notification to patients should include where and how dental treatment records may be obtained and contact information for dentists available; and
- C.** provide to the board the location where all active dental treatment records will be maintained for a minimum of six years; active treatment records are records of patients treated in the two years previous to the date of closure; the notification to the board shall include the name, address, and telephone number of the person who is serving as the custodian of the records.

[16.5.16.12 NMAC - N, 1/9/2012]

16.5.16.13 REINSTATEMENT OF REVOKED LICENSE FOR DISCIPLINARY ACTIONS: A licensee whose license has been revoked for disciplinary actions may request reinstatement of the license after the terms of the settlement agreement have been met. Upon approval from the board and receipt of the request for reinstatement, board staff shall send an application for reinstatement of license.

A. Along with the completed application, the request for reinstatement shall include the reinstatement fee, the triennial renewal fee, impairment fee, and proof of the following continuing education courses:

- (1)** 20 hours of approved continuing education courses related to the clinical practice of dentistry, per year of revocation; at least 20 of these hours shall be in the 12 months previous to the request;
- (2)** proof of current basic life support (BLS) or cardiac pulmonary resuscitation (CPR) certification accepted by the American heart association, the American red cross, or the American safety and health institute (ASHI); cannot be a self-study course;
- (3)** proof of infection control course within the past 12 months; and
- (4)** 60 hours of continuing education required for the last triennial renewal cycle of active licensure; these hours may include continuing education identified at the time of revocation as well as any continuing education taken during the revoked period.

B. Applicant shall authorize the following agencies to send verification of status directly to the board office:

- (1)** drug enforcement administration (DEA); and
- (2)** American association of dental examiners clearinghouse.

C. The board will obtain electronic verification of applicant status from the national practitioners' data bank.

D. Verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

E. The board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of revocation and information on any existing impairment. If the board finds the application in order and is satisfied the applicant has fulfilled all required continuing education, the license may be reinstated and the previous license number reassigned. The reinstated license will expire as defined in Section 16.5.11 NMAC.

F. A dentist with a license in revocation status may not practice dentistry in New Mexico until proof of active licensure is received from the board office.

G. If reinstatement of a revoked license is not requested within three years after settlement agreement has been met, application for a new license shall be made by examination or credentials in order to practice dentistry in New Mexico.

[16.5.16.13 NMAC - N, 1/9/2012]

16.5.16.14 REINSTATEMENT OF SUSPENDED LICENSE FOR DISCIPLINARY ACTIONS: For licenses suspended for greater than six months; a licensee whose license has been suspended for disciplinary actions in addition to meeting the terms of the settlement agreement shall also meet the following conditions before reinstatement of licensure:

A. verification of licensure in all states where the applicant holds or has held a license to practice dentistry, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form;

B. the board at the next regularly scheduled meeting shall review the request for reinstatement, including a statement of the applicant's activities during the period of suspension and information on any existing impairment; the reinstated license will expire as defined in Section 16.5.11 NMAC; and

C. a dentist with a license in suspended status may not practice dentistry in New Mexico until proof of active licensure is approved by the board and issued by the board office.

[16.5.16.14 NMAC - N, 1/9/2012]

HISTORY OF 16.5.16 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

BDE 69-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 08/14/1969;

BDE 70-1, Rules and Regulations of the New Mexico Board of Dental Examiners, filed 09/21/1970;

BDE 73-1, Rules and Regulations of the New Mexico Board of The New Mexico Board of Dentistry, filed 02/12/1973;

Article XIII, Disciplinary Proceedings, filed 03/11/1981;

Article XIII, Disciplinary Proceedings, filed 01/12/1982;

Article XIII, Disciplinary Proceedings, filed 03/30/1982;

BOD Rule 11, Disciplinary Proceedings, filed 02/09/1989;

BODHC Rule DS 9-95, Dentists, Disciplinary Proceedings, filed 05/05/1995.

History of Repealed Material:

Article XIV, Repeals BDE 73-1, Rules and Regulations of the New Mexico Board of Dentistry, filed 2/12/1973.

Other History:

16 NMAC 5.16, Dentists, Disciplinary Proceedings, filed 09/17/1996;

16 NMAC 5.16, Dentists, Disciplinary Proceedings, filed 09/17/1996- renumbered, reformatted and amended to

16.5.16 NMAC, Dentists, Disciplinary Proceedings, effective 12/14/2000.