TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 66 DENTAL THERAPISTS, DISCIPLINARY PROCEEDINGS, LICENSE REVOCATION OR SUSPENSION FOR DISCIPLINARY ACTIONS

16.5.66.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.66.1 NMAC - N, xx/xx/2020]

16.5.66.2 SCOPE: The provisions of 16.5.66 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 licensed dental therapist.
[16.5.66.2 NMAC - N, xx/xx/2020]

16.5.66.3 STATUTORY AUTHORITY: 16.5.66 NMAC is promulgated pursuant to the Dental Health Care Act, Section 61-5A-21, NMSA 1978.
[16.5.66.3 NMAC - N, xx/xx/2020]

16.5.66.4 DURATION: Permanent.
[16.5.66.4 NMAC - N, xx/xx/2020]

16.5.66.5 EFFECTIVE DATE: xx/xx/2020, unless a later date is cited at the end of a section.
[16.5.66.5 NMAC - N, xx/xx/2020]

16.5.66.6 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.
[16.5.66.6 NMAC - N, xx/xx/2020]

16.5.66.7 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. "Drug abuser" means a person who takes a drug or drugs for other than legitimate medical purposes.
D. "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 and damage.
E. "Patient abandonment" means withdrawing a patient from treatment without giving reasonable notice or providing a competent replacement provider.
F. "Physical dependence" means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cassation, rapid dos reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.
G. "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.
[16.5.66.7 NMAC - N, xx/xx/2020]

16.5.66.8 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 to the provisions of the Uniform Licensing Act, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act.
[16.5.66.8 NMAC - N, xx/xx/2020]

16.5.66.9 ACTIONS:

A. The board may assess fines, deny, revoke, suspend, stipulate, or otherwise limit a license if it is determined the licensee is guilty of violating any of the provisions outlined in 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.

C. The board shall take into consideration the dual role of dental therapists as professionals and employees when taking disciplinary action against a licensee.

[16.5.66.10 NMAC - N, xx/xx/2020]

16.5.66.10 GUIDELINES: The board shall define 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 patient treatment.

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 therapy 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;

(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 to inform dentist or patient of periodontal assessment;

(7) failure to provide patient education of oral health care regimens which assist in maintaining good oral health throughout life;

(8) sexual misconduct;

(9) failure to use appropriate infection control techniques and sterilization procedures;

(10) breach of ethical standards, an inquiry into which the board will begin by reference to the most recent version of the American dental association's code of ethics;

(11) fraud, deceit or misrepresentation in any application;

(12) violation of any order of the board, and ratified by the board, including any probation order;

(13) injudicious administration of any drug or medicine;

(14) 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, the surrender of a license to practice in another state, surrender of membership on any medical staff or in any dental therapy or professional association or society, in lieu of, and while under disciplinary investigation by any authority;

(15) deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of a dentist or dental hygienist licensed or applying for licensure by the board or board; and

(16) cheating on an examination for licensure;

(17) failure of a dental therapist to comply with advertising guidelines as outlined in in 16.5.1 NMAC;

(18) assisting a health professional, or be assisted by a health professional that is not licensed to practice by a New Mexico board, agency or commission;

(19) failure to make available to current patients of record a reasonable method of contacting the treating dental therapist 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 supervising dentist deems it necessary for the patient's well-being;

(20) conviction of either a misdemeanor or a felony punishable by incarceration;

(21) aiding and abetting a dental auxiliary who is not properly certified;
(22) patient abandonment;
(23) habitually addicted as defined in Subsection 4 &6 of Section 61-5A-21 NMSA 1978 and Subsections C and D of 61.5B-3 NMSA 1978 habitual or excessive use or abuse of drugs, as defined in the Controlled Substances Act, 30-31-1 NMSA 1978 or habitual or excessive use or abuse of alcohol;
(24) failure of the licensee to furnish the board within 10 business days of request; its investigators or representatives with information requested by the board, and ratified by the board;
(25) failure to appear before the board when requested by the board, and ratified by the board, in any disciplinary proceeding; and
(26) failure of compliance with the Parental Responsibility Act Section 40-5A-3 seq., NMSA 1978.
[16.5.66.10 NMAC - N, xx/xx/2020]

16.5.66.11 INVESTIGATIVE SUBPOENAS: The complaint committee of the board is authorized to issue action investigative subpoenas and to employ experts with regard to pending investigations.
[16.5.66.11 NMAC - N, xx/xx/2020]

16.5.66.12 REVOCATION OF DENTAL THERAPISTS LICENSE FOR DISCIPLINARY ACTIONS: A dental therapist 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.
[16.5.66.12 NMAC - N, xx/xx/2020]

16.5.66.13 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 ratified by 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 dental hygiene and dental therapy, 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 American association of dental examiners clearinghouse to send verification of status directly to the board office.
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 dental therapy, or other health care profession. Verification shall be sent directly to the board office from the other state(s) board, shall include a 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 16.5.63 NMAC.

F. A dental therapist with a license in revocation status may not practice dental therapy 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 dental therapy in New Mexico.

[16.5.66.13 NMAC - N, xx/xx/2020]

16.5.66.14 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 dental therapy, or other health care profession; verification shall be sent directly to the board office from the other state(s) board, shall include a 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 16.5.63 NMAC; and

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

[16.5.66.14 NMAC - N, xx/xx/2020]

HISTORY OF 16.5.66 NMAC: [RESERVED]