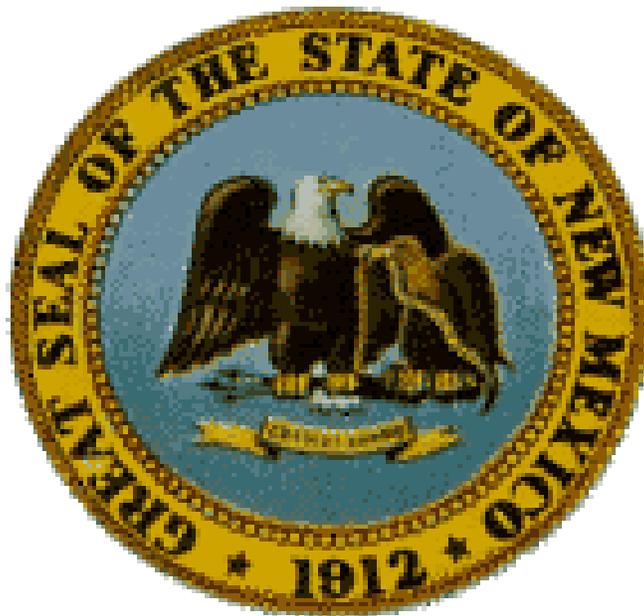


# STATE OF NEW MEXICO

## RESPIRATORY CARE ADVISORY BOARD



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Effective January 16, 2009



# Statutory Chapter in New Mexico Statutes Annotated 1978

## CHAPTER 61 Professional and Occupational Licenses

### ARTICLE 12B Respiratory 61-12B-1 through 61-12B-17

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Also available on the board website:

[www.rld.state.nm.us/boards/Respiratory\\_Care.aspx](http://www.rld.state.nm.us/boards/Respiratory_Care.aspx)



**61-12B-1. Short title. (Repealed effective July 1, 2022.)**

[Chapter 61, Article 12B](#) NMSA 1978 may be cited as the "Respiratory Care Act".

**History:** Laws 1984, ch. 103, § 1; 2001, ch. 188, § 2.

**61-12B-2. Purpose of act. (Repealed effective July 1, 2022.)**

In the interest of public health, safety and welfare and to protect the public from the unprofessional, improper, incompetent and unlawful practice of respiratory care, it is necessary to provide laws and rules to govern the practice of respiratory care. The primary purpose of the Respiratory Care Act is to safeguard life and health and to promote the public welfare by licensing and regulating the practice of respiratory care in the state.

**History:** Laws 1984, ch. 103, § 2; 2001, ch. 188, § 3.

**61-12B-3. Definitions. (Repealed effective July 1, 2022.)**

As used in the Respiratory Care Act:

- A. "board" means the advisory board of respiratory care practitioners;
- B. "department" means the regulation and licensing department or that division of the department designated to administer the provisions of the Respiratory Care Act;
- C. "respiratory care" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation and care of patients with deficiencies and abnormalities that affect the cardiopulmonary system and associated aspects of other system functions, and the terms "respiratory therapy" and "inhalation therapy" where such terms mean respiratory care;
- D. "practice of respiratory care" includes:
  - (1) direct and indirect cardiopulmonary care services that are of comfort, safe, aseptic, preventative and restorative to the patient;
  - (2) cardiopulmonary care services, including the administration of pharmacological, diagnostic and therapeutic agents related to cardiopulmonary care necessary to implement treatment, disease prevention, cardiopulmonary rehabilitation or a diagnostic regimen, including paramedical therapy and baromedical therapy;
  - (3) specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of cardiopulmonary abnormalities, including pulmonary function testing, hemodynamic and physiologic monitoring of cardiac function and collection of arterial and venous blood for analysis;
  - (4) observation, assessment and monitoring of signs and symptoms, general behavior, general physical response to cardiopulmonary care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics;
  - (5) implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a physician authorized to practice medicine or other person authorized by law to prescribe, or the initiation of emergency procedures or as otherwise permitted in the Respiratory Care Act;
  - (6) establishing and maintaining the natural airways, insertion and maintenance of artificial airways, bronchopulmonary hygiene and cardiopulmonary resuscitation, along with cardiac and ventilatory life support assessment and evaluation; and
  - (7) the practice performed in a clinic, hospital, skilled nursing facility, private dwelling or other place deemed appropriate or necessary by the department;

E. "expanded practice" means the practice of respiratory care by a respiratory care practitioner who has been prepared through a formal training program to function beyond the scope of practice of respiratory care as defined by rule of the department;

F. "respiratory care practitioner" means a person who is licensed to practice respiratory care in New Mexico;

G. "respiratory care protocols" means a predetermined, written medical care plan, which can include standing orders;

H. "respiratory therapy training program" means an education course of study as defined by rule of the department; and

I. "superintendent" means the superintendent of regulation and licensing.

**History:** Laws 1984, ch. 103, § 3; 1987, ch. 329, § 1; 1987, ch. 346, § 1; 1993, ch. 150, § 1; 2001, ch. 188, § 4.

#### **61-12B-4. License required; exceptions. (Repealed effective July 1, 2022.)**

A. No person shall practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed pursuant to the provisions of the Respiratory Care Act, except as otherwise provided by that act.

B. A respiratory care practitioner may transcribe and implement the written or verbal orders of a physician or other person authorized by law to prescribe pertaining to the practice of respiratory care and respiratory care protocols.

C. Nothing in the Respiratory Care Act is intended to limit, preclude or otherwise interfere with:

(1) the practices of other persons and health providers licensed by appropriate agencies of New Mexico;

(2) self-care by a patient;

(3) gratuitous care by a friend or family member who does not represent or hold himself out to be a respiratory care practitioner; or

(4) respiratory care services rendered in case of an emergency.

D. An individual who has demonstrated competency in one or more areas covered by the Respiratory Care Act may perform those functions that he is qualified by examination to perform; provided that the examining body or testing entity is recognized nationally for expertise in evaluating the competency of persons performing those functions covered by that act or department rules. The department shall establish by rule those certifying agencies and testing entities that are acceptable to the department.

E. The Respiratory Care Act does not prohibit qualified clinical laboratory personnel who work in facilities licensed pursuant to the provisions of the federal Clinical Laboratories Improvement Act of 1967, as amended, or accredited by the college of American pathologists or the joint commission on accreditation of healthcare organizations from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified.

**History:** Laws 1984, ch. 103, § 4; 1987, ch. 55, § 1; 1993, ch. 150, § 2; 2001, ch. 188, § 5.

#### **61-12B-5. Advisory board created. (Repealed effective July 1, 2022.)**

A. The superintendent shall appoint an "advisory board of respiratory care practitioners" consisting of five members as follows:

(1) one physician licensed in New Mexico who is knowledgeable in respiratory care;

(2) two respiratory care practitioners who are residents of New Mexico, licensed by the department and in good standing. At least one of the respiratory care practitioners shall have been actively engaged in the practice of respiratory care for at least five years immediately preceding appointment or reappointment; and

(3) two public members who are residents of New Mexico. A public member shall not have been licensed as a respiratory care practitioner nor shall he have any financial interest, direct or indirect, in the occupation to be regulated.

B. The board shall be administratively attached to the department.

C. A member shall serve no more than two consecutive three-year terms.

D. A member of the board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [[10-8-1](#) through [10-8-8](#) NMSA 1978] and shall receive no other compensation, perquisite or allowance in connection with the discharge of his duties as a board member.

E. A member failing to attend three consecutive regular and properly noticed meetings of the board without a reasonable excuse shall be automatically removed from the board.

F. In the event of a vacancy, the board shall immediately notify the superintendent of the vacancy. Within ninety days of receiving notice of a vacancy, the superintendent shall appoint a qualified person to fill the remainder of the unexpired term.

G. A majority of the board members currently serving constitutes a quorum of the board.

H. The board shall meet at least twice a year and at such other times as it deems necessary.

I. The board shall annually elect officers as deemed necessary to administer its duties.

**History:** Laws 1984, ch. 103, § 5; 1987, ch. 329, § 2; 1989, ch. 109, § 1; 1996, ch. 51, § 9; 2001, ch. 188, § 6; 2003, ch. 408, § 16.

#### **61-12B-6. Department; duties and powers. (Repealed effective July 1, 2022.)**

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 as may be necessary 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.

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 [[61-1-1](#) through [61-1-31](#) NMSA 1978];

(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 pursuant to that act;

- (5) promulgate rules or 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.

#### **61-12B-7. Licensing by training and examination. (Repealed effective July 1, 2022.)**

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;
- C. is of good moral character; and
- D. 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.

#### **61-12B-8. Licensing without training and examination. (Repealed effective July 1, 2022.)**

The department shall waive the education and examination requirements for an applicant who presents proof that 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.

**History:** Laws 1984, ch. 103, § 8; 1993, ch. 150, § 5; 2001, ch. 188, § 9.

#### **61-12B-9. Other licensing provisions. (Repealed effective July 1, 2022.)**

- A. The department, in consultation with the board, shall adopt rules for mandatory continuing education requirements that shall be completed as a condition for renewal of a license issued pursuant to the provisions of the Respiratory Care Act.
- B. The department, in consultation with the board, may adopt rules for issuance of temporary permits to students and graduates of approved training programs to practice limited respiratory care under the direct supervision of a licensed respiratory care practitioner or physician. Rules shall be adopted defining the terms "student" and "direct supervision".
- C. A license issued by the department shall describe the licensed person as a "respiratory care practitioner licensed by the New Mexico regulation and licensing department".
- D. Unless licensed as a respiratory care practitioner pursuant to the provisions of the Respiratory Care Act, no person shall use the title "respiratory care practitioner", the abbreviation "R.C.P." or any other title or abbreviation to indicate that the person is a licensed respiratory care practitioner.

E. A copy of a valid license or temporary permit issued pursuant to the Respiratory Care Act shall be kept on file at the respiratory care practitioner's or temporary permittee's place of employment.

F. A respiratory care practitioner license shall expire on September 30, annually or biennially, as provided by rules of the department.

**History:** Laws 1984, ch. 103, § 9; 1987, ch. 329, § 3; 1993, ch. 150, § 6; 1996, ch. 51, § 10; 2001, ch. 188, § 10.

#### **61-12B-10. Licensure; date required. (Repealed effective July 1, 2022.)**

The provisions of the Criminal Offender Employment Act [[28-2-1](#) to [28-2-6](#) NMSA 1978] shall govern consideration of criminal records required or permitted by the Respiratory Care Act.

**History:** Laws 1984, ch. 103, § 10; 2001, ch. 188, § 11.

#### **61-12B-11. Fees. (Repealed effective July 1, 2022.)**

A. 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.

#### **61-12B-12. Denial, suspension, revocation and reinstatement of licenses. (Repealed effective July 1, 2022.)**

A. The superintendent in consultation with the board and in accordance with the rules set forth by the department and the procedures set forth in the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978] may take disciplinary action against a license or temporary permit held or applied for pursuant to the Respiratory Care Act for the following causes:

- (1) fraud or deceit in the procurement of or attempt to procure a license or temporary permit;
- (2) imposition of any disciplinary action for an act that would be grounds for disciplinary action by the department pursuant to the Respiratory Care Act or as set forth by rules of the department upon a person by an agency of another jurisdiction that regulates respiratory care;
- (3) conviction of a crime that substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;
- (4) impersonating or acting as a proxy for an applicant in an examination given pursuant to provisions of the Respiratory Care Act;
- (5) habitual or excessive use of intoxicants or drugs;
- (6) gross negligence as defined by rules of the department in the practice of respiratory care;
- (7) violating a provision of the Respiratory Care Act or a rule duly adopted pursuant to that act or aiding or abetting a person to violate a provision of or a rule adopted pursuant to that act;
- (8) engaging in unprofessional conduct as defined by rules set forth by the department;
- (9) committing a fraudulent, dishonest or corrupt act that is substantially related to the qualifications, functions or duties of a respiratory care practitioner;
- (10) practicing respiratory care without a valid license or temporary permit;

- (11) aiding or abetting the practice of respiratory care by a person who is not licensed or who has not been issued a temporary permit by the department;
  - (12) conviction of a felony. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction;
  - (13) violating a provision of the Controlled Substances Act [Chapter [30](#), Article [31](#) NMSA 1978];
  - (14) failing to furnish the department or its investigators or representatives with information requested by the department in the course of an official investigation;
  - (15) practicing beyond the scope of respiratory care as defined in the Respiratory Care Act or as set forth by rules of the department; or
  - (16) surrendering a license, certificate or permit to practice respiratory care in another jurisdiction while an investigation or disciplinary proceeding is pending for an act or conduct that would constitute grounds for disciplinary action under the Respiratory Care Act.
- B. The department, in consultation with the board, may impose conditions on and promulgate rules relating to the reapplication or reinstatement of applicants, licensees or temporary permittees who have been subject to disciplinary action by the department.

**History:** Laws 1984, ch. 103, § 12; 1987, ch. 329, § 5; 1993, ch. 150, § 7; 2001, ch. 188, § 13.

**61-12B-13. Respiratory care fund created; disposition; method of payment. (Repealed effective July 1, 2022.)**

- A. There is created in the state treasury the "respiratory care fund".
- B. All funds received by the superintendent and money collected under the Respiratory Care Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the respiratory care fund.
- C. All amounts paid into the respiratory care fund shall be expended only pursuant to appropriation by the legislature and in accordance with the budget approved by the department of finance and administration and shall be used only for the purposes of implementing the provisions of the Respiratory Care Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

**History:** Laws 1984, ch. 103, § 13; 1987, ch. 329, § 6; 1989, ch. 109, § 2; 2001, ch. 188, § 14.

**61-12B-14. Repealed.**

**61-12B-15. Enforcement. (Repealed effective July 1, 2022.)**

- A. A person who violates a provision of the Respiratory Care Act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of [Section 31-19-1](#) NMSA 1978.
- B. The department may bring civil action in any district court to enforce any of the provisions of the Respiratory Care Act.

**History:** Laws 1984, ch. 103, § 15; 2001, ch. 188, § 15.

**61-12B-16. Termination of board; delayed repeal. (Repealed effective July 1, 2022.)**

The advisory board of respiratory care practitioners is terminated on July 1, 2021 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 the Respiratory Care Act until July 1, 2022. Effective July 1, 2022, 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.

**61-12B-17. Severability. (Repealed effective July 1, 2022.)**

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.



# NEW MEXICO ADMINISTRATIVE CODE

## Title 16 OCUPATIONAL AND PROFESSIONAL LICENSING

### Chapter 23 RESPIRATORY CARE PRACTITIONERS

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Pg. 18-19	16.28.4 NMAC	APPLICATION PROCEDURES FOR PRACTITIONER LICENSE
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Pg. 20-23	16.28.6 NMAC	TEMPORARY PERMITS
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N/A	<b>16.28.10 NMAC</b>	<b>RESERVED</b>
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Pg. 32-35	16.28.12 NMAC	CONTINUING EDUCATION
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Pg. 42-43	16.28.15 NMAC	PARENTAL RESPONSIBILITY ACT COMPLIANCE
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Pg. 52-55	16.28.18 NMAC	DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER

**Also available on the board website:**

**[www.rld.state.nm.us/boards/Respiratory\\_Care.aspx](http://www.rld.state.nm.us/boards/Respiratory_Care.aspx)**



**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 1              GENERAL PROVISIONS**

**16.23.1.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.1.1 NMAC - Rn, 16 NMAC 23.1.1, 7-10-2000; A, 7-10-2000]

**16.23.1.2            SCOPE:** The provisions of Part 1 of Chapter 23 apply to all Parts of Chapter 23 and provide relevant information to anyone affected or interested in the licensing and regulation of the practice of respiratory care as set forth in Chapter 23.  
[2-21-85; 11-29-97; 16.23.1.2 NMAC - Rn, 16 NMAC 23.1.2, 7-10-2000]

**16.23.1.3            STATUTORY AUTHORITY:** Part 1 of Chapter 23 is promulgated pursuant to the Respiratory Care Act Section 61-12B-1 through Section 61-12B-16, NMSA 1978 (1996 Repl. Pam.).  
[2-21-85; 11-29-97; 16.23.1.3 NMAC - Rn, 16 NMAC 23.1.3, 7-10-2000; A, 7-10-2000]

**16.23.1.4            DURATION:** Permanent  
[11-29-97; 16.23.1.4 NMAC - Rn, 16 NMAC 23.1.4, 7-10-2000]

**16.23.1.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.1.5 NMAC - Rn, 16 NMAC 23.1.5, 7-10-2000; A, 7-10-2000]

**16.23.1.6            OBJECTIVE:** The objective of Part 1 of Chapter 23 is to set forth the provisions which apply to all of Title 16, Chapter 23 of the New Mexico Administrative Code and to all persons and entities affected by Chapter 23 (16 NMAC 23).  
[2-21-85; 6-10-87; 1-9-88; 11-29-97; 16.23.1.6 NMAC - Rn, 16 NMAC 23.1.6, 7-10-2000]

**16.23.1.7            DEFINITIONS:**

**A.            "16 NMAC 23"** means the Respiratory Care Advisory Board's Rules and Regulations as published in Title 16 of the New Mexico Administrative Code.

**B.            "Applicant"** means a person who has applied to the Department for a temporary permit or a respiratory care practitioner's license.

**C.            "Approval"** means the review and acceptance of a specific activity.

**D.            "Approval Body"** means the agency, institution, or organization with the authorization to award continuing education credit.

**E.            "Approved Training and Education Program"** means a program supported by the Committee on Accreditation for Respiratory Care (CoARC), or its predecessor the Joint Review Committee for Respiratory Therapy Education (JRCRTE), or accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP), or its successor approval body.

**F.            "Audit"** means an examination and verification of continuing education documents by the Department.

**G.            "Board"** means the Respiratory Care Advisory Board.

**H.            "CRTT"** means a certified respiratory therapy technician. This is the entry level of respiratory care.

**I.            "Clock Hour"** means a unit of measurement to describe a continuing education offering which equals a 60-minute clock hour.

**J.            "Continuing Education" or "CE"** means a learning experience intended to enhance professional development.

**K.            "Department"** means the New Mexico Regulation and Licensing Department.

**L.            "Expired License"** means a license that has not been renewed on or before the end of the license renewal period.

**M.            "CRT"** means certified respiratory therapist. This is the entry level of respiratory care.

**N.            "Initial Licensure"** means the process of achieving the legal privilege to practice within a professional category upon the completion of educational and other licensing requirements.

- O.** “**Inspection of Public Records Act**” refers to Section 14-2-1 through Section 14-2-10, NMSA 1978 (1993 Repl. Pamp.).
- P.** “**Medical Board**” as it applies to respiratory care, means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.
- Q.** “**Lapsed License**” means an expired license which has not been reactivated within the time limitations set forth in Section 11 of Part 11 in 16 NMAC 23.
- R.** “**License**” means a document identifying the legal privilege and authorization to practice within a professional category.
- S.** “**License Reactivation**” means the process of making current a license that has expired as a result of failure to comply with the necessary renewal requirements.
- T.** “**Must**” means required.
- U.** “**NBRC**” means the National Board for Respiratory Care, Inc.
- V.** “**National Licensing Exam**” means the national examination for respiratory care practitioners administered by the National Board for Respiratory Care resulting in obtaining CRTT, CRT, or RRT credentials.
- W.** “**New Mexico Administrative Code**” or “**NMAC**” means the organizing structure for rules filed by New Mexico State agencies. The NMAC is also the body of filed rules and the published versions thereof. The NMAC is structured by Title, Chapter, and Part.
- X.** “**Medical Direction**”, as it applies to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.
- Y.** “**Open Meetings Act**” refers to Section 10-15-1 through Section 10-15-4, NMSA 1978 (1993 Repl. Pamp.).
- Z.** “**Parental Responsibility Act**” or “**PRA**” refers to Section 40-5A-1 through Section 40-5A-13, NMSA 1978 (1995 Supp.) herein referred to as the Parental Responsibility Act or PRA.
- AA.** “**Public Records Act**” refers to Section 14-3-1 through Section 14-3-25, NMSA 1978 (1995 Repl. Pamp.).
- BB.** “**Facility**” means the employer of a licensed respiratory care practitioner or temporary permit holder.
- CC.** “**RRT**” means a registered respiratory therapist. This is the advanced level of respiratory care.
- DD.** “**Reinstatement**” means the process whereby a license that has been subject to revocation or suspension is returned to former status.
- EE.** “**Respiratory Care Act**” refers to Section 61-12B-1 through Section 61-12B-16, NMSA 1978 (1996 Repl. Pamp.).
- FF.** “**Respiratory Care Practitioner**” or “**RCP**” means a person who is licensed to practice respiratory care in New Mexico.
- GG.** “**Respiratory Therapy Training Program**” means a program approved by the Commission on Accreditation of Allied Health Education Programs (CAHEP), or its successor approval body.
- HH.** [RESERVED]
- II.** “**Shall**” means a mandatory requirement.
- JJ.** “**State Rules Act**” refers to Section 14-4-1 through Section 14-4-9, NMSA 1978 (1995 Repl. Pamp.).
- KK.** “**Superintendent**” means the Superintendent of the Regulation and Licensing Department.
- LL.** “**Uniform Licensing Act**” or “**ULA**” refers to Section 61-1-1 through Section 61-1-33, NMSA 1978 (1993 Repl. Pamp.).  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 7-30-99; 16.23.1.7 NMAC - Rn, 16 NMAC 23.1.7, 7-10-2000; A, 7-10-2000; A, 07-10-03; A, 1-16-09]

**16.23.1.8 SEVERABILITY:** Should any part or application of 16 NMAC 23 be declared invalid, the remainder shall remain in full force and effect.  
[11-29-97; 16.23.1.8 NMAC - Rn, 16 NMAC 23.1.8, 7-10-2000]

**16.23.1.9 EXCEPTIONS:** 16 NMAC 23 does not apply to the following:

- A.** Other persons and health care providers licensed by appropriate agencies of New Mexico;
- B.** Persons providing self-care to themselves;

- C. Persons who do not represent themselves or hold themselves out to be a respiratory care practitioner who are providing gratuitous care to a friend or family member;
  - D. Persons who provide respiratory care services in a case of emergency;
  - E. 16 NMAC 23 does not prohibit the following from performing recognized functions and duties of medical laboratory personnel for which they are appropriately trained and certified:
    - (1) Qualified clinical laboratory personnel working in facilities licensed by the federal Clinical Laboratories Improvement Act of 1967, as amended, or any subsequent act;
    - (2) Persons accredited by the College of American Pathologists; or
    - (3) Qualified clinical laboratory personnel who work in facilities accredited by the Joint Commission on Accreditation of Health Care Organizations.
- [2-21-85; 6-10-87; 1-9-88; 11-29-97; 16.23.1.9 NMAC - Rn, 16 NMAC 23.1.9, 7-10-2000]

**16.23.1.10 INSPECTION OF PUBLIC RECORDS:** The Board operates in compliance with the Inspection of Public Records Act, Section 14-2-1 through Section 14-2-16, NMSA 1978. The Board administrator is the custodian of the Board's records.  
[11-29-97; 16.23.1.10 NMAC - Rn, 16 NMAC 23.1.10, 7-10-2000; A, 7-10-2000]

**16.23.1.11 TELEPHONE CONFERENCES:** When it is difficult or impossible for a Board member to attend a Board meeting in person, the member may participate by means of a conference telephone or similar communications equipment as authorized by the Open Meetings Act, Section 1-15-1.C, NMSA 1978 (1993 Repl. Pamp.)

- A. Participation by such means shall constitute presence in person at the meeting.
  - B. Each member participating by conference telephone must be identified when speaking.
  - C. All participants must be able to hear each other at the same time.
  - D. Members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.
- [11-29-97; 16.23.1.11 NMAC - Rn, 16 NMAC 23.1.11, 7-10-2000; A, 7-10-2000]

**HISTORY OF 16.23.1 NMAC:**

**Pre-NMAC History:** The material in Part 1 was derived from regulations previously filed with State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act, filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-1, "Definitions," filed 08-20-91 and Rule 1, "Definitions," filed 03-22-95.

**History of Repealed Material:** [RESERVED]

**Other History:** 16 NMAC 23.1, "General Provisions", was renumbered to 16.23.1 NMAC, filed on 6-6-2000.



**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 2             FEES**

**16.23.2.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.2.1 NMAC - Rn, 16 NMAC 23.2.1, 01-30-2003; A, 07-10-03]

**16.23.2.2            SCOPE:** The provisions in Part 2 of Chapter 23 apply to all license applicants; and to active, expired, and lapsed licensees; to anyone wishing to purchase licensee lists or labels; and to anyone who requests written verification of licensure from the Board.  
[11-29-97; 16.23.2.2 NMAC - Rn, 16 NMAC 23.2.2, 01-30-2003]

**16.23.2.3            STATUTORY AUTHORITY:** Part 2 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-11 NMSA 1978.  
[11-29-97; 16.23.2.3 NMAC - Rn, 16 NMAC 23.2.3, 01-30-2003]

**16.23.2.4            DURATION:** Permanent.  
[11-29-97; 16.23.2.4 NMAC - Rn, 16 NMAC 23.2.4, 01-30-2003]

**16.23.2.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.2.5 NMAC - Rn, 16 NMAC 23.2.5, 01-30-2003; A, 07-10-03]

**16.23.2.6            OBJECTIVE:** The objective of Part 2 of Chapter 23 is to establish fees for licenses; temporary permits; renewal of temporary permits and licenses; and other related administrative processes.  
[11-29-97; 16.23.2.6 NMAC - Rn, 16 NMAC 23.2.6, 01-30-2003]

**16.23.2.7            DEFINITIONS: [RESERVED]**  
[11-29-97; 16.23.2.7 NMAC - Rn, 16 NMAC 23.2.7, 01-30-2003]

**16.23.2.8            INITIAL PRACTITIONER LICENSE FEES:** \$150.00 fee.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.8 NMAC - Rn, 16 NMAC 23.2.8, 01-30-2003; A, 07-10-03; A, 1-16-09]

**16.23.2.9            PRACTITIONER LICENSE RENEWAL FEE:** \$150.00 fee.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.9 NMAC - Rn, 16 NMAC 23.2.9, 01-30-2003; A, 07-10-03; A, 1-16-09]

**16.23.2.10          PENALTY FEE FOR REACTIVATION OF EXPIRED LICENSES. \$100.00:** The penalty fee must accompany any license reactivation application postmarked after September 30th of the odd-numbered year but before August 1 of the succeeding odd-numbered year. The penalty fee is in addition to the renewal fee set forth in 16.23.2.9 of this rule.  
[4-21-95; 11-29-97; 7-30-99; 16.23.2.10 NMAC - Rn, 16 NMAC 23.2.10, 01-30-2003; A, 07-10-03]

**16.23.2.11          TEMPORARY STUDENT EXTERN OR GRADUATE PERMITS.**

- A.     Temporary Student Extern.
  - (1) \$50.00 initial issuance of a one-year renewable temporary permit.
  - (2) \$50.00 one year temporary permit - first renewal.
- B.     Graduate Permits.
  - (1) \$100.00 initial issuance of a one year non-renewable temporary permit.
  - (2) \$50.00 credential upgrade from graduate permit to CRT.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.2.11 NMAC - Rn, 16 NMAC 23.2.11, 01-30-2003; A, 01-16-09]

**16.23.2.12          WRITTEN VERIFICATION OF LICENSURE:** \$10.00 fee. Payment must be submitted with the request for a written verification of licensure.

[4-21-95; 11-29-97; 16.23.2.12 NMAC - Rn, 16 NMAC 23.2.12, 01-30-2003; A, 1-16-09]

**16.23.2.13 CREDENTIAL UPGRADE from CRT to RRT:** \$25.00 fee. Payment must accompany the required forms for upgrade of credentials as set forth in 16.23.3 NMAC, Section 11.

[4-21-95; 11-29-97; 16.23.2.13 NMAC - Rn, 16 NMAC 23.2.13, 01-30-2003; Repealed, 06-24-2004; 16.23.2.13 NMAC - N, 1-16-09]

**16.23.2.14 DUPLICATE WALL LICENSE:** \$25.00 fee. Payment must accompany the request for a duplicate wall license as set forth in 16.23.4.13 NMAC.

[11-29-97; 16.23.2.14 NMAC - Rn, 16 NMAC 23.2.14, 01-30-2003; A, 1-16-09]

**16.23.2.15 WALL LICENSE FOR NAME CHANGE:** \$20.00 fee. Payment must accompany the documents required for a name change as set forth in 16.23.4.14 NMAC.

[11-29-97; 16.23.2.15 NMAC - Rn, 16 NMAC 23.2.15, 01-30-2003; A, 1-16-09]

**16.23.2.16 DUPLICATE RENEWAL LICENSE:** \$15.00 fee. Payment must accompany the request for a duplicate renewal license as set forth in 16.23.4.13 NMAC.

[11-29-97; 16.23.2.16 NMAC - Rn, 16 NMAC 23.2.16, 01-30-2003; A, 1-16-09]

**16.23.2.17 DUPLICATE PERMIT:** \$15.00 fee. Payment must accompany the request for a duplicate permit as set forth in 16.23.6.17 NMAC.

[11-29-97; 16.23.2.17 NMAC - Rn, 16 NMAC 23.2.17, 01-30-2003; A, 1-16-09]

**16.23.2.18 INACTIVE STATUS FOR PRACTITIONER'S LICENSE:** \$30.00 fee. Payment must accompany a completed renewal application filed in accordance with 16.23.9.9 NMAC.

[11-29-97; 16.23.2.18 NMAC - Rn, 16 NMAC 23.2.18, 01-30-2003; A, 1-16-09]

**16.23.2.19 REACTIVATION FROM INACTIVE STATUS FEE:** \$150.00 fee. Payment must accompany the request for reactivation from inactive status as set forth in 16.23.9.16 NMAC.

[11-29-97; 16.23.2.19 NMAC - Rn, 16 NMAC 23.2.19, 01-30-2003; A, 07-10-03; A, 1-16-09]

**16.23.2.20 ALL FEES ARE NON-REFUNDABLE:**

[7-30-99; 16.23.2.20 NMAC - Rn, 16 NMAC 23.2.20, 01-30-2003]

#### **HISTORY OF 16.23.2 NMAC:**

##### **PRE-NMAC HISTORY:**

The material in PART 2 was derived from regulations previously filed with State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act, filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-7, "Fees", filed 08-20-91 and Rule 7, "Fees," filed 03-22-95.

##### **HISTORY OF REPEALED MATERIAL: [RESERVED]**

**Other History:** Rule 7, "Fees", filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.2, "Fees", filed 11-10-97.

16 NMAC 23.2, "Fees", filed 11-10-97, renumbered and reformatted to 16.23.2 NMAC, "Fees", effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 3             QUALIFICATIONS FOR PRACTITIONER LICENSE**

**16.23.3.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.3.1 NMAC - Rn, 16 NMAC 23.3.1, 01-30-2003, A, 07-10-03]

**16.23.3.2            SCOPE:** The provisions of Part 3 of Chapter 23 apply to all persons applying to the Board for a license to practice respiratory care in New Mexico.  
[11-29-97; 16.23.3.2 NMAC - Rn, 16 NMAC 23.3.2, 01-30-2003]

**16.23.3.3            STATUTORY AUTHORITY:** Part 3 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.  
[11-29-97; 16.23.3.3 NMAC - Rn, 16 NMAC 23.3.3, 01-30-2003]

**16.23.3.4            DURATION:** Permanent.  
[11-29-97; 16.23.3.4 NMAC - Rn, 16 NMAC 23.3.4, 01-30-2003]

**16.23.3.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.3.5 NMAC - Rn, 16 NMAC 23.3.5, 01-30-2003, A, 07-10-03]

**16.23.3.6            OBJECTIVE:** The objective of Part 3 of Chapter 23 is to establish the required qualifications necessary for licensure as a respiratory care practitioner.  
[2-21-85; 6-10-87; 11-29-97; 16.23.3.6 NMAC - Rn, 16 NMAC 23.3.6, 01-30-2003]

**16.23.3.7            DEFINITION: [RESERVED]**  
[11-29-97; 16.23.3.7 NMAC - Rn, 16 NMAC 23.3.7, 01-30-2003]

**16.23.3.8            LICENSE REQUIRED TO PRACTICE:** The applicant may not engage in the practice of respiratory care in New Mexico until approval for licensure has been given, and the department has issued an initial license. The applicant may not represent or hold him or herself out to be a respiratory care practitioner or RCP without a valid license.  
[2-21-85; 6-10-87; 1-9-88; 11-29-97; 16.23.3.8 NMAC - Rn, 16 NMAC 23.3.8, 01-30-2003; A, 07-10-03]

**16.23.3.9            LICENSURE REQUIREMENTS:** In accordance with Section 61-12B-7 and Section 61-12B-8, NMSA 1978, and those qualifications set forth therein, the applicant must provide verification of the following:

- A.**        being of good moral character;
- B.**        successful completion of a respiratory care education program supported by the committee on accreditation for respiratory care (CoARC), or its predecessor the joint review committee for respiratory therapy education (JRCRTE), or accredited by the commission on accreditation of allied health education programs (CAAHEP), or its successor approval body; and
- C.**        having successfully passed the national board for respiratory care (NBRC) standard examination resulting in either CRTT, CRT, or RRT credentialing; **or**
- D.**        current licensure in another state that has educational and examination requirements at least equal to or better than those established for licensure in New Mexico at the time of original licensure.

[2-21-85; 6-10-87; 1-9-88; 1-19-91; 9-19-91; 11-29-97; 7-30-99; 16.23.3.9 NMAC - Rn, 16 NMAC 23.3.9, 01-30-2003; A, 07-10-03; A, 06-24-2004]

**16.23.3.10          REQUIREMENTS FOR PERSONS RETURNING TO THE FIELD:** Respiratory therapists applying for licensure who cannot provide proof of having been working in the field of respiratory care within the immediate preceding five years prior to licensure application in New Mexico must provide proof of having successfully passed the exam for certified respiratory therapists (CRRT or CRT) or registered respiratory therapists (RRT) administered by the NBRC and taken within the year of licensure application in New Mexico. In lieu of experience or successfully passing the NBRC within the year of licensure application the licensee may submit 20 hours of required continuing education taken within the year of licensure application.

[16.23.3.10 NMAC - N, 06-24-2004; A, 1-16-09]

**16.23.3.11 REQUIREMENTS FOR UPGRADING LICENSE TYPE:** Respiratory therapists wanting to upgrade their license type from CRRT or CRT to RRT must complete an affidavit and submit the required fee as set forth in 16.23.2 NMAC, Section 13.

[16.23.3.11 NMAC - N, 1-16-09]

**HISTORY OF 16.23.3 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 3 was derived from regulations previously filed with the State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), “Regulations Governing the Respiratory Care Act,” filed 01-22-85; HED-87-3 (HSD), “Regulations Governing the Respiratory Care Act,” filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, “Regulations Governing the Respiratory Care Act,” filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board rule numbers, Rule 91-2, “Qualifications for Practitioner Licenses,” filed 08-20-91 and Rule 2, “Qualification for Practitioner License,” filed 03-22-95.

**HISTORY OF THE REPEALED MATERIAL:** [RESERVED]

**Other History:** Rule 2, “Qualification for Practitioner License,” filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.3, “Qualifications for Practitioner License”, filed 11-10-97.

16 NMAC 23.3, “Qualifications for Practitioner License”, filed 11-10-97, renumbered and reformatted to 16.23.3 NMAC, “Qualifications for Practitioner License”, effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 4             APPLICATION PROCEDURES FOR PRACTITIONER LICENSE**

**16.23.4.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.4.1 NMAC - Rn, 16 NMAC 23.4.1, 01-30-2003; A, 07-10-03]

**16.23.4.2            SCOPE:** The provisions of Part 4 of Chapter 23 apply to all persons applying to the Department for a license to practice respiratory care in New Mexico.  
[11-29-97; 16.23.4.2 NMAC - Rn, 16 NMAC 23.4.2, 01-30-2003]

**16.23.4.3            STATUTORY AUTHORITY:** Part 4 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4, Section 61-12B-6, Section 61-12B-7, and Section 61-12B-9 NMSA 1978.  
[11-29-97; 16.23.4.3 NMAC - Rn, 16 NMAC 23.4.3, 01-30-2003]

**16.23.4.4            DURATION:** Permanent.  
[11-29-97; 16.23.4.4 NMAC - Rn, 16 NMAC 23.4.4, 01-30-2003]

**16.23.4.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.4.5 NMAC - Rn, 16 NMAC 23.4.5, 01-30-2003; A, 07-10-03]

**16.23.4.6            OBJECTIVE:** The objective of Part 4 of Chapter 23 is to establish the application procedures for respiratory care practitioner licensure.  
[2-21-85; 11-29-97; 16.23.4.6 NMAC - Rn, 16 NMAC 23.4.6, 01-30-2003]

**16.23.4.7            DEFINITIONS: [RESERVED]**  
[11-29-97; 16.23.4.7 NMAC - Rn, 16 NMAC 23.4.7, 01-30-2003]

**16.23.4.8            DOCUMENTATION REQUIREMENTS FOR PRACTITIONERS:** Applicants for licensure must provide the following items of documentation to the department.

**A.**            A practitioners application form approved by the department, completed by the applicant, and signed by the applicant.

**B.**            A passport-type photograph of the applicant taken within the last year.

**C.**            A copy of the official transcript for the completed respiratory care program; **or** a copy of the respiratory care program completion certificate or diploma; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation.

**D.**            A copy of the national board for respiratory care, (NBRC) CRTT, CRT, or RRT certificate; or a copy of the applicant's NBRC CRTT, CRT, or RRT identification card; or a copy of the exam results showing successful passing of the NBRC CRTT, CRT, or RRT examination if the applicant has not yet received the NBRC certificate.

**E.**            Payment to the board in the amount of the applicable fee as provided in 16.23.2.8 NMAC.

**F.**            If applicable, a statement of other professional licenses held by the applicant either in New Mexico or in other licensing jurisdictions, and copies thereof; and verification of licensure status sent directly to the department by all state licensing boards where the applicant is or has ever been licensed.

**G.**            A resume' with employment information encompassing at least five years prior to the application for licensure in New Mexico.

**H.**            Applicants for licensure who have not been actively engaged or employed in the practice of respiratory therapy within the last five years prior to application for licensure in New Mexico must provide proof of having successfully passed either the NBRC certified respiratory therapist (CRT) or registered respiratory therapist (RRT) standards exam taken within a year of licensure application in New Mexico.

[2-21-85; 6-10-87; 1-9-88; 1-19-91; 9-19-91; 11-29-97; 7-30-99; 16.23.4.8 NMAC - Rn, 16 NMAC 23.4.8, 01-30-2003; A, 07-10-03; A, 06-24-2004; A, 1-16-09]

**16.23.4.9            INITIAL LICENSE ISSUANCE:** After the above listed documentation has been reviewed and approved by the department, in consultation with the board, the applicant will be issued a respiratory care

practitioner's license valid until September 30 of the next odd numbered year, except as provided in Section 10 of this rule.

[11-29-97; 16.23.4.9 NMAC - Rn, 16 NMAC 23.4.9, 01-30-2003]

**16.23.4.10 LICENSES ISSUED AFTER JUNE 1 OF THE ODD-NUMBERED YEAR:** Respiratory care practitioner licenses initially issued after June 1 of the odd-numbered (renewal) year will not expire until September 30 of the NEXT renewal period (see 16.23.8.12 NMAC).

[11-29-97; 16.23.4.10 NMAC - Rn, 16 NMAC 23.4.10, 01-30-2003; A, 1-16-09]

**16.23.4.11 VERIFICATION OF LICENSURE TO EMPLOYER:** A copy of the initial license and any subsequent renewal licenses must be kept on file with the licensee's employer.

[11-29-97; 16.23.4.11 NMAC - Rn, 16 NMAC 23.4.11, 01-30-2003]

**16.23.4.12 ADDRESS OR EMPLOYMENT CHANGES:** It is the licensee's responsibility to keep the department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and correspondence from the department will be received by the licensee.

[11-29-97; 16.23.4.12 NMAC - Rn, 16 NMAC 23.4.12, 01-30-2003]

**16.23.4.13 DUPLICATE LICENSE:** In the event a license is lost or destroyed, the department will issue a duplicate license upon receipt of the following.

- A. Notice to the department of the loss by the licensee.
- B. A request for a duplicate wall license or a duplicate renewal license.
- C. Administrative fee(s) in an amount as provided in 16.23.2.14 NMAC and 16.23.2.16 NMAC.

[11-29-97; 16.23.4.13 NMAC - Rn, 16 NMAC 23.4.13, 01-30-2003; A, 1-16-09]

**16.23.4.14 LEGAL NAME CHANGE:** If a licensee requests a new wall and/or renewal license to be compatible with a legal name change, the department will issue a new license and/or renewal license upon receipt of the following:

- A. the old license(s);
- B. legal proof of the name change;
- C. a written request for name change to be made on licensing records; and
- D. fee(s) in an amount provided in 16.23.2.15 NMAC and 16.23.2.16 NMAC.

[11-29-97; 16.23.4.14 NMAC - Rn, 16 NMAC 23.4.14, 01-30-2003]

**16.23.4.15 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be purged from board files two years from the date the first item of documentation was received.

[16.23.4.15 NMAC - N, 07-10-03; A, 1-16-09]

#### **HISTORY OF 16.23.4 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 4 was derived from regulations previously filed with State Records Center and Archives by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board, rule number Rule 91-4, "Application Procedure," filed 08-20-91.

#### **HISTORY OF REPEALED MATERIAL: [RESERVED]**

**Other History:** Rule 91-4, "Application Procedure," filed 08-20-91 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.4, "Application Procedures for Practitioner License", filed 11-10-97.

16 NMAC 23.4, "Application Procedures for Practitioner License", filed 11-10-97, renumbered and reformatted to 16.23.4 NMAC, "Application Procedures for Practitioner License", effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONER**  
**PART 6             TEMPORARY PERMITS**

**16.23.6.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.6.1 NMAC - Rn, 16 NMAC 23.6.1, 7-10-2000; A, 7-10-2000]

**16.23.6.2            SCOPE:** The provisions of Part 6 of Chapter 23 apply to respiratory care program student externs or graduates applying for temporary permits to work for remuneration under the training, direction, and supervision of a New Mexico licensed respiratory care practitioner or New Mexico licensed physician who has agreed to be the applicant's training supervisor in a supervisory facility.  
[11-29-97; 16.23.6.2 NMAC - Rn, 16 NMAC 23.6.2, 7-10-2000; A, 7-10-2000]

**16.23.6.3            STATUTORY AUTHORITY:** Part 6 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-6.A(3) and Section 61-12B-9.B, NMSA 1978.  
[11-29-97; 16.23.6.3 NMAC - Rn, 16 NMAC 23.6.3, 7-10-2000; A, 7-10-2000]

**16.23.6.4            DURATION:** Permanent.  
[11-29-97; 16.23.6.4 NMAC - Rn, 16 NMAC 23.6.4, 7-10-2000]

**16.23.6.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section.  
[11-29-97; 16.23.6.5 NMAC - Rn, 16 NMAC 23.6.5, 7-10-2000; A, 7-10-2000]

**16.23.6.6            OBJECTIVE:** The objective of Part 6 of Chapter 23 is to establish the qualification requirements and procedures for a student extern or graduate of a respiratory care program to obtain a temporary permit under the provisions of the Respiratory Care Act in order to become employed in the furnishing of respiratory care under the limitations described herein.  
[11-29-97; 16.23.6.6 NMAC - Rn, 16 NMAC 23.6.6, 7-10-2000]

**16.23.6.7            DEFINITIONS:**

**A.            “Direct supervision”** means direction and control by a training supervisor over a student extern temporary permittee or a graduate temporary permittee while the permittee is providing respiratory care procedures under the authority of the training supervisor’s license.

**B.            “Supervisory facility”** means the employer of a temporary permit holder.

**C.            “Graduate”** means a non-licensed person who has completed an approved respiratory care training program and is employed by a supervisory facility to provide respiratory care **for remuneration** and in accordance with the provisions for a temporary permit issued under these regulations.

**D.            “Licensing period for temporary permits”** means a one year period from the date of issuance to the last day of the same month, one year later.

**E.            “Non-traditional training program”** refers to a respiratory care training program in which a person receives on-the-job training in respiratory care from a supervising medical director, a supervising physician, or a licensed respiratory care practitioner, and in which the trainee may receive compensation while in such a training program.

**F.            “Traditional training program”** refers to a respiratory care training program that provides classroom instruction and clinical experience only to students or student externs under direct supervision of a licensed and responsible professional.

**G.            “Permittee”** means a person who has been granted a temporary permit by the department, in consultation with the board.

**H.            “Student”** means a person enrolled in an approved respiratory care training and education program and who receives **no remuneration** for respiratory care services performed in a supervisory facility as part of an approved respiratory care training program.

**I.            “Student extern”** means a person who is engaged by a supervisory facility to provide respiratory care **for remuneration** while enrolled in an approved respiratory care training and education program, and in accordance with the provisions for a temporary permit issued under these regulations.

**J. “Training supervisor”** means a New Mexico licensed respiratory care practitioner licensed as a CRT, CRRT, RRT or a New Mexico licensed physician who agrees to be responsible for the respiratory care administered by student externs and graduates while these individuals are employed by a supervisory facility and are being trained there.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 7-30-99; 16.23.6.7 NMAC - Rn, 16 NMAC 23.6.7, 7-10-2000; A, 7-10-2000; A, 1-16-09]

**16.23.6.8 APPLICATION REQUIREMENTS FOR STUDENTS:** Persons enrolled in an approved respiratory care training program who are performing respiratory care services in a supervisory facility as part of the training, but receiving no remuneration for those services, are **not** required to have a temporary permit issued by the Department.

[9-19-91; 4-21-95; 11-29-97; 16.23.6.8 NMAC - Rn, 16 NMAC 23.6.8, 7-10-2000; A, 7-10-2000]

**16.23.6.9 APPLICATION REQUIREMENTS FOR STUDENT EXTERNS:** The department, in consultation with the board, will issue temporary permits to respiratory care student externs enrolled in a traditional or non-traditional respiratory care training program approved as set forth in Subsections E and GG of 16.23.1 NMAC, and who provide satisfactory evidence of the following:

**A.** Verification of current respiratory care program enrollment sent directly by the educational institution to the department;

**B.** A passport-type photograph taken within the past year;

**C.** A notarized statement or letter sent by the applicant's direct supervisor confirming the location and status of the applicant's employment;

**D.** A notarized agreement signed by the proposed training supervisor which certifies that the supervisor will provide training and direct supervision which meets the requirements of these regulations;

**E.** A temporary permit application form approved by the department, completed by the applicant, and signed by the applicant in the presence of a notary public; and

**F.** Payment to the board in the amount set forth in Subsection A of 16.23.2.11 NMAC.

[2-21-85; 6-10-87; 1-9-88; 1-9-988; 8-20-91; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 7-30-99; 16.23.6.9 NMAC - Rn, 16 NMAC 23.6.9, 7-10-2000; A, 7-10-2000; A, 1-16-09]

**16.23.6.10 APPLICATION REQUIREMENTS FOR GRADUATES:** The department, in consultation with the board, will issue non-renewable temporary permits to non-licensed graduates from an approved respiratory care training and education program (see Subsections E and GG of 16.23.6.1 NMAC), and who provide the following:

**A.** the required items listed in Subsections B through G of 16.23.6 NMAC (this rule);

**B.** a copy of the applicant's graduation certificate or diploma from an approved respiratory care training and educational program; **or**

**C.** the applicant's graduate transcript sent directly to the department by the educational institution; or an official copy of the transcripts sent directly from the program; or a letter sent directly from the program director prior to matriculation; **and**

**D.** proof of good faith attempts and reasonable progress in pursuing NBRC credentialing as an RRT, CRT, or CRRT by providing:

(1) test results of any unsuccessful attempts to pass the NBRC credentialing examination; **or**

(2) a copy of the letter scheduling the applicant for the NBRC CRTT, CRT, or RRT credentialing exam if the applicant has not taken the credentialing exam before, but is scheduled to sit for it.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 11-6-92; 4-21-95; 11-29-97; 7-30-99; 16.23.6.10 NMAC - Rn, 16 NMAC 23.6.10, 7-10-2000, A, 7-10-2000; A, 1-16-09]

**16.23.6.11 INITIAL TEMPORARY PERMIT ISSUANCE UPON APPROVAL:** After the applicant has met all the requirements for a temporary permit, and the application has received approval by the Department, in consultation with the Board, the applicant will be issued a temporary permit for one year.

**A.** The temporary permit is only valid if the conditions of the permit remain unchanged.

**B.** A copy of the temporary permit will be sent by the Department to the person on record as the permittee's training supervisor.

[11-29-97; 16.23.6.11 NMAC - Rn, 16 NMAC 23.6.11, 7-10-2000]

**16.23.6.12 ADDRESS OR EMPLOYMENT CHANGES.** The permittee must keep the Department informed immediately of any changes in residential and employment addresses and phone numbers so that renewal notices and Department correspondence will be received by the permittee.  
[11-29-97; 16.23.6.12 NMAC - Rn, 16 NMAC 23.6.12, 7-10-2000]

**16.23.6.13 LIMITATIONS ON STUDENT EXTERN TEMPORARY PERMITS:** Student externs and graduates with temporary permits will be limited in the performance of respiratory care to those competence levels that have written verification and in accordance with the safe practice and patient care safety regulations of the facility.

**A.** Temporary permits are only valid for the performance of respiratory care under the direct supervision of the training supervisor who signed the supervisor's agreement portion of the applicant's application for the temporary permit.

**B.** Any change in supervision or in employment by either the permittee or the training supervisor invalidates the permit and must be reported to the department. Since the training supervisor is responsible for the respiratory care administered by the permittee, it is advisable for the training supervisor in this circumstance to document to the department that he or she is no longer professionally responsible for the permittee.

**C.** A temporary permit issued to a respiratory care student extern is immediately invalid upon the student extern's withdrawal from the respiratory care training and education program.

**D.** A temporary permit may not be renewed more than two (2) times.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 16.23.6.13 NMAC - Rn, 16 NMAC 23.6.13, 7-10-2000; A, 7-10-2000; A, 07-10-03; A, 1-16-09]

**16.23.6.14 [RESERVED]**

**16.23.6.15 RE-ENROLLMENT IN NEW PROGRAM:** If an applicant has failed or withdrawn from a program and at a later date enrolls in a **new** approved respiratory care program, he or she may apply for a **new** permit under the new program.

**A.** With the application, the applicant must provide a letter to the department explaining the circumstances of withdrawal from the previous program and of enrollment in the new program.

**B.** The applicant must meet all the application requirements set forth in 16.23.6.9 NMAC.

**C.** The previous temporary permit number will be reissued.

**D.** All applicable provisions in Part 6 and Part 7 will apply to the new temporary permit.  
[11-29-97; 16.23.6.15 NMAC - Rn, 16 NMAC 23.6.15, 7-10-2000; A, 7-10-2000; A, 1-16-09]

**16.23.6.16 LICENSE REQUIRED UPON CERTIFICATION:** Any respiratory care training program graduate who holds a temporary permit and has successfully passed the NBRC CRTT, CRT, or RRT credentialing exam must apply for and receive a respiratory care practitioner's license before he or she may be recognized as a respiratory care practitioner or RCP, and may practice as such, independent of training supervision in New Mexico.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 7-30-99; 16.23.6.16 NMAC - Rn, 16 NMAC 23.6.16, 7-10-2000]

**16.23.6.17 DUPLICATE PERMIT OR NEW PERMIT WITH NAME CHANGE:** In the event a temporary permit is lost or destroyed, or the permittee has had a legal name change, the same procedures provided for issuance of a duplicate or new license for name change in Sections 13 and 14 of Part 4 must be followed by the permittee. The fee listed in Section 17 of Part 2 shall apply in either case.  
[11-29-97; 16.23.6.17 NMAC - Rn, 16 NMAC 23.6.17, 7-10-2000; A, 7-10-2000]

**16.23.6.18 [RESERVED]**

**16.23.6.19 DIRECT SUPERVISION IN PRACTICE:** The training supervisor may be a CRRT, CRT, or RRT and shall train the temporary permittee in the performance of respiratory care functions until the training supervisor determines that the permittee is competent to perform those functions independently. The degree of independence extended to the permittee is contingent upon the supervised training received by the permittee from the training supervisor who is ultimately medically and legally liable for the actions of the permittee.

**A.** The training supervisor is the agent of the facility and trains the trainee permittee in accordance with the safe practice and patient care safety standards of the facility.

**B.** Before the permittee is allowed to perform respiratory care functions independently, the provisions of 16.23.6.13 NMAC require that the training supervisor file with the facility a written verification that the permittee is competent to perform respiratory care functions.

**C.** When the facility allows the permittee to perform the approved respiratory care functions on patients, the facility assumes responsibility as well.  
[16.23.6.19 NMAC - N, 7-10-2000; A, 1-16-09]

**16.23.6.20 BACK-UP SYSTEM IN TRAINING:** It makes good medical and legal sense for the training supervisor to have a back-up training system as he or she cannot be available 24 hours a day and may or may not be in the room or on the facility premises when the permittee is performing the approved respiratory care functions.

**A.** The training supervisor shall have a written back-up system to include respiratory, nursing, and medical staff to be available for the permittee if he or she is faced with a problem or determines that a respiratory care procedure that he or she has not yet received approval to perform independently is immediately necessary for a patient.

**B.** The back-up system shall provide written procedures available for the permittee. For instance, for instruction or assistance (by phone, page, intercom, etc.) from the training supervisor, or a respiratory care practitioner, a charge nurse, or any physician in the facility.

**C.** The training supervisor is ultimately responsible for the actions of the permittee.  
[16.23.6.20 NMAC - N, 7-10-2000]

**16.23.6.21 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be purged from board files two years from the date the first item of documentation was received.

[16.23.6.21 NMAC - N, 07-10-03; A, 1-16-09]

#### **History of 16.23.6 NMAC:**

##### **Pre-NMAC History:**

The material in Part 6 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; and by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87. Applicable provisions were also filed by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-1, "Definitions," filed 08-20-91 and Rule 1, "Definitions," filed 03-22-95; Rule 91-4, "Application Procedure," filed on 08-20-91; Rule 91-3, "Temporary Permits," filed on 08-20-91; and Rule 3, "Temporary Permits," filed on 10-07-92.

**Other History:** 16 NMAC 23.6, "Temporary Permits", was renumbered to 16.23.6 NMAC, filed on 6-6-2000.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 7             TEMPORARY PERMIT RENEWAL**

**16.23.7.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board 725 St. Michaels Drive P.O. Box 25101 Santa Fe, New Mexico 87504  
[11-29-97; 16.23.7.1 NMAC - Rn, 16 NMAC 23.7.1, 01-30-2003]

**16.23.7.2            SCOPE:** The provisions of PART 7 of Chapter 23 apply to persons who hold a current temporary permit under the provisions of the Respiratory Care Act and 16.23.6 NMAC.  
[11-29-97; 16.23.7.2 NMAC - Rn, 16 NMAC 23.7.2, 01-30-2003]

**16.23.7.3            STATUTORY AUTHORITY:** PART 7 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-4.A, Section 61-12B-6.A, Section 61-12B-7, and Section 61-12B-9.C and D NMSA 1978.  
[11-29-97; 16.23.7.3 NMAC - Rn, 16 NMAC 23.7.3, 01-30-2003]

**16.23.7.4            DURATION:** Permanent.  
[11-29-97; 16.23.7.4 NMAC - Rn, 16 NMAC 23.7.4, 01-30-2003]

**16.23.7.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section or Paragraph.  
[11-29-97; 16.23.7.5 NMAC - Rn, 16 NMAC 23.7.5, 01-30-2003]

**16.23.7.6            OBJECTIVE:** The objective of PART 7 of Chapter 23 is to make set forth provisions for the renewal of current temporary permits.  
[11-29-97; 16.23.7.6 NMAC - Rn, 16 NMAC 23.7.6, 01-30-2003]

**16.23.7.7            DEFINITIONS: [RESERVED]**

**16.23.7.8            TEMPORARY STUDENT PERMIT EXPIRATION:**  
**A.**        Temporary permits are issued for a period of one year, and will expire on the last day of the month in which the initial permit was issued.  
**B.**        Renewed temporary permits will also expire on the last day of the same month in which the permit was initially issued.  
**C.**        The number of permits possible will be a total of three maximum regardless of the period of unemployment while the permittee is enrolled in the respiratory care training program.  
[6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 16.23.7.8 NMAC - Rn, 16 NMAC 23.7.8, 01-30-2003; A, 1-16-09]

**16.23.7.9            RENEWAL PROCESS FOR STUDENT TEMPORARY PERMITS:**  
**A.**        At least forty-five days before the temporary permit expiration date, the department will mail the permittee a temporary permit renewal notice and an application form to apply for permit renewal.  
**B.**        Renewal application notices will be mailed to the last residential address on file with the department. It is the permittee's responsibility to request a renewal form if one has not been received thirty days prior to the permit expiration date.  
**C.**        The department will send the permittee's training supervisor a copy of the renewal notice, which was sent to the permittee.  
[11-29-97; 16.23.7.9 NMAC - Rn, 16 NMAC 23.7.9, 01-30-2003; A, 1-16-09]

**16.23.7.10          REQUIREMENTS FOR STUDENT TEMPORARY PERMIT RENEWAL:** All applicants for temporary permit renewal must meet the following requirements:  
**A.**        Complete and sign a renewal application form approved by the department;  
**B.**        Provide the documentation required by this rule for student externs or graduates, whichever is applicable to the permittee (See 16.23.6.9 NMAC or 16.23.6.10 NMAC); and a copy of the applicant's birth certificate and a photograph are not required for temporary permit renewals.

C. Submit a check or money order payable to the board for the required fee as provided in 16.23.2.11 NMAC, whichever is applicable.  
[11-29-97; 16.23.7.10 NMAC - Rn, 16 NMAC 23.7.10, 01-30-2003; A, 1-16-09]

**16.23.7.11 APPROVAL REQUIRED:** All temporary permit renewal requests are subject to individual review and approval by the Department, in consultation with the Board. If a temporary permit renewal application is approved, a renewal temporary permit will be mailed to the permittee.  
[6-10-87; 1-9-88; 9-19-91; 9-3-92; 11-6-92; 11-29-97; 16.23.7.11 NMAC - Rn, 16 NMAC 23.7.11, 01-30-2003]

**16.23.7.12 VERIFICATION OF RENEWAL TO EMPLOYER:** A copy of the renewed temporary permit must be kept on file with the temporary permittee's employer. The Department will mail a copy of the temporary permit to the training supervisor.  
[11-29-97; 16.23.7.12 NMAC - Rn, 16 NMAC 23.7.12, 01-30-2003]

**16.23.7.13 FINAL PERMIT - NO RENEWAL:** Forty-five days prior to the expiration date of the third and final permit (initial permit plus two renewals), the permittee and the permittee's training supervisor will be notified that the permittee's permit lapse is imminent, and that the privileges allowed by the permit will no longer be authorized.

A. In order to continue practicing in the profession, the permittee must complete the process for practitioner license application as set forth in 16.23.3 NMAC.

B. Any licensed practitioner who aids and abets the continued practice of a person whose permit privileges have lapsed shall be subject to disciplinary action by the department for violation of the Respiratory Care Act and Subsection H of 16.23.17.8 NMAC.  
[11-29-97; 16.23.7.13 NMAC - Rn, 16 NMAC 23.7.13, 01-30-2003, A, 1-16-09]

#### **HISTORY OF 16.23.7 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 7 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-3, "Temporary Permits," filed 08-20-91, Rule 3, "Temporary Permits," filed 08-04-92; and Rule 3, "Temporary Permits," filed 10-07-92.

#### **HISTORY OF REPEALED MATERIAL: [RESERVED]**

**Other History:** Rule 3, "Temporary Permits," filed 10-07-92 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.7, "Temporary Permit Renewal", filed 11-10-97. 16 NMAC 23.7, "Temporary Permit Renewal", filed on 11-10-97, renumbered and reformatted to 16.23.7 NMAC, "Temporary Permit Renewal, effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 8             RENEWAL AND EXPIRATION OF PRACTITIONER LICENSE**

**16.23.8.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.8.1 NMAC - Rn, 16 NMAC 23.8.1, 01-30-2003; A, 07-10-03]

**16.23.8.2            SCOPE:** The provisions of PART 8 of Chapter 23 apply to all respiratory care practitioners currently licensed in New Mexico.  
[11-29-97; 16.23.8.2 NMAC - Rn, 16 NMAC 23.8.2, 01-30-2003]

**16.23.8.3            STATUTORY AUTHORITY:** PART 8 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9.A, NMSA 1978.  
[11-29-97; 16.23.8.3 NMAC - Rn, 16 NMAC 23.8.3, 01-30-2003]

**16.23.8.4            DURATION :** Permanent.  
[11-29-97; 16.23.8.4 NMAC - Rn, 16 NMAC 23.8.4, 01-30-2003]

**16.23.8.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of the Section.  
[11-29-97; 16.23.8.5 NMAC - Rn, 16 NMAC 23.8.5, 01-30-2003; A, 07-10-03]

**16.23.8.6            OBJECTIVE:** The objective of PART 8 of Chapter 23 is to set forth requirements and procedures for renewal of New Mexico respiratory care practitioner licenses.  
[11-29-97; 16.23.8.6 NMAC - Rn, 16 NMAC 23.8.6, 01-30-2003]

**16.23.8.7            DEFINITIONS: [RESERVED]**

**16.23.8.8            PRACTITIONER LICENSE EXPIRATION DATE:** Respiratory care practitioner licenses expire on September 30 of each odd-numbered year except as provided in 16.23.8.12 NMAC (this rule).  
[11-29-97; 16.23.8.8 NMAC - Rn, 16 NMAC 23.8.8, 01-30-2003]

**16.23.8.9            NOTIFICATION:** No less than forty-five days prior to the license expiration date, notices and renewal applications will be mailed to the licensee at the last official address on file with the department.  
**A.** Failure to receive the renewal application notice will not relieve the licensee of the responsibility of renewing the license by the expiration date.  
**B.** It is the licensee's responsibility to request a renewal application if one has not been received at least thirty days prior to the license expiration date.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.9 NMAC - Rn, 16 NMAC 23.8.9, 01-30-2003; A, 1-16-09]

**16.23.8.10           APPLICATION REQUIRED:** Practitioner licenses shall be renewed by the department, in consultation with the board, only upon receipt of the following:  
**A.** A completed renewal application;  
**B.** Certification that the continuing education requirements were met as set forth in 16.23.12 NMAC; and  
**C.** Payment in the amount of the required fee as provided in 16.23.2.9 NMAC.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.10 NMAC - Rn, 16 NMAC 23.8.10, 01-30-2003; A, 1-16-09]

**16.23.8.11           RENEWAL DEADLINE:** The deadline for renewal of current respiratory care practitioner licenses is September 30th of the odd-numbered year, except as provided in 16.23.8.12 NMAC (this rule).  
**A.        September 30 Postmark Requirement.** Completed renewal applications must be postmarked or completed on-line on or before September 30 of the renewal year.  
**B.        Application Rejected.** Incomplete renewal applications will be rejected by the board.

**C. Late Renewal.** Any renewal application, corrected or otherwise returned to the department postmarked **after** September 30, of the odd-numbered year, is expired and must be accompanied by the penalty fee required for reactivation. (See 16.23.2.10 NMAC.)  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.11 NMAC - Rn, 16 NMAC 23.8.11, 01-30-2003, A, 1-16-09]

**16.23.8.12 RENEWAL DEADLINE FOR PRACTITIONER LICENSES ISSUED AFTER JUNE 1 OF THE RENEWAL YEAR:** Practitioners' licenses issued after June 1 of the renewal (odd-numbered) year will not expire until September 30 of the renewal cycle **following** the **current** renewal cycle.  
[11-29-97; 16.23.8.12 NMAC - Rn, 16 NMAC 23.8.12, 01-30-2003, A, 1-16-09]

**16.23.8.13 LICENSE EXPIRATION:**

**A.** Respiratory care licenses not renewed by the end of the renewal cycle will be expired and invalid.

**B.** Official notification of license expiration will be mailed to the last residential address on file with the Department.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.8.13 NMAC - Rn, 16 NMAC 23.8.13, 01-30-2003]

**16.23.8.14 PRACTICE PROHIBITED:** A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The Department will seek civil action against the violator in accordance with Section 61-12B-15.

[4-21-95; 11-29-97; 16.23.8.14 NMAC - Rn, 16 NMAC 23.8.14, 01-30-2003]

**HISTORY OF 16.23.8 NMAC:**

**PRE-NMAC HISTORY:** The material in PART 8 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-5, "Renewal of Licenses," filed 08-20-91, Rule 91-8, "Expiration/License Renewal," filed 08-20-91, and Rule 5, "Renewal and Expiration of Practitioner Licenses," filed 03-22-95.

**HISTORY OF REPEALED MATERIAL: [RESERVED]**

**Other History:** Rule 5, "Renewal and Expiration of Practitioner Licenses," filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.8, "Renewal and Expiration of Practitioner License", filed 11-10-97.

16 NMAC 23.8, "Renewal and Expiration of Practitioner License", filed on 11-10-97, was renumbered and reformatted to 16.23.8 NMAC, "Renewal and Expiration of Practitioner License", effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 9             INACTIVE STATUS FOR PRACTITIONER LICENSE**

**16.23.9.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.9.1 NMAC - Rn, 16 NMAC 23.9.1, 01-30-2003; A, 07-10-03]

**16.23.9.2            SCOPE:** The provisions of Part 9 of Chapter 23 apply to all respiratory care practitioners who are currently licensed in New Mexico.  
[11-29-97; 16.23.9.2 NMAC - Rn, 16 NMAC 23.9.2, 01-30-2003]

**16.23.9.3            STATUTORY AUTHORITY:** Part 9 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9.A NMSA 1978.  
[11-29-97; 16.23.9.3 NMAC - Rn, 16 NMAC 23.9.3, 01-30-2003]

**16.23.9.4            DURATION:** Permanent.  
[11-29-97; 16.23.9.4 NMAC - Rn, 16 NMAC 23.9.4, 01-30-2003]

**16.23.9.5            EFFECTIVE DATE:** November 29, 1997 unless a later date is cited at the end of the section.  
[11-29-97; 16.23.9.5 NMAC - Rn, 16 NMAC 23.9.5, 01-30-2003; A, 07-10-03]

**16.23.9.6            OBJECTIVE:** The objective of Part 9 of Chapter 23 is to set forth requirements and procedures for placing a current practitioners license on Inactive Status.  
[11-29-97; 16.23.9.6 NMAC - Rn, 16 NMAC 23.9.6, 01-30-2003]

**16.23.9.7            DEFINITIONS: [RESERVED]**

**16.23.9.8            INACTIVE STATUS.** Currently licensed practitioners who are not currently practicing in New Mexico under the terms and provisions authorized by the Respiratory Care Act, or who are working for the federal government, may place their licenses on inactive status at the time of renewal rather than let their licenses expire.  
[11-29-97; 16.23.9.8 NMAC - Rn, 16 NMAC 23.9.8, 01-30-2003]

**16.23.9.9            INACTIVE STATUS REQUIREMENTS.** A practitioners license will be placed on inactive status by the department after the licensee has provided the following:

- A.** a completed, signed, and notarized renewal application on which the “inactive status requested” box has been checked;
- B.** documentation verifying that the continuing education requirements were met as set forth in Part 12 of 16.23 NMAC; and
- C.** the applicable fee for Inactive status set forth in 16.23.2.18 NMAC.

[11-29-97; 16.23.9.9 NMAC - Rn, 16 NMAC 23.9.9, 01-30-2003]

**16.23.9.10          SEPTEMBER 30 POSTMARK REQUIREMENT.** The practitioner must submit the completed renewal application form marked for inactive status with a postmark dated on or before September 30 in order to be processed for inactive status.  
[11-29-97; 16.23.9.10 NMAC - Rn, 16 NMAC 23.9.10, 01-30-2003]

**16.23.9.11          INCOMPLETE APPLICATION.** Unsigned, incorrect, or otherwise incomplete applications will be rejected and returned to the licensee for correction or completion.  
[11-29-97; 16.23.9.11 NMAC - Rn, 16 NMAC 23.9.11, 01-30-2003]

**16.23.9.12          APPLICATION REJECTED.** Any inactive status application, corrected or otherwise returned to the department, postmarked **after** September 30, of the odd-numbered (renewal) year, will **not** be processed for inactive status. The rejected application will be returned to the applicant, and the status of the license will be expired and invalid and the late penalty fee will apply if reactivation is sought within the time limitations set forth in 16.23.11 NMAC.

[11-29-97; 16.23.9.12 NMAC - Rn, 16 NMAC 23.9.12, 01-30-2003; A, 07-10-03]

**16.23.9.13 WRITTEN APPROVAL NOTIFICATION OF INACTIVE STATUS.** Upon approval of the inactive status application request, the department will send the licensee notice that the license has been placed on inactive status.

[11-29-97; 16.23.9.13 NMAC - Rn, 16 NMAC 23.9.13, 01-30-2003]

**16.23.9.14 TIME LIMITATION ON INACTIVE STATUS LICENSE.** A license on inactive status must be reactivated before September 30 of the NEXT odd-numbered year, or the license shall lapse and become null and void (see 16.23.11.11 NMAC).

[11-29-97; 16.23.9.14 NMAC - Rn, 16 NMAC 23.9.14, 01-30-2003; A, 06-24-2004]

**16.23.9.15 PRACTICE PROHIBITED.** Until the inactive status license has been reactivated, the respiratory care practitioner may not practice respiratory care in New Mexico unless employed by the federal government.

[11-29-97; 16.23.9.15 NMAC - Rn, 16 NMAC 23.9.15, 01-30-2003]

**16.23.9.16 INACTIVE STATUS REACTIVATION.** The individual who has placed his or her license on inactive status may reactivate the license before September 30 of the next odd-numbered year by completing the following procedure.

**A.** Request a reactivation application form from the department or download it from the board's website.

**B.** Complete, sign, and return the reactivation application form with a postmark dated on or before September 30 of the odd-numbered year and within the time limitation set forth in 16.23.9.14 NMAC, this rule.

**C.** Remit the applicable fee for reactivation from inactive status set forth in 16.23.2.19 NMAC.

[11-29-97; 16.23.9.16 NMAC - Rn, 16 NMAC 23.9.16, 01-30-2003; A, 06-24-2004]

**16.23.9.17 REACTIVATION APPROVED.** Upon review and approval of the reactivation application, the Department will issue a reactivated license to the licensee. The license number will remain the same.

[11-29-97; 16.23.9.17 NMAC - Rn, 16 NMAC 23.9.17, 01-30-2003]

**16.23.9.18 RESUMPTION OF PRACTICE ALLOWED.** Upon receipt of the reactivated license, the licensee may resume the practice of respiratory care in New Mexico.

[11-29-97; 16.23.9.18 NMAC - Rn, 16 NMAC 23.9.18, 01-30-2003]

**16.23.9.19 CONTINUING EDUCATION REQUIREMENTS FOR REACTIVATION.** For the next renewal cycle, the number of continuing education hours that will be required will depend upon the reactivation date as follows:

**A. Twenty Hours.** If the completed reactivation application is received by the Department postmarked **on or before** September 30 of the **even**-numbered year, the number of continuing education hours due at the next renewal (September 30 of the next odd-numbered year) will be twenty (20).

**B. Ten Hours.** If the completed reactivation application is received by the Department postmarked **on or after** October 1 of the **even**-numbered year through May 31 of the odd-numbered year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be ten (10).

**C. Zero Hours.** If the completed reactivation application is approved by the Department postmarked **on or after** June 1 of the **odd**-numbered (renewal) year through July 31 of the same year, the number of continuing education hours due at the next renewal (September 30 of the same year) will be zero (0).

[11-29-97; 16.23.9.19 NMAC - Rn, 16 NMAC 23.9.19, 01-30-2003; A, 07-10-03]

#### **HISTORY OF 16.23.9 NMAC:**

**Pre-NMAC History:** None

**History of Repealed Material:** [RESERVED]

**Other History:** 16 NMAC 23.9, "Inactive Status for Practitioner License", filed 11-10-97, renumbered and reformatted to 16.23.9 NMAC, "Inactive Status for Practitioner License", effective 01-30-03.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 11            LICENSE REACTIVATION; LICENSE LAPSE**

**16.23.11.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.11.1 NMAC - Rn, 16 NMAC 23.11.1, 01-30-2003; A, 07-10-03]

**16.23.11.2        SCOPE:** The provisions of Part 11 of Chapter 23 apply to all respiratory care practitioners who have ever been licensed in New Mexico.  
[11-29-97; 16.23.11.2 NMAC - Rn, 16 NMAC 23.11.2, 01-30-2003]

**16.23.11.3        STATUTORY AUTHORITY:** Part 11 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9.A NMSA 1978.  
[11-29-97; 16.23.11.3 NMAC - Rn, 16 NMAC 23.11.3, 01-30-2003]

**16.23.11.4        DURATION:** Permanent.  
[11-29-97; 16.23.11.4 NMAC - Rn, 16 NMAC 23.11.4, 01-30-2003]

**16.23.11.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of the section.  
[11-29-97; 16.23.11.5 NMAC - Rn, 16 NMAC 23.11.5, 01-30-2003; A, 07-10-03]

**16.23.11.6        OBJECTIVE:** The objective of Part 11 of Chapter 23 is to set forth requirements and procedures for reactivation of a New Mexico respiratory care practitioner license from expired status. Part 11 also states the requirements the person with a lapsed license must meet to be able to practice respiratory care in New Mexico again.  
[11-29-97; 16.23.11.6 NMAC - Rn, 16 NMAC 23.11.6, 01-30-2003]

**16.23.11.7        DEFINITIONS:** [RESERVED]

**16.23.11.8        LICENSE EXPIRATION DUE TO NON-RENEWAL.** Respiratory care practitioner licenses not renewed or which have not been placed on inactive status by the end of the renewal cycle will be expired and invalid.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.11.8 NMAC - Rn, 16 NMAC 23.11.8, 01-30-2003]

**16.23.11.9        PRACTICE PROHIBITED.** A person continuing to practice without a valid license is in violation of Section 61-12B-4 of the Respiratory Care Act, and is guilty of a misdemeanor. The department will seek civil action against the violator in accordance with Section 61-12B-15.  
[4-21-95; 11-29-97; 16.23.11.9 NMAC - Rn, 16 NMAC 23.11.9, 01-30-2003]

**16.23.11.10        LICENSE REACTIVATION FROM EXPIRED STATUS.** The individual who has allowed his or her license to expire, must reactivate the expired license before the next scheduled renewal expiration date for licensed respiratory care practitioners September 30 of the next odd-numbered year. The applicant must complete the following process in order to reactivate his or her license.

**A.**        Contact the department to request a reactivation application form or download it from the board's website.

**B.**        Complete and return to the department, the reactivation application form with the necessary continuing education documentation required in 16.23.12 NMAC.

**C.**        Submit to the department a check or money order payable to the board in the amount of the renewal and penalty fee (See 16.23.2.9 NMAC and 16.23.2.10 NMAC).

[2-21-85, 1-9-88; 6-10-87, 1-9-88, 9-19-91, 4-21-95, 11-29-97; 16.23.11.10 NMAC - Rn, 16 NMAC 23.11.10, 01-30-2003; A, 06-24-2004]

**16.23.11.11        LICENSE LAPSE.** An expired license which has not been reactivated before the next scheduled license expiration date September 30 of the next odd-numbered year, will lapse and become null and void.

**A.        Re-licensure required.** Before resuming the practice of respiratory care in New Mexico, the individual whose license has lapsed must be approved for licensure by the department.

**B. Application required.** The applicant with a lapsed license must repeat the entire initial licensure application process as set forth in 16.23.3 and 16.23.4 NMAC.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.11.11 NMAC - Rn, 16 NMAC 23.11.11, 01-30-2003; A, 06-24-2004]

**HISTORY OF 16.23.11 NMAC**

**PRE-NMAC HISTORY:** The material in PART 11 was derived from regulations previously filed with the State Records Center and Archives Center by former department name Health and Environment Department, rule numbers, HED-85-1 (HSD), “Regulations Governing the Respiratory Care Act,” filed 01-22-85; HED-87-3 (HSD), “Regulations Governing the Respiratory Care Act,” filed 05-11-87; by department name Regulation & Licensing Department, former division name, Boards & Commissions Division rule number BCD 87-3, “Regulations Governing the Respiratory Care Act,” filed 12-10-87; and by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule numbers, Rule 91-8, “Expiration/License Renewal,” filed 08-20-91, Rule 5, “Renewal and Expiration of Practitioner Licenses,” filed 03-22-95.

**HISTORY OF REPEALED MATERIAL:** [RESERVED]

**Other History:** Rule 5, “Renewal and Expiration of Practitioner Licenses,” filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.11, “License Reactivation; License Lapse”, filed 11-10-97.

16 NMAC 23.11, “License Reactivation; License Lapse”, filed on 11-10-97, renumbered and reformatted to 16.23.11 NMAC, “License Reactivation; License Lapse”, effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 12            CONTINUING EDUCATION**

**16.23.12.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board.  
[11-29-97; 16.23.12.1 NMAC - Rn, 16 NMAC 23.12.1, 01-30-2003; A, 07-10-03]

**16.23.12.2        SCOPE:** The provisions of Part 12 of Chapter 23 applies to all respiratory care practitioners intending to renew or reactivate their New Mexico license.  
[11-29-97; 16.23.12.2 NMAC - Rn, 16 NMAC 23.12.2, 01-30-2003]

**16.23.12.3        STATUTORY AUTHORITY:** Part 12 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-9(A) NMSA 1978.  
[11-29-97; 16.23.12.3 NMAC - Rn, 16 NMAC 23.12.3, 01-30-2003]

**16.23.12.4        DURATION:** Permanent.  
[11-29-97; 16.23.12.4 NMAC - Rn, 16 NMAC 23.12.4, 01-30-2003]

**16.23.12.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.12.5 NMAC - Rn, 16 NMAC 23.12.5, 01-30-2003; A, 07-10-03]

**16.23.12.6        OBJECTIVE:** The objective of Part 12 of Chapter 23 is to set forth the requirements and procedures for the New Mexico licensed respiratory care practitioner to meet the continuing education requirements for license renewal or reactivation.  
[11-29-97; 16.23.12.6 NMAC - Rn, 16 NMAC 23.12.6, 01-30-2003]

**16.23.12.7        DEFINITIONS: [RESERVED]**

**16.23.12.8        CONTINUING EDUCATION REQUIREMENTS.** Continuing education is a requirement for biennial license renewal or license reactivation.

**A.** Continuing education hours must be directly related to respiratory therapy, pulmonary function technology, or related inter-disciplinary areas of health care.

**B.** The department may consult with the board to resolve questions as to appropriate continuing education hours.

**(1)** The department shall be the final authority on acceptance of any educational activity submitted by a licensee or a sponsor for approval.

**(2)** Each respiratory care practitioner must participate in at least **twenty (20)** clock hours of continuing education activities every renewal cycle, or as provided by 16.23.12.12 NMAC and 16.23.12.13 NMAC.

**C.** A minimum of twelve of the twenty hours of continuing education must be category I that include any of the following types of educational offerings:

**(1) lecture** - a discourse given for instruction before an audience or through teleconference;

**(2) panel** - a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution;

**(3) workshop** - a series of meetings for intensive, hands on, study or discussion, in a specific area of interest;

**(4) seminar** - a directed advanced study or discussion in a specific field of interest;

**(5) symposium** - conference of more than a single session organized for the purpose of discussion of a specific subject from various viewpoints and by various presenters;

**(6) distance education** - includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package; and

**(7) NBRC** awarded continuing education credit for successful completion of re-credentialing exams for CRT and RRT level credentials.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.12.8 NMAC - Rn, 16 NMAC 23.12.8, 01-30-2003; A, 07-10-03; A, 06-24-2004]

**16.23.12.9 APPROVED CONTINUING EDUCATION PROGRAMS**

**A.** The department will approve, on a clock hour basis, continuing education activities which meet the criteria in Subsection A of 16.23.12.8 NMAC, and which are sponsored or approved for respiratory care practitioners by the following:

- (1) the American association for respiratory care, inc. (AARC);
- (2) any AARC state chartered affiliate;
- (3) other state boards that license respiratory care practitioners;
- (4) the American lung association; and
- (5) the American heart association.

**B.** The department will approve, on a clock hour basis, a maximum of eight hours per renewal cycle of the following type of education activities listed within 16.23.12.9.B NMAC for licensees:

(1) any hospital or healthcare organization respiratory care-related continuing education in-service;

(2) respiratory care-related science courses taken in an academic setting and received toward RRT credentialing;

- (3) CPR certification or re-certification courses;
- (4) infection control certification or re-certification courses;
- (5) hazardous materials certification or re-certification courses; and
- (6) advanced life support courses.

**C.** The department will approve respiratory care-related education taken in an academic setting. One (1) semester hour or its equivalent converts to fifteen (15) clock hours.

**D.** The department will automatically approve for licensed respiratory care practitioners a maximum of six (6) clock hours of continuing education credit for each renewal period for teaching approved respiratory care-related continuing education offerings as provided in Part 12 (this rule). Credit will be granted one (1) time only for each course taught no matter how many times or how many years the course is repeated. [2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.12.9 NMAC - Rn, 16 NMAC 23.12.9, 01-30-2003, A, 06-24-2004]

**16.23.12.10 DOCUMENTATION.** Licensees shall be responsible for maintaining documentation of their continuing education activities and shall be required to submit copies of proofs of attendance at the time of license renewal.

**A. Proofs of attendance.** Proofs of attendance, including those for in-services, must clearly state the following:

- (1) name, address, and phone number of the sponsor or in-service provider;
- (2) date the educational offering or in-service was completed;
- (3) location where the educational offering was presented;
- (4) complete name of the seminar, course, or in-service (acronyms are not sufficient);
- (5) number of clock hours credited;
- (6) name of the attendee receiving credit for the continuing education offering or in-service;
- (7) signature of the person authorized by the sponsoring agency to verify licensee attendance; and
- (8) Name of the instructor.

**B. Academic credit courses.** A copy of the transcript of completed, approved academic credit hour courses as provided in Subsection C of 16.23.12.9 NMAC, must be submitted with the renewal documentation.

**C. Teaching activities.** A licensed respiratory care practitioner seeking credit for teaching respiratory care related courses must submit documentation of the teaching activity which clearly states the following:

- (1) name, address, and phone number of the sponsor or in-service provider;
- (2) complete name of the seminar, course, or in-service (acronyms are not sufficient);
- (3) date the educational offering or in-service was presented;
- (4) location where the educational offering was presented;
- (5) name of the licensee instructor;
- (6) number of clock hours credited; and
- (7) signature of the person authorized by the sponsoring agency to verify the licensee's teaching activity

[1-9-88; 9-9-91; 4-21-95; 11-29-97; 16.23.12.10 NMAC - Rn, 16 NMAC 23.12.10, 01-30-2003]

**16.23.12.11 OTHER EDUCATIONAL OFFERINGS.** The department, in consultation with the board, has an informal arrangement with the New Mexico society for respiratory care (NMSRC) in which NMSRC will review for approval other continuing education offerings, for individual licensees or continuing education sponsors.

**A.** Any continuing education (CE) activity that is not covered by 16.23.12.8 NMAC through 16.23.12.10 NMAC must be submitted to NMSRC for review and approval.

(1) Approval must be granted by the NMSRC **before** the CE may be considered applicable toward meeting the continuing education renewal requirement for respiratory care practitioners licensed in New Mexico. Any deadlines for submission of these requests to the NMSRC will be established by the NMSRC as needed.

(2) Approval must be granted by NMSRC **before** the continuing education can be submitted to the department and the board to meet the licensee's continuing education renewal requirement.

**B.** The request for approval of an educational seminar or course must include the following, at a minimum. The NMSRC may require additional information to process the request.

- (1) Name of the seminar or course.
- (2) Sponsoring party.
- (3) Objective of the seminar.
- (4) Format and subjects of seminar or course.
- (5) Number of clock hours credited for the offering.
- (6) Sample "proof of attendance" certificate.
- (7) Name and qualifications of the instructor.
- (8) Evaluation mechanism to be used.

**C.** Any processing fee established by the NMSRC for the continuing education review service must be payable to the NMSRC and must accompany the request to the NMSRC for approval of an educational offering.

**D.** The NMSRC will give written notification to the sponsor or licensee of the approval or denial of the educational program or seminar.

[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; 16.23.12.11 NMAC - Rn, 16 NMAC 23.12.11, 01-30-2003; A, 06-24-2004; A, 02-04-2005]

**16.23.12.12 CONTINUING EDUCATION REQUIREMENT PRORATED.** Any applicant whose initial licensure application is postmarked on or after October 1 of the **even** numbered year, through May 31 of the odd-numbered renewal year, shall be required to meet **one half (ten clock hours)** of the continuing education requirements for renewal at the time of renewal.

[9-19-91; 4-21-95; 11-29-97; 16.23.12.12 NMAC - Rn, 16 NMAC 23.12.12, 01-30-2003]

**16.23.12.13 CONTINUING EDUCATION REQUIREMENT WAIVED.** Any applicant whose initial licensure application is postmarked on or after June 1 of the **odd**-numbered (renewal) year through July 31 of the same year shall have the continuing education requirement **waived** for that renewal cycle.

[9-19-91; 4-21-95; 11-29-97; 16.23.12.13 NMAC - Rn, 16 NMAC 23.12.13, 01-30-2003]

**16.23.12.14 CONTINUING EDUCATION AUDIT.** The department, in consultation with the board, may elect to use an audit system for verifying continuing educational activities at the time of renewal.

**A.** In this case, the department will randomly select a minimum of ten (10) percent of the currently licensed respiratory care practitioners to provide, with their renewal applications, hard-copy proof of having met the continuing education requirement.

**B.** Audit requests will be included in the renewal notice.

**C.** Licensees not selected for audit will be required only to list the continuing education activities completed on their renewal applications. The department shall still have the option to audit these individuals' continuing education records at any time before the next scheduled license renewal.

[11-29-97; 16.23.12.14 NMAC - Rn, 16 NMAC 23.12.14, 01-30-2003]

**16.23.12.15 [RESERVED]**

**16.23.12.16 [RESERVED]**

**16.23.12.17 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER OF CONTINUING EDUCATION REQUIREMENT**

**A.** Licensees generally have twenty-four (24) months to complete the continuing education requirement for renewal, which is sufficient time to meet the continuing education requirement.

**B.** In the event a licensee experiences and extenuating circumstance such as a prolonged debilitating personal illness; or a prolonged debilitating illness of an immediate family member; or being mobilized to active duty by the national guard or other branch of service in the United States armed forces, which makes it impossible to meet the continuing education requirement for license renewal, the individual may request an emergency deferral or a waiver of the continuing education requirement by submitting one of the following items to the board before the license expiration date.

(1) A written request for deferral or waiver explaining the circumstances that made it impossible for the licensee to meet the requirement in the twenty-four months prior to the expiration date of the license.

(2) Documentation accompanying the request for deferral or waiver that verifies the extenuating circumstances, such as a signed affidavit from a physician or medical provider, or a copy of the mobilization orders from the branch of government calling the person to active duty; etc.

**C.** A licensee mobilized for active military duty, but who is still in training when the license renewal comes due, is required to renew his/her license and meet the continuing education requirements, but the license renewal fee will not be assessed.

**D.** A licensee mobilized into active military duty, and who is in military action at the time the license renewal comes due, is not required to renew his/her license or meet the continuing education requirements. However, upon return to civilian status, the licensee shall renew the license without having to pay the renewal or late penalty fee.

**E.** The license of a respiratory therapist who does not earn the required continuing education for renewal due to his/her call to active military duty will not lapse for failure to earn continuing education hours provided the licensee submits a copy of the mobilization orders to the board office prior to the expiration of the license.

**F.** The license renewal extension authorized by this regulation shall end one month after deployment is concluded.

**G.** Upon return to civilian status, the licensee shall resume earning continuing education prorated as follows after the deployment ends.

(1) If the deployment ends in October of the odd-numbered year through March of the even-numbered year, the licensee will accrue twenty (20) hours of continuing education for the next renewal cycle.

(2) If the deployment ends in April of the even-numbered year through September of the even-numbered year, the licensee will accrue fifteen (15) hours of continuing education for the next renewal cycle.

(3) If the deployment ends in October of the even-numbered year through March of the odd-numbered year, the licensee will accrue ten (10) hours of continuing education for the next renewal cycle.

(4) If the deployment ends in April of the odd-numbered year through July of the odd-numbered year, the licensee will accrue zero (0) hours of continuing education for the that year's renewal cycle.

[16.23.12.17 NMAC - N, 02-04-2005]

#### **HISTORY OF 16.23.12 NMAC:**

**Pre-NMAC History:** The material in Part 12 was derived from regulations previously filed with the state records center and archives by former department name health and environment department, rule numbers, HED-85-1 (HSD), "Regulations Governing the Respiratory Care Act," filed 01-22-85; HED-87-3 (HSD), "Regulations Governing the Respiratory Care Act," filed 05-11-87; by department name regulation & licensing department, former division name, boards & commissions division rule number BCD 87-3, "Regulations Governing the Respiratory Care Act," filed 12-10-87; and by department name regulation and licensing department, respiratory care advisory board in rule numbers, Rule 91-5, "Renewal of Licenses," filed 08-20-91; Rule 91-8, "Expiration/License Renewal," filed 08-20-91; Rule 91-6, "Continuing Education", filed on 08-20-91; and Rule 6, "Continuing Education," filed on 03-22-95.

#### **History of Repealed Material:** [RESERVED]

**Other History:** Rule 6, "Continuing Education," (filed 03-22-95) was renumbered, reformatted and replaced into first version of New Mexico Administrative Code as 16 NMAC 23.12, "Continuing Education", effective 11-29-97. 16 NMAC 23.12, "Continuing Education" (filed 11-10-97), renumbered and reformatted to 16.23.12 NMAC, "Continuing Education" effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 13            EXPANDED PRACTICE**

**16.23.13.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 7-30-99; 16.23.13.1 NMAC - Rn, 16 NMAC 23.13.1, 01-30-2003; A, 06-24-2004]

**16.23.13.2        SCOPE:** The provisions of Part 13 of Chapter 23 apply to all respiratory care practitioners who intend to practice an expanded scope procedure in a facility; and to the facility that intends to employ a licensed respiratory care practitioner to perform expanded scope procedures.  
[11-29-97; 16.23.13.2 NMAC - Rn, 16 NMAC 23.13.2, 01-30-2003]

**16.23.13.3        STATUTORY AUTHORITY:** Part 13 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-3.E and Section 61-12B-7(B) NMSA 1978.  
[11-29-97; 16.23.13.3 NMAC - Rn, 16 NMAC 23.13.3, 01-30-2003]

**16.23.13.4        DURATION:** Permanent.  
[11-29-97; 16.23.13.4 NMAC - Rn, 16 NMAC 23.13.4, 01-30-2003]

**16.23.13.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a section.  
[11-29-97; 16.23.13.5 NMAC - Rn, 16 NMAC 23.13.5, 01-30-2003; A, 06-24-2004]

**16.23.13.6        OBJECTIVE:** The objective of Part 13 of Chapter 23 is to describe the procedure for gaining department approval for qualified respiratory care practitioners to practice expanded scope procedures.  
[11-29-97; 16.23.13.6 NMAC - Rn, 16 NMAC 23.13.6, 01-30-2003]

**16.23.13.7        DEFINITIONS:**

**A.        "Expanded practice"** means any practice performed by a respiratory care practitioner that is not described in Section 61-12B-3.D. (1) through (7) of "Definitions" in the New Mexico Respiratory Care Act, NMSA 1978 (1993 Repl. Pamp.), or as amended.

**B.        "Facility"** means the employer of a licensed respiratory care practitioner.

**C.        Repealed.**

**D.        Repealed.**

**E.        "Medical board"** means a group of medical experts that review clinical practice in a facility to assure that the practice of health care meets the standard of care in the health care community.  
[2-21-85; 6-10-87; 1-9-88; 9-19-91; 4-21-95; 11-29-97; R 7-30-99; 16.23.13.7 NMAC - Rn, 16 NMAC 23.13.7, 01-30-2003]

**16.23.13.8        REQUIREMENTS FOR EXPANDED PRACTICE RECOGNITION.** Expanded practice procedures must have the approval of the facility's medical board, and the outcome of initiating the performance of specific expanded practice procedures by respiratory care practitioners should be measured by the facility. Furthermore, the expanded practice must meet the standard of care in the health care community. In order for a licensed respiratory care practitioner to be permitted to perform expanded practice procedures, the practitioner must meet the following requirements:

**A.        complete a training program in the expanded practice procedure as defined in Subsection A of 16.23.13.7 NMAC (this rule), and approved by the facility's medical board;**

**B.        obtain authorization from the facility to perform, under appropriate medical direction, those expanded practice functions;**

**C.        file notice with the Board when he or she is approved by the facility to perform procedures that are expanded practice procedures for him or herself; and**

**D.        follow the initial training with ongoing competency verification.**

[4-21-95; 11-29-97; 7-30-99; 16.23.13.8 NMAC - Rn, 16 NMAC 23.13.8, 01-30-2003]

**16.23.13.9        This entire Section is Repealed.**

[4-21-95; 11-29-97; R -30-99; 16.23.13.9 NMAC - Rn, 16 NMAC 23.13.9, 01-30-2003]

**16.23.13.10 TRAINING STANDARDS**

**A.** The level of training and skill verification for the respiratory care practitioner performing in an area of expanded practice will be consistent with the respiratory care practitioner's facility's risk management guidelines and professional accreditation and licensing requirements.

**B.** The level of training and skill verification for a respiratory care practitioner performing in an area of expanded practice will be consistent with professional credentialing standards.

[4-21-95; 11-29-97; 16.23.13.10 NMAC - Rn, 16 NMAC 23.13.10, 01-30-2003]

**16.23.13.11 DEVELOPMENT OF AN EXPANDED PRACTICE PROCEDURE: This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.11 NMAC - Rn, 16 NMAC 23.13.11, 01-30-2003]

**16.23.13.12 DEVELOPMENT OF AN APPROVED TRAINING PROGRAM: This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.12 NMAC - Rn, 16 NMAC 23.13.12, 01-30-2003]

**16.23.13.13 APPROVAL OF TRAINING PROGRAM: This entire Section is Repealed.**

[4-21-95; 11-29-97; R 7-30-99; 16.23.13.13 NMAC - Rn, 16 NMAC 23.13.13, 01-30-2003]

**16.23.13.14 CONTINUING EDUCATION.**

**A.** Continuing education of expanded practice skills should be consistent with the facility's accreditation requirements.

**B.** Respiratory care practitioners who do not perform the expanded practice approved for them frequently enough to maintain performance at a competent and proficient level will take refresher training courses consistent with the training standards outlined in 16.23.13.10 NMAC.

[4-21-95; 11-29-97; 7-30-99; 16.23.13.14 NMAC - Rn, 16 NMAC 23.13.14, 01-30-2003]

**16.23.13.15 PENALTIES**

**A.** Effective July 1, 1998, any respiratory care practitioner who performs expanded practice procedures without valid approval will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

**B.** Any respiratory care practitioner who intentionally falsifies information to the department or allows false information to be submitted on his or her behalf with regards to expanded practice, will be subject to penalties as set forth in the Respiratory Care Act and in accordance with those provisions contained in the Uniform Licensing Act.

[4-21-95; 11-29-97; 16.23.13.15 NMAC - Rn, 16 NMAC 23.13.15, 01-30-2003]

**HISTORY OF 16.23.13 NMAC:**

**Pre-NMAC History:** The material in Part 13 was derived from regulations previously filed with the State Records and Archives Center by department name Regulation and Licensing Department, Respiratory Care Advisory Board in rule number, Rule 8, "Expanded Practice," filed on 3-22-95.

**History of Repealed Material:** [RESERVED]

**Other History:** Rule 8, "Expanded Practice," filed 03-22-95 was renumbered, reformatted and replaced into first version of the New Mexico Administrative Code as 16 NMAC 23.13, "Expanded Practice", filed on 11-10-97. 16 NMAC 23.13, "Expanded Practice", filed on 11-10-97, renumbered and reformatted to 16.23.13 NMAC, "Expanded Practice" effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 14            SCOPE OF PRACTICE GUIDELINES FOR NON-LICENSED, NON-EXEMPTED**  
**PERSONS**

**16.23.14.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department, Respiratory Care Advisory Board  
[16.23.14.1 NMAC - N, 7-10-00]

**16.23.14.2        SCOPE:** The provisions in Part 14 of Chapter 23 apply to licensees and non-licensees.  
[16.23.14.2 NMAC - N, 7-10-00]

**16.23.14.3        STATUTORY AUTHORITY:** Part 14 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-11 NMSA 1978. Specifically, Sections 61-12B-2; 61-12B-3; 61-12B-4; 61-12B-7; 61-12B-9.C, D, and E; 61-12B-12.A.7; and 61-12B-15.  
[16.23.14.3 NMAC - N, 7-10-00]

**16.23.14.4        DURATION:** Permanent.  
[16.23.14.4 NMAC - N, 7-10-00]

**16.23.14.5        EFFECTIVE DATE:** July 10, 2000, unless a later date is cited at the end of a section.  
[16.23.14.5 NMAC - N, 7-10-00]

**16.23.14.6        OBJECTIVE:** The objective of Part 14 of Chapter 23 is to clarify who can perform respiratory care-related functions and procedures. Its objective is also to clarify for non-licensed persons what respiratory care-related function, procedures, or services that they can legally perform, for instance, in the delivery of medical equipment in the home care setting, in accordance with the Respiratory Care Act, NMSA 1978, Sections 61-13-1 through 61-13-17.  
[16.23.14.6 NMAC - N, 7-10-00]

**16.23.14.7        DEFINITIONS:**

- A.        “Department”** means the New Mexico regulation and licensing department.
  - B.        “DME or DME company”** refers to durable medical equipment or companies that provide durable medical equipment in the health care industry.
  - C.        [Reserved]**
  - D.        “Gratuitous”** means to receive no form of payment or remuneration.
  - E.        “Home care setting”** as it applies to respiratory care, means any facility, including a patient’s home that would usually not employ respiratory care practitioners, specifically those facilities visited by a person from outside the facility to provide respiratory care services.
  - F.        [Reserved]**
  - G.        “License”** means the legal privilege and authorization to practice within a professional category.
  - H.        [Reserved]**
  - I.        “Prescription”** means an order given individually for the person for whom prescribed, either directly from the prescriber to the person licensed to fill the prescription or indirectly by means of a written order signed by the prescriber
  - J.        “Medical direction”** as applied to respiratory care, means a prescription or order by a physician authorized to practice medicine or by any other person authorized to prescribe under the laws of New Mexico.
- [16.23.14.7 NMAC - N, 7-10-00; A, 02-04-2005]

**16.23.14.8        RESPIRATORY CARE SCOPE OF PRACTICE:** The scope of practice for respiratory care practitioners is clearly defined in NMSA 1978, Section 61-12B-3.C and the respiratory care functions and procedures within the scope of practice of respiratory care practitioners are outlined in Section 61-12B-3.D. In order to perform these functions and procedures in New Mexico, a person must be licensed by the State under the Respiratory Care Act.  
[16.23.14.8 NMAC - N, 7-10-00]

**16.23.14.9 EXCEPTIONS TO LICENSURE:** The following individuals are exempted from licensure under the Respiratory Care Act.

**A.** Persons licensed by other appropriate State agencies may perform the respiratory care functions and procedures provided in NMSA 1978, Section 61-12B-3, so long as they are authorized to do so by their profession's licensing body.

**(1)** The licensing body establishes and regulates the professional standards of the licensed profession; and

**(2)** The licensing body is obligated to enforce the provisions of its statutory mandate and the rules and regulations of that profession.

**B.** Persons who provide respiratory care-related self-care.

**C.** Persons, who do not represent themselves to be respiratory care practitioners, but who provide gratuitous care to friends or family members, or who provide respiratory care services in a case of emergency.

**D.** Persons who have demonstrated competency in one or more areas covered by the Respiratory Care Act may perform only those functions that they are qualified by examination to perform, as long as the testing body offering the examination is certified by the national commission for health certifying agencies.

[16.23.14.9 NMAC - N, 7-10-00]

**16.23.14.10 VIOLATION OF THE RESPIRATORY CARE ACT SCOPE OF PRACTICE:** It is a misdemeanor violation for anyone to perform respiratory care procedures that are regulated under the Respiratory Care Act unless licensed by the Board; or unless exempted from licensure by the provisions in the Respiratory Care Act; or unless authorized under another licensed professional's license to perform respiratory care-related functions, procedures, or services.

**A.** The department may seek an immediate injunction to stop the illegal practice of respiratory care; and/or

**B.** The department may initiate civil action proceedings in any district court to enforce any of the provisions of the Respiratory Care Act.

[16.23.14.10 NMAC - N, 7-10-00]

**16.23.14.11 UNLICENSED PERSONS NOT EXEMPTED BY THE RESPIRATORY CARE ACT:** Persons who are not licensed in New Mexico to practice respiratory care, and who are not exempted from licensure by the Respiratory Care Act, particularly those persons employed by durable medical equipment companies, home care delivery, or other similar service companies may perform only the functions listed below. If a procedure, service, or function is not listed below, the non-licensed person may not legally perform it.

[16.23.14.11 NMAC - N, 7-10-00]

**16.23.14.12 CPAP, BI-LEVEL WITHOUT BACK-UP RATE**

**A.** Deliver equipment and supplies.

**B.** Instruct the patient/family on how to order supplies

**C.** Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.12 NMAC - N, 7-10-00]

**16.23.14.13 ORAL SUCTIONING**

**A.** Deliver equipment and supplies.

**B.** Instruct the patient/family on how to order supplies

**C.** Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.13 NMAC - N, 7-10-00]

**16.23.14.14 OXYGEN DELIVERY, SET UP, CARE, MONITORING, AND INSTRUCTION**

**A.** Deliver oxygen equipment and supplies.

**B.** Instruct the patient/family on how to order supplies

**C.** Connect the oxygen tubing and/or cannula to the oxygen equipment.

**D.** Instruct the patient/family on the use of the cannula.

**E.** Instruct the patient/family on how to turn the oxygen unit on.

**F.** Demonstrate to patient/family how to set the liter flow.

**G.** Instruct the patient/family on how to connect and clean the humidifier bottle.

**H.** Instruct the patient/family on oxygen safety.

- I. Instruct the patient/family on how to deal with equipment malfunction.
- J. Instruct the patient/family regarding the back-up oxygen cylinder.
- K. Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.14 NMAC - N, 7-10-00]

**16.23.14.15 VENTILATOR/LIFE SUPPORT**

- A. Deliver ventilator and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency

[16.23.14.15 NMAC - N, 7-10-00]

**16.23.14.16 BRONCHIAL PULMONARY HYGIENE**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.16 NMAC - N, 7-10-00]

**16.23.14.17 NASOTRACHEAL SUCTIONING**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.17 NMAC - N, 7-10-00]

**16.23.14.18 IPPB, NEBULIZER SET UP AND TREATMENT**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.18 NMAC - N, 7-10-00]

**16.23.14.19 APNEA MONITOR**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.19 NMAC - N, 7-10-00]

**16.23.14.20 DIAGNOSTIC TESTING**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.20 NMAC - N, 7-10-00]

**16.23.14.21 TRACHEOSTOMY CARE**

- A. Deliver equipment and supplies.
- B. Instruct the patient/family on how to order supplies.
- C. Instruct the patient/family on who and/or where to call in case of emergency.

[16.23.14.21 NMAC - N, 7-10-00]

**16.23.14.22 [RESERVED]**

**16.23.14.23 [RESERVED]**

**16.23.14.24 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY**

**GUIDELINES.** In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, (2003 Repl. Pamp.) if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the

department's rules and regulations governing respiratory care (16.23 NMAC) by practicing respiratory care in New Mexico without a valid New Mexico license.

**A.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of respiratory care.

**B.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars (\$1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures and/or protocols without benefit of a valid New Mexico respiratory care license or permit.

**C.** In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing. [16.23.14.23 NMAC - N, 02-04-2005]

**HISTORY of 16.23.14 NMAC:** [RESERVED]

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 15            PARENTAL RESPONSIBILITY ACT COMPLIANCE**

**16.23.15.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board 725 St. Michael's Drive P.O. Box 25101 Santa Fe, New Mexico 87504  
[11-29-97; 16.23.15.1 NMAC - Rn, 16 NMAC 23.15.1, 01-30-2003]

**16.23.15.2            SCOPE:** The provisions of PART 15 of Chapter 23 apply to all license applicants and licensees.  
[11-29-97; 16.23.15.2 NMAC - Rn, 16 NMAC 23.15.2, 01-30-2003]

**16.23.15.3            STATUTORY AUTHORITY:** PART 15 of Chapter 23 is promulgated pursuant to the Parental Responsibility Act (Chapter 25, Laws of 1995).  
[11-29-97; 16.23.15.3 NMAC - Rn, 16 NMAC 23.15.3, 01-30-2003]

**16.23.15.4            DURATION:** Permanent.  
[11-29-97; 16.23.15.4 NMAC - Rn, 16 NMAC 23.15.4, 01-30-2003]

**16.23.15.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section or Paragraph.  
[11-29-97; 16.23.15.5 NMAC - Rn, 16 NMAC 23.15.5, 01-30-2003]

**16.23.15.6            OBJECTIVE:** The objective of PART 15 of Chapter 23 is to set forth the regulations for enforcing the provisions of the Parental Responsibility Act.  
[11-29-97; 16.23.15.6 NMAC - Rn, 16 NMAC 23.15.6, 01-30-2003]

**16.23.15.7            DEFINITIONS:** All terms defined in the Parental Responsibility Act shall have the same meanings in this section. As used in this section:

**A.            "HSD"** means the New Mexico Human Services Department.  
**B.            "Statement of Compliance"** means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment order for support.

**C.            "Statement of Non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment order for support.

[11-29-97; 16.23.15.7 NMAC - Rn, 16 NMAC 23.15.7, 01-30-2003]

**16.23.15.8            DISCIPLINARY ACTION:** If a temporary permit or respiratory care practitioner license applicant, or a temporary permittee or respiratory care practitioner licensee is not in compliance with a judgment order for support, the Department, in consultation with the Board:

- A.**            shall deny an application for a temporary permit or respiratory care practitioner license;
- B.**            shall deny the renewal of the temporary permit or respiratory care practitioner license; and
- C.**            has grounds for suspension or revocation of the temporary permit or respiratory care

practitioner license.

[11-29-97; 16.23.15.8 NMAC - Rn, 16 NMAC 23.15.8, 01-30-2003]

**16.23.15.9            CERTIFIED LIST:** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the Department shall match the certified list against the current list of respiratory care temporary permit or practitioner license applicants or current temporary permittees and licensees.

**A.**            Upon the later receipt of an application for temporary permit, license, or renewal of either, the Department shall match the applicant against the current certified list.

**B.**            By the end of the month in which the certified list is received, the Department shall report to HSD the names of applicants, temporary permittees, and licensees who are on the certified list; and the action the Department has taken in connection with such applicants, temporary permittees, and licensees.

[11-29-97; 16.23.15.9 NMAC - Rn, 16 NMAC 23.15.9, 01-30-2003]

**16.23.15.10 INITIAL ACTION:** Upon determination that an applicant for temporary permit or practitioner license, or a temporary permittee or a respiratory care practitioner licensee appears on the certified list, the Department, in consultation with the Board, shall:

**A.** commence a formal proceeding under 16.23.15.11 NMAC to take the appropriate action under 16.23.15.8 NMAC, (or

**B.** for current temporary permittees and licensees only, informally notify the permittee or licensee that the permittee's or licensee's name is on the certified list, and that the permittee or licensee must provide the Department with a subsequent Statement of Compliance from HSD by the earlier of the application for permit or license renewal or by a specified date not to exceed thirty (30) days. If the permittee or licensee fails to provide this statement, the Department, in consultation with the Board, shall commence a formal proceeding under 16.23.15.11 NMAC.

[11-29-97; 16.23.15.10 NMAC - Rn, 16 NMAC 23.15.10, 01-30-2003]

**16.23.15.11 NOTICE OF CONTEMPLATED ACTION:** Prior to taking any action specified in 16.23.15.8 NMAC, the Department shall serve upon the applicant, temporary permittee, or licensee a written notice stating that:

**A.** the Department has grounds to take such action, and that the Department shall take such action unless the temporary permittee, licensee or applicant for either:

(1) mails a letter to the Department, by certified mail return receipt requested, within twenty (20) days after service of the notice requesting a hearing; or

(2) provides the Department, within thirty (30) days of the date of the notice, with a Statement of Compliance from HSD; and

**B.** if the temporary permittee, respiratory care practitioner licensee or applicant for either, disagrees with the determination of non-compliance, or wishes to come into compliance, he or she should contact the HSD Child Support Enforcement Division.

[11-29-97; 16.23.15.11 NMAC - Rn, 16 NMAC 23.15.11, 01-30-2003]

**16.23.15.12 EVIDENCE AND PROOF:** In any hearing under this rule, relevant evidence is limited to the following:

**A.** A Statement of Non-compliance is conclusive evidence that requires the Department to take the appropriate action under 16.23.15.8 NMAC, unless:

**B.** The applicant or licensee provides the Department with a subsequent Statement of Compliance, which shall preclude the Department from taking any action under this rule.

[11-29-97; 16.23.15.12 NMAC - Rn, 16 NMAC 23.15.12, 01-30-2003]

**16.23.15.13 ORDER:** When a disciplinary action is taken under this section solely because the temporary permittee, respiratory care practitioner licensee, or applicant for either, is not in compliance with a judgment and order for support, the order shall state that the application, permit, or license shall be reinstated upon presentation of a subsequent Statement of Compliance. The Department may also include any other conditions necessary to comply with Department requirements for reapplication or reinstatement of lapsed licenses or temporary permits.

[11-29-97; 16.23.15.13 NMAC - Rn, 16 NMAC 23.15.13, 01-30-2003]

**16.23.15.14 PROCEDURES:** Proceedings under this rule shall be governed by the Uniform Licensing Act.  
[11-29-97; 16.23.15.14 NMAC - Rn, 16 NMAC 23.15.14, 01-30-2003]

**HISTORY OF 16.23.15 NMAC:**

**PRE-NMAC HISTORY:** None

**HISTORY OF REPEALED MATERIAL:** [RESERVED]

**Other History:** 16 NMAC 23.15, "Parental Responsibility Act Compliance, renumbered and reformatted to 16.23.15 NMAC, "Parental Responsibility Act Compliance", effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 16            DISCIPLINARY PROCEEDINGS**

**16.23.16.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.16.1 NMAC - Rn, 16 NMAC 23.16.1, 01-30-2003; A, 07-10-03]

**16.23.16.2        SCOPE:** PART 16 of Chapter 23 applies to all license applicants or New Mexico licensed respiratory care practitioners.  
[11-29-97; 16.23.16.2 NMAC - Rn, 16 NMAC 23.16.2, 01-30-2003]

**16.23.16.3        STATUTORY AUTHORITY:** Authority for PART 16 of Chapter 23 is the Respiratory Care Act, Section 61-12B-12 NMSA 1978 (1996 Repl. Pamp.), and the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.).  
[11-29-97; 16.23.16.3 NMAC - Rn, 16 NMAC 23.16.3, 01-30-2003]

**16.23.16.4        DURATION:** Permanent.  
[11-29-97; 16.23.16.4 NMAC - Rn, 16 NMAC 23.16.4, 01-30-2003]

**16.23.16.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section.  
[11-29-97; 16.23.16.5 NMAC - Rn, 16 NMAC 23.16.5, 01-30-2003; A, 07-10-03]

**16.23.16.6        OBJECTIVE:** The objective of PART 16 of Chapter 23 is to set forth the policies and procedures for processing complaints submitted to the department and/or the board against temporary permittees and respiratory care practitioner licensees, and for instituting disciplinary actions against temporary permittees, licensees, or applicants for either.  
[11-29-97; 16.23.16.6 NMAC - Rn, 16 NMAC 23.16.6, 01-30-2003]

**16.23.16.7        DEFINITIONS:** For the purposes of this rule and for 16.23.17 NMAC:

**A.            “Complaint”** means a complaint, which has been filed with the department and/or the board, against a temporary permittee, respiratory care practitioner licensee, or applicant for either permit or license.

**B.            “Complainant”** means the party who files a complaint against a temporary permittee, a respiratory care practitioner licensee, or an applicant for either a permit or a license governed by the Respiratory Care Act.

**C.            “Respondent”** means the permit or license applicant or the temporary permittee or licensed practitioner who is the subject of the complaint.

**D.            “Notice of contemplated action” or “NCA”** means the administrative action provided for by the Uniform Licensing Act, whereby the respondent is given notice of a pending disciplinary action against his or her application, permit or license, based upon violations of the department’s rules and regulations governing the practice of respiratory care or the Respiratory Care Act, which have been alleged in a complaint filed with the department and/or the board. The respondent is afforded an opportunity for a formal hearing before the department, in consultation with the board.

**E.            “Formal hearing”** means a formal hearing setting before a hearing officer, or a presiding officer and the board, whereby a respondent has the opportunity to be heard and to present evidence under the Uniform Licensing Act repudiating the allegations in the subject complaint. An administrative prosecutor also presents to the department, in consultation with the board, evidence of the alleged violations. The department, in consultation with the board, has the authority to take any action, which would have the effect of denying, revoking, or suspending a license or an application for licensure in accordance with the Uniform Licensing Act.

**F.            “Hearing officer” or “presiding officer”** means the person appointed by the department, in consultation with the board, to conduct hearings under the Uniform Licensing Act.

**G.            “Redacted”** means the act or process of editing or revising the complaint so that the parties, which are the subject of the complaint, are unknown to the board.  
[11-29-97; 16.23.16.7 NMAC - Rn, 16 NMAC 23.16.7, 01-30-2003]

**16.23.16.8 DISCIPLINARY PROCEEDINGS:** An investigation may be instituted by the department, in consultation with the board, upon the receipt of a written, notarized complaint filed by any person, including any member of the board.

**A.** A complaint filed, with the department, will be received by the board administrator who will process the complaint and will determine how the complaint will be handled.

**B.** In cases where it is clearly evident that the complaint does not fall within the board's statutory authority or jurisdiction, the board administrator will not process the complaint and will inform the complainant of the reasons.

**C.** If the complaint appears to contain violations of the board's statute or its rules and regulations (16.23 NMAC), the board administrator will process the complaint.

**D.** If the complaint is not lengthy, the board administrator may elect to present the processed complaint to the entire board in a redacted form.

**E.** If the complaint is lengthy or complicated, the board administrator shall refer it to the board's standards of practice committee for review, consideration, and possible investigation.

**F.** The department may provide the respondent with a copy of the complaint and allow a reasonable time for a response to the allegations in the complaint.

**G.** The foregoing notwithstanding, the department will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it determines that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

[11-29-97; 16.23.16.8 NMAC - Rn, 16 NMAC 23.16.8, 01-30-2003]

**16.23.16.9 STANDARDS OF PRACTICE COMMITTEE.** On an annual basis, the board chair shall appoint a member or members of the board to a standards of practice committee. The board may also appoint the board administrator and/or a complaint manager to the standards of practice committee.

**A.** The standards of practice committee will review all documentation provided to it in reference to the subject complaint.

**B.** The standards of practice committee may be authorized by the board to employ, without prior board approval, the services of an investigator or other persons determined by the committee to be necessary in order to expedite the investigation of a complaint. In such cases, the board administrator will contract for any such required services once budgetary availability is determined.

**C.** Upon completion of its investigation, the standards of practice committee shall present a summary of the complaint to the board, in a redacted form, for the purpose of enabling the board to act upon the standards of practice committee's recommendations concerning the disposition of the subject complaint.

**D.** The standards of practice committee may be authorized by the board to discuss a settlement agreement or mediation agreement with the respondent as a means of resolving the complaint.

**(1)** The settlement or mediation agreement shall be presented to the board for consideration and approval.

**(2)** Depending on the board's decision and action on any settlement or mediation agreement presented, the Board may make recommendation for further action to the department superintendent.

[11-29-97; 16.23.16.9 NMAC - Rn, 16 NMAC 23.16.9, 01-30-2003; A, 07-10-03]

**16.23.16.10 STANDARDS OF PRACTICE COMMITTEE RECUSED.** Members of the standards of practice committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the department or the board against the permittee, licensee, or applicant who is the subject of the complaint.

[11-29-97; 16.23.16.10 NMAC - Rn, 16 NMAC 23.16.10, 01-30-2003]

**16.23.16.11 BOARD ACTION CONCERNING COMPLAINT DISPOSITION.** After consideration, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

**A.** If the board determines that the department lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to recommend to the department that the complaint be dismissed and closed.

**B.** If the board determines that there is sufficient evidence or cause for the department to issue a notice of contemplated action, it may vote to recommend to the department that the complaint be referred to the

attorney general's office for possible prosecution in accordance with the provisions contained within the Uniform Licensing Act.

**C.** The board may recommend that the department take any other action with regard to a complaint which is within the department's authority and which is within the law, including referring the complaint to the attorney general for injunctive proceedings; or referring it to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[11-29-97; 16.23.16.11 NMAC - Rn, 16 NMAC 23.16.11, 01-30-2003]

**16.23.16.12 PREHEARING MOTIONS.** The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing.

[11-29-97; 16.23.16.12 NMAC - Rn, 16 NMAC 23.16.12, 01-30-2003]

**16.23.16.13 DISCIPLINARY ACTION:** In accordance with those provisions contained in the Uniform Licensing Act, the department, in consultation with the board, may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated those provisions set forth in Section 61-12B-12 of the Respiratory Care Act or those provisions found to constitute grounds for disciplinary action in Part 17 of the boards regulations (16.23 NMAC). The Uniform Licensing Act allows discipline in many forms in addition to suspension or revocation, including but not limited to, fines, letters of reprimand, or corrective action plans.

**A. Formal letters of reprimand.** The department, in consultation with the board, shall have discretionary authority to issue formal letters of reprimand or warning instead of license revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be a matter of public record.

**B. Settlement agreements.** Following the issuance of a notice of contemplated action, the department, in consultation with the board, may enter into a settlement agreement with the respondent as a means of resolving a complaint.

[11-29-97; 16.23.16.13 NMAC - Rn, 16 NMAC 23.16.13, 01-30-2003]

**16.23.16.14 LICENSE/PERMIT RETURNED TO THE DEPARTMENT.** Any temporary permit, wall license and renewal license issued by the department must be returned to the department subsequent to revocation or suspension. The permit or license(s) must be returned in person or by registered mail no later than twenty (20) days after the suspension or revocation order by the department.

[11-29-97; 16.23.16.14 NMAC - Rn, 16 NMAC 23.16.14, 01-30-2003]

**16.23.16.15 COSTS OF DISCIPLINARY PROCEEDINGS.** The respondent shall bear all costs of disciplinary proceedings unless the respondent is excused by the department from paying all or part of the fees, or if the respondent prevails at the hearing and an action specified in § 61-1-3 of the Uniform Licensing Act is not taken by the department.

[11-29-97; 16.23.16.15 NMAC - Rn, 16 NMAC 23.16.15, 01-30-2003]

**16.23.16.16 PRIVATE CAUSE OF ACTION.** Neither the action nor inaction of the department or board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[11-29-97; 16.23.16.16 NMAC - Rn, 16 NMAC 23.16.16, 01-30-2003]

**16.23.16.17 FEDERAL FRAUD AND ABUSE DATA BANK.**

**A.** In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act (HIPAC) of 1996, also known as the Kassebaum-Kennedy bill, the department, in consultation with the board, shall report any final adverse actions taken against a licensee or applicant, which contain an admission or finding of guilt or liability, to the federal fraud and abuse data bank established under HIPAC.

**B.** The department, in consultation with the board, has the discretion not to report any final adverse action taken against a licensee or applicant, which does not contain an admission or finding of guilt or liability, to the federal fraud and abuse databank established under HIPAC.

[11-29-97; 16.23.16.17 NMAC - Rn, 16 NMAC 23.16.17, 01-30-2003; A, 07-10-03]

**16.23.16.18 NATIONAL RESPIRATORY CARE DISCIPLINARY DATABASE.** All final adverse actions shall also be reported by the department, in consultation with the board, to the national respiratory care disciplinary database established by the national board for respiratory care, inc. (NBRC) and the American association for respiratory care, inc. (AARC) in accordance with the provisions contained in 16.23.16.18 NMAC. [11-29-97; 16.23.16.18 NMAC - Rn, 16 NMAC 23.16.18, 01-30-2003; A, 07-10-03]

**16.23.16.19 UNLICENSED PRACTICE OF RESPIRATORY CARE - DISCIPLINARY**

**GUIDELINES.** In accordance with the provisions contained within the Uniform Licensing Act, the department may take disciplinary action as provided in Section 61-1-3.2, NMSA 1978, (2003 Repl. Pamp.) if the department, in consultation with the board, determines that the respondent has violated the Respiratory Care Act or the department's rules and regulations governing respiratory care (16.23 NMAC) by practicing respiratory care in New Mexico without a valid New Mexico license.

**A.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in the practice of respiratory care.

**B.** The department, in consultation with the board, may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a company or other business entity that requires an unlicensed person to engage in the practice of respiratory care without a license. The penalty shall be imposed in the amount of one thousand dollars (\$1,000) for each individual that the company or business entity employs and who is performing respiratory care scope of practice procedures and/or protocols without benefit of a valid New Mexico respiratory care license or permit.

**C.** In addition, the department, in consultation with the board may assess the person, company, or other business entity for administrative costs, including investigative costs and the cost of conducting a hearing. [16.23.16.19 NMAC - N, 02-04-2005]

**HISTORY of 16.23.16 NMAC:**

**Pre-NMAC History:** None

**History of Repealed Material:** [RESERVED]

**Other History:** 16 NMAC 23.16, Disciplinary Proceedings” (filed 11-10-97), renumbered and reformatted to 16.23.16 NMAC, “Disciplinary Proceedings”, effective 01-30-2003.

**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 17            GROUNDS FOR DISCIPLINARY ACTION**

**16.23.17.1            ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.17.1 NMAC - Rn, 16 NMAC 23.17.1, 01-30-2003; A, 07-10-03]

**16.23.17.2            SCOPE:** The provisions in PART 17 of Chapter 23 apply to any person found to be in violation of the Respiratory Care Act, NMSA 1978, Section 61-12B-1 through 61-12B-16 or the Department's Regulations governing the practice of respiratory care, 16.23 NMAC.  
[11-29-97; 16.23.17.2 NMAC - Rn, 16 NMAC 23.17.2, 01-30-2003]

**16.23.17.3            STATUTORY AUTHORITY:** PART 17 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-1 through Section 61-12B-16 NMSA 1978 (1995 Repl. Pamp.) the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.).  
[11-29-97; 16.23.17.3 NMAC - Rn, 16 NMAC 23.17.3, 01-30-2003]

**16.23.17.4            DURATION:** Permanent.  
[11-29-97; 16.23.17.4 NMAC - Rn, 16 NMAC 23.17.4, 01-30-2003]

**16.23.17.5            EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section.  
[11-29-97; 16.23.17.5 NMAC - Rn, 16 NMAC 23.17.5, 01-30-2003; A, 07-10-03]

**16.23.17.6            OBJECTIVE:** The objective of PART 17 of Chapter 23 is to set forth the grounds which subject the applicant to disciplinary action such as permit or license denial, suspension or revocation, or to any other penalty provided by the Uniform Licensing Act.  
[11-29-97; 16.23.17.6 NMAC - Rn, 16 NMAC 23.17.6, 01-30-2003]

**16.23.17.7            DEFINITIONS:** For the purposes of this rule:

- A.            "Assault"** means an action that places someone in fear of personal injury, such as a threat, accompanied by a physical manifestation to do bodily harm to someone.
- B.            "Battery"** means carrying out bodily harm.
- C.            "Negligence"** is the incompetent performance of an act, or the omission or failure to perform an act, the competent performance of which would be the acceptable and prevailing standard of the profession, and which would be considered reasonable and ordinary under the circumstance.

[11-29-97; 16.23.17.7 NMAC - Rn, 16 NMAC 23.17.7, 01-30-2003]

**16.23.17.8            DISCIPLINARY GUIDELINES:** In accordance with the provisions contained within the Uniform Licensing Act, the Department may take disciplinary action as provided in Section 61-1-3, if the Department, in consultation with the Board, determines that a respiratory care licensee or temporary permittee has violated the Respiratory Care Act or the Department's Rules and Regulations governing respiratory care 16.23 NMAC. The Superintendent of the Department may refuse to issue or may suspend or revoke any permit or license for any cause listed below:

- A.            Making fraudulent representations to any respiratory care licensing board in any jurisdiction in the procurement of an initial or a renewal temporary permit or practitioner's license.**
- B.            Having had a temporary permit or practitioner's license denied, suspended or revoked by a respiratory care board in another licensing jurisdiction for any cause listed in 16.23.17 NMAC (this rule). However, the disciplinary action imposed by the Department shall not exceed the length of time or severity of the action imposed by the other licensing jurisdiction.**
- C.            Having been convicted of a crime, which substantially relates to the qualifications, functions or duties of a respiratory care practitioner. The record of conviction or the certified copy of the record of conviction shall be conclusive evidence of the conviction.**
- D.            Engaging in the habitual or excessive use of alcohol or controlled substances.**

- E.** Using or being under the influence of alcohol, controlled substances, or drugs that impair judgment, while on duty in any facility of employment.
- F.** Obtaining, possessing, administering, or using any narcotic or controlled substance in violation of any Federal or State criminal law.
- G.** Being responsible for gross negligence in the performance and delivery of health care while engaged in the practice of respiratory care.
- H.** Violating any provision of the Respiratory Care Act or the rules and regulations governing respiratory care adopted by the Department, or aiding or abetting any other person in violating these laws.
- I.** Engaging in acts of unprofessional conduct such as, but not limited to, the following:
  - (1) Failing to maintain minimum acceptable and prevailing standards of respiratory care practice;
  - (2) Performing procedures and functions beyond which the respondent is individually competent to perform or which are outside the scope of accepted and responsible practice of respiratory care;
  - (3) Failing to respect and protect the legal and personal rights of the patient, including the right to informed consent and refusal of treatment;
  - (4) Intentionally or negligently causing physical or emotional injury to a patient;
  - (5) Assaulting or committing battery on a patient;
  - (6) Abandoning or neglecting a patient requiring immediate respiratory care without making reasonable arrangements for continuation of such care;
  - (7) Failing to maintain for each patient a record which accurately reflects the respiratory care treatment of the patient;
  - (8) Failing to take appropriate action to safeguard the patient's welfare or to follow policies and procedures established by the respiratory care practitioner's employer;
  - (9) Divulging confidential information regarding any patient or family unless disclosure is required for responsible performance of duty, or as required by law;
  - (10) Failing or refusing to provide health care to a patient for reasons of discrimination;
  - (11) Failing to protect the health, safety, and welfare of the patient by abiding by and practicing established policies of disease prevention;
  - (12) Failing to take appropriate action in the health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice including, but not limited, to reporting such practice to employment and licensing authorities;
  - (13) As a supervisor, failing to supervise persons under one's direction or assigning the performance of functions governed by the Respiratory Care Act to persons who are untrained and unqualified to perform those functions;
  - (14) Removing narcotics, drugs, supplies, or equipment from any health care facility or other work place location without authorization;
- J.** Committing any fraudulent, dishonest, or unscrupulous act which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. Such acts shall include, but not be limited to:
  - (1) Engaging in fraud, misrepresentation, or deceit in writing the national licensing exam.
  - (2) Impersonating an examination candidate in order to write a certification or licensing examination for him or her.
  - (3) Impersonating another licensed practitioner.
  - (4) Practicing respiratory care without a current license.
  - (5) Permitting or allowing another person to use his or her license for any purpose.

[11-29-97; 16.23.17.8 NMAC - Rn, 16 NMAC 23.17.8, 01-30-2003; A, 07-10-03]

**16.23.17.9 GROSS NEGLIGENCE:** In performing respiratory care functions, a temporary permittee or licensed practitioner is under the legal duty to possess and to apply the knowledge, skill, and care that is ordinarily possessed and exercised by other temporary permittees and licensed practitioners and required by the generally accepted standards of the profession. The failure to possess or to apply to a substantial degree such knowledge, skill, and care constitutes gross negligence.

**A.** Charges of gross negligence may be based upon a single act of gross negligence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate gross negligence.

**B.** It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions so long as the conduct is of such a character that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

C. Proof of intent will not be necessary to establish gross negligence.

D. The following shall be deemed prime examples of activities which demonstrate that the temporary permittee or licensed practitioner has engaged in an act or acts of gross negligence. The Department, in consultation with the Board, shall not be limited to this list in determining whether an act or acts constitute gross negligence.

(1) Acting in a manner inconsistent with the care for the welfare, health, or safety of patients set forth by the facility in which the temporary permittee or licensed practitioner is employed.

(2) Performance or conduct that substantially departs from, or fails to conform to, the minimal reasonable standards of acceptable and prevailing practice of respiratory care.

(3) Failure to adhere to the facility's quality assurance standards and risk management recommendations.]

(4) Failure to maintain an appropriate standard of care.

(5) Failure to follow established policies and procedures.

(6) Performing procedures beyond the scope of one's training and education.

(7) Attempting to treat too many patients simultaneously, resulting in harm to one or more patients.

[11-29-97; 16.23.17.9 NMAC - Rn, 16 NMAC 23.17.9, 01-30-2003]

**16.23.17.10 [RESERVED]**

**16.23.17.11 REQUEST FOR REINSTATEMENT.**

A. One year from the date of the revocation of a temporary permit or practitioner license, the permittee or licensee may apply to the Superintendent of the Department for reinstatement, restoration, or modification of the terms of the judgment order.

B. The Superintendent, in consultation with the Board, shall have the discretion to accept or reject the application for reinstatement, restoration, or modification when it is deemed appropriate.

[11-29-97; 16.23.17.11 NMAC - Rn, 16 NMAC 23.17.11, 01-30-2003]

**HISTORY OF 16.23.17 NMAC:**

**PRE-NMAC HISTORY:** None

**HISTORY OF REPEALED MATERIAL:** [RESERVED]

**Other History:** 16 NMAC 23.17, "Grounds for Disciplinary Action", filed 11-10-97, renumbered and reformatted to 16.23.17 NMAC, "Grounds for Disciplinary Action", effective 01-30-2003.



**TITLE 16            OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 23        RESPIRATORY CARE PRACTITIONERS**  
**PART 18            DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER**

**16.23.18.1        ISSUING AGENCY:** New Mexico Regulation and Licensing Department Respiratory Care Advisory Board  
[11-29-97; 16.23.18.1 NMAC - Rn, 16 NMAC 23.18.1, 01-30-2003; A, 07-10-03]

**16.23.18.2        SCOPE:** The provisions in PART 18 of Chapter 23 apply to any person governed by the Respiratory Care Act who may be subject to investigation and disciplinary action for excessive use or abuse of intoxicants or drugs.  
[11-29-97; 16.23.18.2 NMAC - Rn, 16 NMAC 23.18.2, 01-30-2003]

**16.23.18.3        STATUTORY AUTHORITY:** PART 18 of Chapter 23 is promulgated pursuant to the Respiratory Care Act, Section 61-12B-12.C. NMSA 1978 (1995 Repl. Pamp.); the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pamp.); and the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978 (1995 Repl. Pamp.).  
[11-29-97; 16.23.18.3 NMAC - Rn, 16 NMAC 23.18.3, 01-30-2003]

**16.23.18.4        DURATION:** Permanent.  
[11-29-97; 16.23.18.4 NMAC - Rn, 16 NMAC 23.18.4, 01-30-2003]

**16.23.18.5        EFFECTIVE DATE:** November 29, 1997, unless a later date is cited at the end of a Section.  
[11-29-97; 16.23.18.5 NMAC - Rn, 16 NMAC 23.18.5, 01-30-2003; A, 07-10-03]

**16.23.18.6        OBJECTIVE:** The objective of PART 18 of Chapter 23 is to set forth policies and guidelines for disciplinary action when evidence or allegations of abuse of intoxicants or drugs by a temporary permittee or licensed practitioner have been presented to the Board.  
[11-29-97; 16.23.18.6 NMAC - Rn, 16 NMAC 23.18.6, 01-30-2003]

**16.23.18.7        DEFINITIONS:** For the purposes of this rule:  
**A.        “Impaired Health Care Provider Act”** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pamp.).  
**B.        “Controlled Substances Act”** refers to Section 30-31-1 through Section 30-31-42 NMSA 1978.  
[11-29-97; 16.23.18.7 NMAC - Rn, 16 NMAC 23.18.7, 01-30-2003]

**16.23.18.8        EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS.** In cases where the Department and/or the Board has reasonable cause to believe that a temporary permittee or a licensed practitioner is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the permittee’s or licensee’s ability to practice respiratory care with reasonable skill and safety to patients, the Department, in consultation with the Board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.  
[11-29-97; 16.23.18.8 NMAC - Rn, 16 NMAC 23.18.8, 01-30-2003]

**16.23.18.9        EXAMINING COMMITTEE DESIGNATED:** The Department, in consultation with the Board, shall designate three licensed health care providers as members of an “Examining Committee” to examine the temporary permittee or licensed practitioner believed to be impaired by the excessive or habitual use or abuse of intoxicants or drugs.  
[11-29-97; 16.23.18.9 NMAC - Rn, 16 NMAC 23.18.9, 01-30-2003]

**16.23.18.10       EXAMINATION CONDUCTED BY EXAMINING COMMITTEE:** In accordance with the provisions in the Impaired Health Care Provider Act, the Examining Committee shall order and conduct an examination and may require a physical examination or drug test of the permittee or licensee, to determine his or her fitness to practice respiratory care with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

[11-29-97; 16.23.18.10 NMAC - Rn, 16 NMAC 23.18.10, 01-30-2003]

**16.23.18.11 PHYSICAL EXAM OR DRUG TEST ORDERED:** The physical examination and/or drug test ordered by the Examination Committee shall be performed by a licensed professional designated by the Department. The cost of said examination or test shall be borne by the temporary permittee or licensed practitioner. [11-29-97; 16.23.18.11 NMAC - Rn, 16 NMAC 23.18.11, 01-30-2003]

**16.23.18.12 EXAMINING COMMITTEE REPORT:**

**A.** The Examining Committee shall report its findings on the examination and make recommendation to the Board and the Department.

**B.** Recommendations made to the Board and the Department by the Examining Committee shall be advisory only and shall not be binding on the Board or the Department.

[11-29-97; 16.23.18.12 NMAC - Rn, 16 NMAC 23.18.12, 01-30-2003]

**16.23.18.13 RESULTS ADMISSIBLE.** The results of the Examining Committee's findings and the physical exam and/or drug test shall be admissible in any subsequent review by the Board or hearing before the Department, notwithstanding any claim of privilege under a contrary rule or law or statute.

[11-29-97; 16.23.18.13 NMAC - Rn, 16 NMAC 23.18.13, 01-30-2003]

**16.23.18.14 [RESERVED]**

**16.23.18.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION:** Failure or refusal by the temporary permittee or licensed practitioner to comply with an Examining Committee order to appear before it for examination, or to submit to a physical examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the temporary permit or license by the Department until further order by the Department.

[11-29-97; 16.23.18.15 NMAC - Rn, 16 NMAC 23.18.15, 01-30-2003]

**16.23.18.16 ACTION ON EXAMINATION COMMITTEE REPORT:** The Department, in consultation with the Board, may accept or reject any finding, determination, or recommendation made by the Examining Committee to the Board regarding the temporary permittee's or licensee's ability to continue to practice with or without restriction on the temporary permit or the license, or it may refer the matter back to the Board or the Examination Committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.

[11-29-97; 16.23.18.16 NMAC - Rn, 16 NMAC 23.18.16, 01-30-2003]

**16.23.18.17 [RESERVED]**

**16.23.18.18 ENTITLEMENT TO HEARING:** Before the Department, in consultation with the Board, can take action to restrict, suspend, or revoke the temporary permittee's permit or practitioner's license on the evidence reported by the Examining Committee, the temporary permittee or licensed practitioner shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.

[11-29-97; 16.23.18.18 NMAC - Rn, 16 NMAC 23.18.18, 01-30-2003]

**16.23.18.19 [RESERVED]**

**16.23.18.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE:** In lieu of a formal hearing, the temporary permittee or licensed practitioner may voluntarily request, in writing to the Department, a restriction of the temporary permit or the license to practice respiratory care.

**A.** The Department, in consultation with the Board, may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the temporary permit or practitioner's license to practice within specified limitations.

**B.** Upon imposition of voluntary restrictions on the temporary permit or the practitioner's license, the Department, in consultation with the Board, shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.

[11-29-97; 16.23.18.20 NMAC - Rn, 16 NMAC 23.18.20, 01-30-2003]

**16.23.18.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION:** The temporary permittee or licensed practitioner shall have a right, at reasonable intervals after a year, to petition the Department in writing, for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of respiratory care with reasonable skill and safety to patients.

**A.** The Department, in consultation with the Board, shall act on the petition by referring it to the Examining Committee, who shall conduct the necessary examination of the temporary permittee or the licensed practitioner, and make written recommendation to the Board.

**B.** Upon consideration of the Examining Committee's recommendation, the Department, in consultation with the Board may, in its discretion, remove the voluntary restriction on the temporary permit or practitioner's license.

[11-29-97; 16.23.18.21 NMAC - Rn, 16 NMAC 23.18.21, 01-30-2003]

**16.23.18.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION:** In the absence of a request by the temporary permittee or licensed practitioner for voluntary restriction of his or her temporary permit or practitioner's license as provided in 16.23.18.20 NMAC (this rule), the Department may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the temporary permit or practitioner's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[11-29-97; 16.23.18.22 NMAC - Rn, 16 NMAC 23.18.22, 01-30-2003; A, 07-10-2003]

**16.23.18.23 TEMPORARY SUSPENSION.** The Department may temporarily suspend the temporary permit or license 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 respondent's continuation in practice would constitute an imminent danger to the health and safety of the public. The respondent shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[11-29-97; 16.23.18.23 NMAC - Rn, 16 NMAC 23.18.23, 01-30-2003]

**16.23.18.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER:** Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any temporary permittee or licensed practitioner who is prohibited from practicing respiratory care may, after a year from the date of suspension or revocation of the temporary permit or practitioner's license, petition the Department for reinstatement or restoration of his or her temporary permit or license to practice, or for modification of the final disciplinary orders.

**A.** The application for reinstatement or restoration of the temporary permit or practitioner's license, or for the modification of the disciplinary orders shall be made in writing to the Department by the temporary permittee or licensed practitioner.

**B.** The temporary permittee or licensed practitioner shall be afforded an opportunity to demonstrate that he or she can resume the practice of respiratory care with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

(1) The Department may require an examination by the Examining Committee for such reinstatement, restoration, or modification of the temporary permit or practitioner's license.

(2) The Department may require verification that the temporary permittee or licensed practitioner has completed a treatment program for alcohol or chemical dependency.

(3) The Department may require verifiable proof that the temporary permittee or licensed practitioner has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one (1) year.

(4) The Department may require verifiable proof that the temporary permittee or licensed practitioner has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

(5) The Department shall have the discretion to accept or reject the petition for reinstatement or restoration of the temporary permit or practitioner's license, or for modification of the disciplinary orders.

[11-29-97; 16.23.18.24 NMAC - Rn, 16 NMAC 23.18.24, 01-30-2003]

**HISTORY OF 16.23.18 NMAC:**

**PRE-NMAC HISTORY:** None

**HISTORY OF REPEALED MATERIAL:** [RESERVED]

**Other History:** 16 NMAC 23.18, “Disciplinary Guidelines for Impaired Practitioner”, filed 11-10-97, renumbered and reformatted to 16.23.18 NMAC, “Disciplinary Guidelines for Impaired Practitioner”, effective 01-30-2003.