

Frequently Asked Questions
By
CONSUMERS

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Q. Medical Records. Who “owns” my medical records? How do I get them?

A. Medical records are in the “custody” of the Physician or the Hospital or the Clinic providing service. A patient does not “own” the record, either. Medical records are confidential material, and are protected under strict laws, including the recent HIPAA Law (Health Insurance Portability and Accountability Act). A patient may request a copy of the record and must sign a release, either to have a copy of that record, or to have that copy sent to another Physician or facility. Special releases may be required for psychotherapy notes and may be withheld from the patient. Drug and alcohol, and HIV/AIDS records also require special releases.

According to the NMMB Rule 16.10.17.8, medical records may not be withheld because an account is overdue or a bill for treatment or other services is owed. A reasonable cost-based charge may be made for the cost of duplicating and mailing medical records. A reasonable charge is not more than \$30.00 for the first 15 pages, and \$0.25 per page thereafter.

Q. Who can obtain a copy of my medical record?

A. Anyone with a valid release. This includes *attorneys; insurance companies; government agencies; you as the patient; your appointed representative; and an appropriate agency by subpoena.* You need to make sure that your signature is on the release. Just because someone is a spouse he or she is not automatically entitled to the records of a spouse or a deceased spouse. With a proper authorization, all the records can be released.

Q. Internet Prescription. Is it legal and safe to get medicine prescribed over the Internet?

A. The New Mexico Medical Board considers prescribing, dispensing and administering drugs or medical supplies to a patient when there is no established physician-patient relationship, **including prescribing over the Internet** that is based solely on an on-line questionnaire, **unprofessional or dishonorable conduct (NMMB Rule 16.10.8.8 L)**. There are several exceptions as follows:

1. The Physician or PA is covering for another practitioner where a physician-patient relationship has previously been established and documented;
 2. The Physician or PA is in an ER or urgent care setting;
 3. The prescriptions are written to prepare a patient for an exam or lab testing;
 4. Prescribing or dispensing for immunization programs;
 5. Treatment for partners of patients with STD’s (sexually-transmitted diseases) using the therapy guidelines and protocols published by the NM Dept. of Health;
 6. Treatment during a face-to-face Telehealth encounter, online, using videoconference technology where a medical history and informed consent are obtained and a medical record generated. The physical exam results may have been reported to the practitioner by another practitioner or the physical exam can be waived if it is not normally a part of the specific services being provided.
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Q. Reporting an impaired practitioner. Is there a legal *requirement* to report alcohol or drug abuse, or disruptive or unprofessional behavior to the New Mexico Medical Board?

A. No. There is, however, an *ethical obligation* to report such behaviors. For more information, please refer to [Reporting Requirements for Practitioners](#).

Q: How can I find out if a complaint has been filed against a Physician?

A: Although the Board maintains a record of all complaints filed, complaint records are confidential. See NMSA 1978, § 61-6-34(B). However, any *licensure action* the Board has taken against a Physician is public information and may be found on our website under [MD & PA Lookup](#).

Q. When, and how, may I make a Complaint against a Physician or Physician Assistant?

A. Follow the suggestions that are posted on the Medical Board web site under: [Information for Consumers](#) and [How to File a Complaint](#). By using the “Complaint Form” which may be downloaded, your complaint will be brought to the attention of the Board’s Investigators and, subsequently, to a special Complaint Committee of the Board. Once an investigation is complete, the result is brought to that Complaint Committee for analysis and recommendation, and then to the Board for final resolution.

Q. Complaint & Complainant. Can a Physician or Physician Assistant sue an individual making a complaint about him or her?

A. No. It could be attempted; *however*, the Law of New Mexico states in 61-6-34.C [Protected Communications](#): “No person or legal entity providing information to the Board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.”

Q. Complaint & Physician Treatment. Can a Physician stop treating a patient because the patient has made a complaint against the Physician?

A. Yes. The fact that there has been a complaint suggests that the physician-patient relationship may no longer be viable. However, the Physician must follow the AMA Code of Medical Ethics recommendation for discharging a patient from the practice. Section 8.115 of the Code of Medical Ethics states, “**Termination of the Physician-Patient Relationship.** Physicians have an obligation to support continuity of care for their patients. While Physicians have the option of withdrawing from a case, they cannot do so without giving notice to the patient, the relatives, or responsible friends sufficiently long in advance of withdrawal to permit another medical attendant to be secured.” The Board considers thirty (30) days a sufficient amount of time for notification of dismissal. Notice of dismissal

shall be given in writing via the United States Postal Service (the letter may be certified), electronically, or by facsimile.

Q. A “Disciplined” License. What does it mean when it says a Physician’s license has been disciplined?

A. Each case is different. You can learn whether a Physician’s license has been disciplined by looking on the Board’s website. Locate the [“MD & PA Lookup”](#) area, then enter the name of the individual. If multiple results occur, select the one you wish to check on. If there has been disciplinary action there will be a “Yes” link to the public action document under “Public Actions”. If the Board has not taken action against the license, after “Public Action” it will say “None”.

Q: Can the Board help me resolve billing issues I have with my doctor?

A: No. The investigation of billing disputes, costs of services, and referrals by doctors of patients to collection agencies is not within the jurisdiction of the Board. The only exception to this is that the Board *may* investigate an allegation against a doctor for billing a patient for a service that the patient did not receive.

Q: Can I file a medical malpractice claim against a Physician with the Board?

A: No. The Board is an administrative agency and its jurisdiction is limited to the licensing and discipline of Physicians, Physician Assistants, Anesthesiologist Assistants, Genetic Counselors, and Polysomnographic (Sleep Study) Technologists. The Board can only impose disciplinary measures against a practitioner’s license if there is a violation of the Medical Practice Act or Rules of Professional Conduct.

Q. My Doctor has had a Malpractice Claim. What does that mean?

A. Information about a Malpractice Claim must be interpreted very carefully. There may be very little relationship between the existence of malpractice history and the practitioner’s medical or surgical competence. Malpractice histories will vary by medical practice area, such as general or specialty and medical or surgical. Physicians practicing in certain specialties may have higher numbers of suits than those practicing in other specialties. Generally, the more specialized and risky the specialty, the more risk there may be of a malpractice action.

Another aspect to keep in mind is that malpractice claims may be “settled” before trial for a number of reasons that have little to do with the merits of the suit, and may not reflect on the competence or conduct of the practitioner. Insurance companies may settle for practical or financial reasons, or because they do not wish to enter into a long trial. It may be five years or longer from the time that a question is raised about potential malpractice and the filing of a lawsuit, including any decision regarding settlement or trial.

Generally speaking, **the Board is not involved in Malpractice claims or suits.** That is the responsibility of the practitioner’s insurance carrier. The Board is informed by the National Practitioner Data Bank when there has been a significant settlement or payment. Similarly, the Board Action Data

Bank of the Federation of State Medical Boards reports to our Board whenever there is a significant action taken against a Physician's license by another State Board. In this manner, practitioners can no longer "escape" from one state and quietly go to practice in another without the adverse action being known.

Q. Rudeness or other behavioral anomalies. If the Physician or practitioner is abrupt, or otherwise exhibits behaviors unacceptable to me, what can I do about it?

A. If rudeness is a one-time event, an apology may be appropriate; rarely is there cause for discipline in that instance. If a Physician or practitioner repeatedly exhibits rudeness or other, more serious behaviors, it may be a red flag which identifies a possibly "disruptive practitioner." Disruptive behaviors include: inappropriate language or behavior, sexual innuendo or other boundary violations, or rage expressed in any form. These departures from normal, ethical treatment of patients, or others, are not acceptable and usually need to be reported to the Board. An investigation may be initiated.

Q. Examination Chaperone. Does a chaperone *have* to be present when physical or gynecological examinations are done?

A. No, but it is an ethical principle, and one of respect for a patient, which prompts most Physicians to have a chaperone or nurse present for such examinations. When in doubt, it is *always* preferable to use a chaperone.

Q: Can properly trained Medical Assistants or technicians perform medical acts on patients in a Physician's office?

A: The guiding principle may be found on the web site, under Governing Statute and Rules, in the Medical Practice Act, NMSA 1978, § 61-6-17(I). "Properly trained medical or surgical assistants or technicians or professional licensees performing under the Physician's employment and direct supervision can perform a medical act that a reasonable and prudent Physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating Physician, the act can be properly and safely performed in its customary manner, and if the person does not hold himself out to the public as being authorized to practice medicine in NM. The delegating Physician shall remain responsible for the medical acts of the person performing the medical act. "Direct supervision" means a Physician must be present in the office at the time the medical act is being performed by the properly trained assistant or technician."

Q. Can a Medical Assistant perform laser treatments?

A. A New Mexico Licensed Physician may delegate use of certain devices and procedures to Medical Assistants. The Medical Assistant is limited to using medical therapeutic and cosmetic devices that are non-invasive and non-ablative. The Medical Assistant **MUST** be certified to use the specific devices and the Supervising Physician must be immediately available on the premises.

THE INJECTION OF COSMETIC OR AESTHETIC SUBSTANCES IS CONSIDERED TO BE THE PRACTICE OF MEDICINE AND CANNOT BE DELEGATED TO A MEDICAL ASSISTANT.

To register a Medical Assistant with the Medical Board, the following must be submitted to the Board office:

1. A completed Certification of Training form:
(<http://www.nmmb.state.nm.us/pdf/CertificationLaserTraining.pdf>)
2. A training outline that includes:
 - device physics and safety,
 - basic principles of use,
 - clinical application of the device,
 - indications for use,
 - contraindications for use,
 - pre-operative care,
 - post-operative care,
 - recognition and acute management of complications, and,
 - infectious disease recognition & management.
3. The certification and C.V. of the trainer.

Go to this link to see the complete New Mexico Medical Board Rule regarding Medical Assistants:
http://www.nmmb.state.nm.us/pdf/Rules/NMAC16.10.13_MedAsstCosmetic.pdf

Q. How do I find out what the status of my Physician's license is?

A. Go to the Board's website or call the Board office. One of the easiest ways to find out about your Physician or a Physician Assistant is to visit the Board's web site and go to "[MD & PA Lookup](#)". The website is updated regularly. You can search by first or last name and by license number. By calling the Board (476-7220) you can learn more information about a given practitioner.

Q. Does the New Mexico Medical Board have guidelines or rules governing pain management?

A. The Board has guidelines in its rules that are used to determine whether a Physician's or Physician Assistant's prescriptive practices are consistent with the appropriate treatment of pain. To review the New Mexico Medical Board's Rule go to:
http://www.nmmb.state.nm.us/pdf/Rules/NMAC16.10.14_PainManagement.pdf.

Q. What is an "Anesthesiologist Assistant (AA's)?"

A. A special category of "Assistants to Physicians" who provide anesthesia services to patients under the direct supervision of a Board-Certified Anesthesiologist. The rules for provision of these services are somewhat different from those governing the Physician Assistant (PA). The average "AA" program is 108 weeks. AA's only provide anesthesia services, and cannot otherwise work as "PA's." They work only in the operating room or special anesthesia clinics, and only under the supervision of the Anesthesiologist. Currently, the law only allows AA's to work within the structure of the

University of New Mexico Health Sciences Center in Albuquerque. When currently certified by the National Commission on Certification of Anesthesiologist Assistants (NCCAA), the AA may use the designation AA-C.

Q. What is a “Physician Assistant?”

A. A “PA”, or Physician Assistant, is a health professional licensed to practice medicine with Physician supervision. PA’s are educated in accredited programs in schools of medicine or allied health programs in universities or teaching hospitals. The average PA program is 108 weeks. In order to maintain licensure, the PA must take the National Commission on Certification of Physician Assistants (NCCPA) exam and maintain 100 hours of Continuing Professional Education every two years. When currently certified by the NCCPA, the PA may use the designation PA-C.

Q. I received a prescription from my Physician’s “PA” that had “MD” at the end of the signature line and “PA-C.” Does that mean the PA is a Medical Doctor (MD)?

A. No. The prescription pad used by the PA, as stated in Board Rules (16.10.16.8), shall contain the following: the name, business address and telephone number of the Supervising Physician and the name, title and New Mexico license number of the Physician Assistant (PA). If the signature line is without MD, PA, or PA-C printed after it, the PA or PA-C must add the designation "PA" or "PA-C" at the end of the signature line when signing a prescription. If the PA or PA-C uses a prescription pre-printed with "MD" at the end of the signature line, the designation "MD" should be clearly crossed out and "PA" or "PA-C" added.

Q. What is a D.O.? How does a D.O. differ from an M.D.?

A. They are similar, but not the same. A “Doctor of Osteopathy” has been trained in the medical discipline with additional focus on neuromuscular and musculoskeletal manipulation as an added method for diagnosis and treatment. Both Medical Doctor and D.O. are Physicians. **In New Mexico, the licensing and regulatory Boards are different: the D.O. Board may be reached at 476-4950; the New Mexico Medical Board may be reached at 476-7220.**

Q. Who regulates Health Facilities?

A. The New Mexico Health Department, Health Facility and Licensing Bureau. Go to: <http://dhi.health.state.nm.us/hflc/index.php> or call (505) 476-9025.

Q. Where do I find information regarding the New Mexico Medical Cannabis Program (Medical Marijuana)?

A. At the New Mexico Department of Health: <http://www.health.state.nm.us/marijuana.html> or call (505) 827-2321.
