

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 10 REPORT OF SETTLEMENTS, JUDGMENTS, ADVERSE ACTIONS AND
CREDENTIALING DISCREPANCIES REPORTING REQUIREMENTS
FOR LICENSEES, APPLICANTS AND OTHER PERSONS AND ENTITIES

16.10.10.1 ISSUING AGENCY: New Mexico Medical Board, ~~hereafter called the board.~~ (the “board”).
[16.10.10.1 NMAC - Rp 16 NMAC 10.10.1, 7/15/01; A, 1/6/12]

16.10.10.2 SCOPE: This part applies to ~~licensees and any entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care~~ all applicants and licensees under the jurisdiction of the Medical Practice Act, NMSA 1978, Sections 61-6-1 to -34, and entities falling within the scope of NMSA 1978, Section 61-6-16.

[16.10.10.2 NMAC - Rp 16 NMAC 10.10.2, 7/15/01; A, 1/6/12]

16.10.10.3 STATUTORY AUTHORITY: This part is adopted pursuant to ~~the Health Care Quality Improvement Act of 1986, 42 U.S.C.A. Sections 11131-11152 and NMSA 1978, Sections 61-6-15(D)-21 and 61-6-16, NMSA 1978,~~ and in accordance with the Impaired Health Care Provider Act, NMSA 1978, Sections 61-7-1 to -12.

[16.10.10.3 NMAC - Rp 16 NMAC 10.10.3, 7/15/01; A, 8/6/04]

16.10.10.4 DURATION: ~~This part is p~~Permanent
[16.10.10.4 NMAC - Rp 16 NMAC 10.10.4, 7/15/01]

16.10.10.5 EFFECTIVE DATE: ~~The effective date of this part is~~ July 15, 2001, unless a later date ~~is~~ cited ~~appears~~ at the end of a section.

[16.10.10.5 NMAC - Rp 16 NMAC 10.10.5, 7/15/01]

16.10.10.6 OBJECTIVE: This part has three objectives.

A. In accordance with NMSA 1978, Section 61-6-15(D)(1), this part defines the requirements for licensees and applicants to report to the board actions taken against them by other licensing jurisdictions, peer review bodies, health care entities, professional or medical societies and associations, governmental agencies, law enforcement agencies, and courts for acts or conduct similar to acts or conduct constituting grounds for action under the Medical Practice Act.

B. In accordance with NMSA 1978, Section 61-6-16, ~~this part provides~~ defines the requirements for health care-affected entities to ~~provide~~ reports to the board

(1) payments relating to malpractice actions or claims arising in New Mexico involving licensees and applicants,

(2) professional review actions, and

(3) actions taken against licensees’ and applicants’ clinical privileges while the licensee or applicant is under investigation or in lieu of investigation by the affected entity.

C. In accordance with the ethical standards adopted by the board in 16.10.8 NMAC, this part defines the requirement for licensees and applicants to report to the board impaired, incompetent, disorderly and/or unethical colleagues. ~~of all malpractice payments made on behalf of licensees, and all actions adversely affecting licensing or clinical privileges of licensees. This part also provides requirements for licensees to report adverse actions that affect licensing or clinical privileges, or are taken by a governmental or law enforcement agency.~~

[16.10.10.6 NMAC - Rp 16 NMAC 10.10.6, 7/15/01; A, 8/6/04; A, 1/6/12]

16.10.10.7 DEFINITIONS: The following definitions apply to this section. All terms not defined have their general dictionary meaning.

A. “Adverse action” means any discipline, sanction or other action, whether equitable, administrative, civil or criminal, affecting a licensee, applicant or other person falling under the jurisdiction of the Medical Practice Act. The term embraces any action affecting the licensee’s or applicant’s practice, including, but not limited to revocations, suspensions, probation, monitoring, restrictions, and stipulations or other limitations, as well as fines, penalties and financial settlements. The term also includes any action taken to avoid disciplinary action, a sanction, or another action. An action does not need to involve clinical competence or patient care or affect clinical privileges in order to be “adverse.”

B. “Adversely affecting” means reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges, or membership in a health care entity to include: terminating employment for cause, or without cause when based on incompetency or behavior affecting patient care and safety, or ~~physician being~~ allowing ~~the licensee or applicant~~ to resign rather than being terminated for such reasons. These actions do not include those instances in which a peer review entity requires supervision of a ~~physician licensee or applicant~~ for purposes of evaluating that ~~physician’s licensee’s or applicant’s~~ professional knowledge or ability.

BC. “Clinical privileges” include privileges, membership on the medical staff, employment, and other circumstances under which a ~~physician or physician assistant licensee or applicant~~ is permitted by a health care entity to furnish medical care.

CD. “Termination of employment” includes the termination of employment by a health care entity for cause, or without cause if related to clinical competence or behavior ~~impacting affecting~~ patient safety/care, or allowing resignation in lieu of termination for such reason.

DE. “Health care entity” means: --

(1) a hospital, HMO, a physician group or other health care institution that is licensed to provide health care services in New Mexico;

(2) an entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care; ~~or~~

(3) a professional society or a committee, or agent thereof, of ~~physicians or physician assistants or other~~ licensed health care practitioners at the national, state or local level, that follows a formal peer review process for the purpose of furthering quality health care, including without limitation a health maintenance organization or other prepaid medical practice which is licensed or determined to be qualified by any state; ~~and.~~

(4) a health plan or network that partners payers, employers and/or health care providers and professionals, including preferred provider groups, specialty groups, physician-hospital organizations and workers’ compensation networks.

EF. “Medical malpractice action or claim” means a written claim or demand for compensation based on the furnishing, or failure to furnish, health care services, and includes, without limitation, the filing of a cause of action, based on the law of tort, brought in any court of any state or the United States seeking monetary damages whether resulting in a settlement or in a judgment.

FG. “Professional review action” means an action of a health care entity: --

(1) taken in the course of professional review activity;

(2) based on the competence, conduct, or impairment of a ~~n individual physician or physician assistant or other licensed~~ health care practitioner which affects or could affect adversely the health or welfare of a patient or patients; and,

(3) which adversely affects or may adversely affect the clinical privileges or membership in a professional society of ~~the physician or physician assistant a licensed health care professional.~~

GH. “Professional review activity” means an activity of a health care entity with respect to an individual ~~physician or physician assistant licensee or applicant; --~~

(1) to determine whether the ~~physician or physician assistant licensee or applicant~~ may have clinical privileges with respect to, or membership in, the entity;

(2) to determine the scope or conditions of such privileges or membership; or

(3) to change or modify such privileges or membership.

HI. “Credentialing discrepancy” means, for the purposes of 16.10.10 NMAC, an error or omission in an application.

[16.10.10.7 NMAC - Rp 16 NMAC 10.10.7, 7/15/01; A, 1/6/12; A, 2/14/13]

16.10.10.8 REPORTING OF MEDICAL MALPRACTICE PAYMENTS BY ENTITIES AND PERSONS:

A. Each person or entity, including an insurance company, which makes a payment under a policy of insurance, self-insurance or otherwise, in settlement of, or in whole or partial satisfaction of, a judgment in a

malpractice action or claim must file a report with the board within thirty days after any initial or complete payment is made.

B. Applicants and licensees must file a report with the board within thirty days after any initial or complete payment is made by them, or directly or indirectly on their behalf.

C. Reports filed under this section shall include, at minimum -- ~~containing the information listed below.~~

~~A. such reports must be submitted to the board within thirty days of payment;~~

~~B. (1) include at a minimum the name, license number, and social security number of the named ~~physician or physician assistant~~ licensee or applicant;~~

~~C. (2) the name and address of the person or entity making the payment;~~
~~(3)~~

~~D. the name, title and telephone number of the ~~official person~~ submitting the report; ~~on behalf of the entity;~~~~

~~(4) the date or dates on which the act(s) or omission(s) giving rise to the claim occurred;~~

~~E. (5) the date of judgment or settlement;~~

~~F. (6) the amount paid, the date of payment and whether payment is made in satisfaction of a judgment or constitutes a settlement;~~

~~G. (7) a description of terms of the judgment or settlement and any conditions attached thereto, including terms of payment;~~

~~H. (8) a description of the alleged acts or omissions and injuries or illnesses upon which the action or claim is based; and,~~

~~I. (9) the ~~physician or physician assistant's~~ official addendum to the licensee's or applicant's data bank report.~~

[16.10.10.8 NMAC - Rp 16 NMAC 10.10.8.1, 7/15/01; A, 1/6/12]

16.10.10.9 REPORTING OF ~~ADVERSE ACTIONS ON~~ ADVERSELY AFFECTING CLINICAL PRIVILEGES BY HEALTH CARE ENTITIES:

A. All health care entities, ~~and~~ licensees and applicants shall report any actions adversely affecting the ~~licensee of a clinical privileges of the~~ licensee or applicant within thirty days ~~after of the date of such action by the health care entity~~ the action is taken.

B. ~~Such actions shall be~~ Actions reported by the health care entity must report include, but are not limited to:

(1) any professional review action ~~that~~ adversely affects ing the clinical privileges of ~~a physician or physician assistant~~ licensee or applicant, except as provided in Subsection C of this section;

(2) the health care entity's acceptance of the surrender of clinical privileges or any restriction ~~of on~~ such privileges as a result of or relating to possible incompetency or improper professional conduct while the ~~physician or physician assistant~~ licensee or applicant is under investigation ~~by the entity relating to possible incompetency or improper professional conduct~~; or, in return for the health care entity's decision not to conducting an investigation or proceeding;

(3) ~~in the case of~~ any professional review action taken by a professional society ~~which~~ adversely affects ing the membership of a ~~physician or physician assistant~~ licensee or applicant in the society;

(4) the failure to complete medical records if where the failure ~~is related~~s to the ~~physician's~~ licensee's or applicant's professional competence or conduct, ~~or the failure and adversely affects or could~~ or did adversely affect a patient's health or welfare; and

(5) a positive drug test for illegal substances, alcohol or ~~un~~prescribed or unprescribed medications ~~and prescription medication~~ not supported by appropriate diagnosis (the board will not require name of the licensee or applicant if ~~physician~~ the licensee or applicant has voluntarily self-~~reported to the New Mexico monitored treatment program (MTP), or any successor organization,~~ the board will not require name of physician, as it will be in a blind report from MTP.)

~~B.C. Reports of actions adversely affecting clinical privileges contents. All adverse actions must include, at minimum --:~~

~~(1) be reported to the board within thirty days of adverse action taken pursuant to Paragraphs (1) through (5) of Subsection A of this section;~~

~~(2) include at a minimum the name, license number, and social security number of the ~~physician or physician assistant~~ licensee or applicant;~~

(2) a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges;

 (3) the action taken, the date of the action was taken, and the effective date of the action; and,

 (34) any ~~physician or physician assistant's~~ official addendum to the licensee's or applicant's data bank report ~~shall be reported~~.

C.D. ~~The following actions do not require reporting to the board by a~~ health care entity is not required to report to the board --:

(1) actions based on the ~~physician or physician assistant's licensee's or applicant's~~ association, or lack of association, with a professional society or association;

(2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;

(3) actions based on the ~~physician or physician assistant's licensee's or applicant's~~ participation in prepaid group health plans;

(4) actions based on the ~~physician or physician assistant's licensee's or applicant's~~ association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or

(5) any other matter that does not relate to the competence or professional conduct of a ~~physician or physician assistant licensee or applicant~~; and

(6) suspensions of clinical privileges resulting from a failure to complete charts medical records, ~~(except to the extent such failures are reportable under Pparagraph (4) of Ssubsection A of this part section)~~, maintain insurance or perform other administrative obligations ~~that results in a suspension of clinical privileges~~.

D.E. ~~Any s~~Subsequent disposition of ~~the initial an~~ action adversely affecting the licensee or applicant, ~~regardless of whether such disposition is even if~~ favorable, does not alter ~~the requirement to report within thirty days a health care entity's duty to report the action~~.

[16.10.10.9 NMAC - Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02; A, 1/6/12; A, 7/2/12; A, 2/14/13]

16.10.10.10 REPORTING OF CREDENTIALING DISCREPANCIES: Any health care entity ~~that has received having~~ information ~~from about~~ a licensee or applicant ~~where a discrepancy has been identified that conflicts with information the licensee included~~ on an application or re-application ~~that includes~~ submitted with a signed attestation of accuracy, shall report the discrepancy to the board within 90 days.

[16.10.10.10 NMAC - N, 7/15/01; A, 4/18/02; A, 2/14/13]

16.10.10.11 SANCTIONS FOR FAILURE TO REPORT:

A. Medical malpractice payments. Any health care entity or person failing to report malpractice payments required by this ~~rule part~~ shall be subject to a civil penalty not to exceed \$10,000.

B. ~~Adverse a~~Actions adversely affecting clinical privileges. Any ~~hospital,~~ health care entity or professional review body failing to comply with the reporting requirements set forth in ~~Section 9 of~~ this part shall be subject to a civil penalty not to exceed \$10,000. The and will be reported by the board will report the failure to comply to the data bank as required by 42 U.S.C. § Section 11133.

[16.10.10.11 NMAC - Rp 16 NMAC 10.10.8.2 & 10.10.8.5, 7/15/01; A, 1/6/12]

16.10.10.12 CONFIDENTIAL COMMUNICATIONS: Any information or reports submitted to the board under this part, or pursuant to ~~this regulation or~~ 42 U.S.C.A. 11131-11152, as amended, shall be confidential and shall ~~not~~ be disclosed other than only to the ~~physician or physician assistant involved, or as~~ licensee or applicant, unless otherwise authorized or required by law.

[16.10.10.12 NMAC - Rp 16 NMAC 10.10.8.7, 7/15/01]

16.10.10.13 LICENSEE REPORTING REQUIREMENTS OF ADVERSE ACTIONS BY LICENSEES AND APPLICANTS:::

A. ~~Consistent with Section 61-6-15(D)(21) NMSA 1978, i~~n addition to the reporting requirements contained in sSections 8 and 9 of this part, a licensee or applicant is required to shall report to the board any adverse action ~~adversely~~ affecting the licensee or applicant taken by ~~:-~~ another licensing jurisdiction; a peer review body; a health care entity; a professional or medical society or association; a governmental agency; a law enforcement agency, including arrests; and any court for acts or conduct similar to acts or conduct that would constitute grounds for action under the Medical Practice Act.

B. Licensees and applicants must report to the board any adverse action taken against them or their license Reports shall be received by the board within 30 days from after the date the action occurs or is taken. For the purpose of this section, thean "action occurs or is taken" on the date when the an entitiesy described in this

~~subsection takes have taken adverse action, regardless of whether the action is subject to appeal or an appeal is taken. Any subsequent disposition of the initial adverse action adversely affecting the licensee, regardless of whether such disposition is favorable negates or affects the adverse action, does not alter the this reporting requirement to report within 30 days. In the case of an arrest, the licensee or applicant arrest shall be reported the arrest within 30 days of occurrence. In the case of adverse action taken by a peer review body, health care entity, or professional or medical society or association, refer to Section 9 of this part to determine what action must be reported.~~

~~**B.C.** Any adverse action taken against an applicant while the applicant's application is pending shall be reported within 30 days after the application for license or reinstatement is granted.~~

~~**D.** The Failure to report any adverse action shall constitute unprofessional or dishonorable conduct under pursuant to Subsection D of Section 61-6-15(D) NMSA 1978 of the Medical Practice Act and shall be subject to any penalty that may be imposed pursuant to Section 61-6-15 NMSA 1978.~~

~~[16.10.10.13 NMAC - N, 8/6/04; A, 1/6/12; A, 7/2/12; A, 2/14/13]~~

16.10.10.14 REPORTING IMPAIRED, INCOMPETENT, DISRUPTIVE OR UNETHICAL COLLEAGUES:

~~**A.** Consistent with 16.10.8.9 NMAC (adopting the ethical standards of the American medical association), licensees and applicants having a good faith basis for believing that the public health and safety may be at risk must report impaired, incompetent, disruptive and/or unethical colleagues, including specifically other licensees and applicants. "Impaired" means any condition affecting the ability to engage safely and effectively in professional activities. "Incompetent" includes practices or conduct create the potential for harm, whether or not harm has resulted. "Unethical" includes, but is not limited to corrupt, dishonest, illegal actions, as well as a breach of moral duty.~~

~~**B.** The duty to report imposed by this section does not limit or replace the duty to report to other organizations or entities, including law enforcement.~~

~~**C.** Reports under this section may be made anonymously, but must include sufficient information to allow investigation by the Board.~~

~~**D.** Reports made under this section will be held in confidence in the same manner as all investigations by the board.~~

~~**E.** Specifically exempt from the reporting requirements contained in this section are "peer review" communications protected by law.~~

16.10.10.15 SELF-REPORTING:

~~**A.** All applicants and licensees have a duty to self-report to the board any mental illness, physical illness (including but not limited to deterioration through the aging process or loss of motor skill), or habitual use of abuse of drugs, as defined in the Controlled Substances Act, NMSA 1978, Section 31-31-1 to -41, or alcohol that may affect their ability to practice with reasonable skill or safety to patients.~~

~~**B.** Reports made under this section will not subject a licensee or applicant to investigation or disciplinary action by the board, but may subject the applicant or licensee to action the board deems necessary to ensure the protection of the public.~~

~~**C.** Reports made under this section will not exempt a licensee or applicant from investigation or disciplinary action based on conduct constituting an independent violation of the Medical Practice Act or the board's rules.~~

HISTORY OF 16.10.10 NMAC:

Pre-NMAC History: Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

Rule 16, Report of Settlements and Judgments and Adverse Action, 7/10/90

Rule 15, Report of Settlements and Judgments and Adverse Action, 6/21/93

NMAC History:

16 NMAC 10.15, Report of Settlements and Judgments and Adverse Action, 3/18/96

16 NMAC 10.10, Report of Settlements and Judgments and Adverse Action, 3/5/97

History of Repealed Material:

16 NMAC 10.10, Report of Settlements and Judgments and Adverse Action - Repealed 7/15/01