

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 10 REPORTING REQUIREMENTS FOR LICENSEES, APPLICANTS AND OTHER PERSONS AND ENTITIES

16.10.10.1 ISSUING AGENCY: New Mexico Medical Board (the “board”).
[16.10.10.1 NMAC - Rp 16.10.10.1 NMAC, 9/17/2018]

16.10.10.2 SCOPE: This part applies to all applicants and licensees under the jurisdiction of the Medical Practice Act, Sections 61-6-1 to -35 NMSA 1978, and entities falling within the scope of Section 61-6-16 NMSA 1978.
[16.10.10.2 NMAC - Rp 16.10.10.2 NMAC, 9/17/2018]

16.10.10.3 STATUTORY AUTHORITY: This part is adopted pursuant to Paragraph (21) of Subsection D of Sections 61-6-15 and 61-6-16 NMSA 1978, and in accordance with the Impaired Health Care Provider Act Sections 61-7-1 to 61-7-12 NMSA 1978.
[16.10.10.3 NMAC - Rp 16.10.10.3 NMAC, 9/17/2018]

16.10.10.4 DURATION: This part is permanent.
[16.10.10.4 NMAC - Rp 16.10.10.4 NMAC, 9/17/2018]

16.10.10.5 EFFECTIVE DATE: The effective date of this part is September 17, 2018, unless a later date appears at the end of a section.
[16.10.10.5 NMAC - Rp 16.10.10.5 NMAC, 9/17/2018]

16.10.10.6 OBJECTIVE: This part has three objectives.

A. In accordance with Paragraph (21) of Subsection D of Section 61-6-15 NMSA 1978, 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 Section 61-6-16 NMSA 1978, this part defines the requirements for affected entities to report 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 board’s statutory duty to protect the public health, safety and welfare, and the ethical standards adopted by the board in 16.10.8 NMAC, this part establishes mandatory reporting requirements for licensees and applicants to ensure the board is informed of impaired, incompetent, disruptive and unethical practitioners.

[16.10.10.6 NMAC - Rp 16.10.10.6 NMAC, 9/17/2018]

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 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 licensee or applicant for purposes of evaluating that licensee's or applicant's professional knowledge or ability.

C. "Clinical privileges" include privileges, membership on the medical staff, employment, and other circumstances under which a licensee or applicant is permitted by a health care entity to furnish medical care.

D. "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 affecting patient safety/care, or allowing resignation in lieu of termination for such reason.

E. "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;

(3) a professional society or a committee, or agent thereof, of 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 health care providers and professionals, including preferred provider groups, specialty groups, physician-hospital organizations and workers' compensation networks.

F. "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.

G. "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 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 a licensed health care professional.

H. "Professional review activity" means an activity of a health care entity with respect to an individual licensee or applicant:

(1) to determine whether the 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.

I. "Credentialing discrepancy" means, for the purposes of this part, an error or omission in an application.

[16.10.10.7 NMAC - Rp 16.10.10.7 NMAC, 9/17/2018]

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 30 days after any initial or complete payment is made.

B. Applicants and licensees must file a report with the board within 30 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 a minimum:

(1) the name, license number, and social security number of the named licensee or applicant;

(2) the name and address of the person or entity making the payment;

(3) the name, title and telephone number of the person submitting the report;

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

(5) the date of judgment or settlement;

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

- (7) a description of terms of the judgment or settlement and any conditions attached thereto, including terms of payment;
- (8) a description of the alleged acts or omissions and injuries or illnesses upon which the action or claim is based; and,
- (9) the official addendum to the licensee's or applicant's data bank report.

[16.10.10.8 NMAC - Rp 16.10.10.8 NMAC, 9/17/2018]

16.10.10.9 REPORTING OF ACTIONS ADVERSELY AFFECTING CLINICAL PRIVILEGES:

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

B. Actions the health care entity must report include, but are not limited to:

- (1) any professional review action adversely affecting the clinical privileges of a 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 on such privileges as a result of or relating to possible incompetency or improper professional conduct while the licensee or applicant is under investigation, or in return for the health care entity's decision not to conduct an investigation or proceeding;
- (3) any professional review action taken by a professional society adversely affecting the membership of a licensee or applicant in the society;
- (4) the failure to complete medical records where the failure relates to the licensee's or applicant's professional competence or conduct, or the failure could or did adversely affect a patient's health or welfare; and
- (5) a positive drug test for illegal substances, alcohol or prescribed or un-prescribed medications not supported by appropriate diagnosis (the board will not require name of the licensee or applicant if the licensee or applicant has voluntarily self-reported to the New Mexico health professional wellness program (HPWP), or any successor organization).

C. Reports of actions adversely affecting clinical privileges must include, at a minimum:

- (1) the name, license number, and social security number of the 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 the action was taken, and the effective date of the action; and,
- (4) any official addendum to the licensee's or applicant's data bank report.

D. A health care entity is not required to report to the board:

- (1) actions based on the 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 licensee's or applicant's participation in prepaid group health plans;
- (4) actions based on the 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 licensee or applicant; and
- (6) suspensions of clinical privileges resulting from a failure to complete medical records, except to the extent such failures are reportable under Paragraph (4) of Subsection A of this section, maintain insurance or perform other administrative obligations.

E. Subsequent disposition of an action adversely affecting the licensee or applicant, even if favorable, does not alter a health care entity's duty to report the action.

[16.10.10.9 NMAC - Rp 16.10.10.9 NMAC, 9/17/2018]

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

[16.10.10.10 NMAC - Rp 16.10.10.10 NMAC, 9/17/2018]

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 part shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000).

B. Actions adversely affecting clinical privileges. Any health care entity or professional review body failing to comply with the reporting requirements set forth in this part shall be subject to a civil penalty not to exceed ten thousand dollars (\$10,000). 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 16.10.10.11 NMAC, 9/17/2018]

16.10.10.12 CONFIDENTIAL COMMUNICATIONS: Any information or report submitted to the board under this part, or pursuant to 42 U.S.C. 11131-11152, as amended, shall be confidential and shall be disclosed only to the licensee or applicant, unless otherwise authorized or required by law.

[16.10.10.12 NMAC - Rp 16.10.10.12 NMAC, 9/17/2018]

16.10.10.13 REPORTING OF ADVERSE ACTIONS BY LICENSEES AND APPLICANTS:

A. In addition to the reporting requirements contained in Section 16.10.10.8 and 16.10.10.9 NMAC, a licensee or applicant shall report to the board any adverse action 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 within 30 days after the date the action occurs or is taken. For the purpose of this section, an “action occurs or is taken” on the date an entity described in this section takes action, regardless of whether the action is subject to appeal or an appeal is taken. Any subsequent disposition of the adverse action, regardless of whether such disposition negates or affects the adverse action, does not alter this reporting requirement. In the case of an arrest, the licensee or applicant shall report the arrest within 30 days.

C. The failure to report any adverse action shall constitute unprofessional or dishonorable conduct under Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act.

[16.10.10.13 NMAC - Rp 16.10.10.13 NMAC, 9/17/2018]

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 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 creating the potential for harm, whether or not harm has resulted. “Unethical” includes, but is not limited to corrupt, dishonest or illegal actions.

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.

F. The submission of a false or malicious report under this section constitutes unethical conduct subject to disciplinary action.

[16.10.10.14 NMAC - Rp 16.10.10.14 NMAC, 9/17/2018]

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 or abuse of drugs, as defined in the Controlled Substances Act, Section 31-31-1 to 31-31-41 NMSA 1978, or alcohol that affects their ability to practice with reasonable skill or safety to patients.

B. Reports made under this section may subject the licensee or applicant to action by the board where necessary to ensure public health, safety and welfare.

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, 7/10/1990.

Rule 15, Report of Settlements and Judgments and Adverse Action, 6/21/1993.

NMAC History:

16 NMAC 10.15, Report of Settlements and Judgments and Adverse Action, 3/18/1996.

16 NMAC 10.10, Report of Settlements and Judgments and Adverse Action, 3/5/1997.

History of Repealed Material:

16 NMAC 10.10, Report of Settlements and Judgments and Adverse Action - Repealed 7/15/2001.

16.10.10 NMAC, Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies filed 6/8/2001 – Repealed effective 9/17/2018.

16.10.10 NMAC, Report of Settlements, Judgments, Adverse Actions and Credentialing Discrepancies filed 6/8/2001 was replaced by 16.10.10 NMAC, Reporting Requirements for Licensees, Applicants and Other Persons and Entities, effective 9/17/2018.