

# ARTICLE 1

## Uniform Licensing

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### 61-1-1. Short title.

Sections 61-1-1 through 61-1-31 NMSA 1978 may be cited as the "Uniform Licensing Act".

**History:** 1953 Comp., § 67-26-1, enacted by Laws 1957, ch. 247, § 1; 1971, ch. 54, § 1.

**Cross references.** — For State Rules Act, see Chapter 14, Article 4 NMSA 1978. For criminal offender employment, see 28-2-1 NMSA 1978. For the Parental Responsibility Act, see Chapter 40, Article 5A NMSA 1978.

**Uniform Licensing Act.** — Following the recompilation of NMSA in 1978, this section defined the Uniform Licensing Act as "Sections 61-1-1 through 61-1-31 NMSA 1978". Laws 1981, ch. 349, §§ 22 and 23 added 61-1-32 and 61-1-33 NMSA 1978, but did not specifically add those sections to the Uniform Licensing Act.

Laws 2002, ch. 83, §§ 2 to 4 purported to enact new sections under the Uniform Licensing Act but those sections were relocated to appear following the State Civil Emergency Preparedness Act which is compiled as 12-10-1 to 12-10-10 NMSA 1978.

**Due process.** — A regulation of the New Mexico

board of psychologist examiners requiring an oral examination for reinstatement of a retiree's license was rationally related to a legitimate governmental purpose; however, the examination might not comply with due process, and, thus, an applicant for reinstatement was entitled to a hearing on the rational justification for the oral examination requirement. *Mills v. New Mexico State Bd. of Psychologist Exmrs.*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

**Appeals.** — Because the Uniform Licensing Act did not provide a retired psychologist with a basis for appealing a decision of the New Mexico board of psychologist examiners to require an oral examination for reinstatement of her license, she could request a writ of certiorari to obtain review of the board's alleged due process violations. *Mills v. New Mexico State Bd. of Psychologist Exmrs.*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

**Revocation must be based on substantial evi-**

**dence.** — In administrative adjudications where a person's livelihood (a property right) is at stake, any action depriving a person of that property must be based upon such substantial evidence as would support a verdict in a court of law. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**Naked hearsay insufficient.** — In proceedings to revoke a license to conduct a business or profession, where, by law, the licensee is entitled to a hearing before the licensing authority, revocation based solely upon hearsay evidence is unwarranted. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**License not revocable on grounds for original denial.** — An administrative agency, having once issued a license to an applicant who has made full disclosure of all pertinent facts, may not revoke that same license for reasons that would not have permitted issuance of the license in the first instance. *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 78 N.M. 536, 434 P.2d 61 (1967).

**Barring fraud and misrepresentation and the existence of statutory authority, state may not revoke the license issued previously to party for the reason that party did not have two years of college training required by the statute when, in fact, at the time appellant granted the license to party, state knew that appellee did not have said college work but, nevertheless, proceeded to grant the license under a policy which, in effect, eliminated the college requirement.** *Roberts v. State Bd. of Embalmers & Funeral Dirs.*, 78 N.M. 536, 434 P.2d 61 (1967).

**Specification of "unprofessional conduct" not required.** — A board may suspend or revoke a license to practice a profession for "unprofessional conduct" without its being required to first specify by regulation or rule exactly what acts may be so con-

sidered. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969).

**Preexisting account not required to receive funds.** — No law or regulation of the New Mexico real estate commission requires a custodial, trust or escrow account prior to the receipt of funds appropriate for deposit in such account. *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Law reviews.** — For note, "Police Power and the Design of Buildings," see 5 *Nat. Resources J.* 122 (1965).

For article, "An Administrative Procedure Act For New Mexico," see 8 *Nat. Resources J.* 114 (1968).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 *N.M. L. Rev.* 103 (1979-80).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 58 *Am. Jur. 2d Occupations, Trades, and Professions* §§ 1 to 10.

Single or isolated transactions as falling within provisions of commercial or occupational licensing requirements, 93 *A.L.R.2d* 90.

Physician's or other healer's conduct, or conviction of offense, not directly related to medical practice, as ground for disciplinary action, 34 *A.L.R.4th* 609.

Physician's or other healer's conduct in connection with defense of or resistance to malpractice action as ground for revocation of license or other disciplinary action, 44 *A.L.R.4th* 248.

Failure of building and construction artisan or contractor to procure business or occupational license as affecting enforceability of contract or right to recover for work done — modern cases, 44 *A.L.R.4th* 271.

Validity of state or municipal tax or license fee upon occupation of practicing law, 50 *A.L.R.4th* 467.

## 61-1-2. Definitions.

As used in the Uniform Licensing Act [61-1-1 NMSA 1978]:

A. "board" means:

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and

(4) any other state agency to which the Uniform Licensing Act [61-1-1 NMSA 1978] is applied by law;

B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

D. "revoke a license" means to prohibit the conduct authorized by the license;

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow, for a stated period of time, the conduct authorized by the license, subject to conditions that are reasonably related to the grounds for suspension; and

F. "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requires the resources of the state.

**History:** 1953 Comp., § 67-26-2, enacted by Laws 1957, ch. 247, § 2; 1959, ch. 223, § 13; 1969, ch. 6, § 1; 1971, ch. 54, § 2; 1973, ch. 259, § 4; 1977, ch. 245, § 165; 1981, ch. 62, § 16; 1981, ch. 349, § 1; 1983, ch. 295, § 26; 1989, ch. 6, § 49; 1989, ch. 51, § 26; 1989, ch. 387, § 16; 1990, ch. 75, § 24; 1991, ch. 147, § 26; 1993, ch. 49, § 31; 1993, ch. 171, § 25; 1993, ch. 295, § 1; 2002, ch. 83, § 1.

**1989 amendments.** — Laws 1989, ch. 6, § 49, effective July 1, 1989, in Subsection A, substituting “surveyors” for “land surveyors” in Paragraph (16), “commission and division of the regulation and licensing department” for “committee and division of the commerce and industry department” in Paragraph (20), and “manufactured housing division of the regulation and licensing department” for “division of the commerce and industry department” in Paragraph (24), was approved March 2, 1989. Laws 1989, ch. 51, § 26, effective June 16, 1989, also amending this section by rewriting Subsections A(20) and A(24); adding a Subsection A(27), which read “the board of social work examiners; and”; and redesignating former Subsection A(27) as present Subsection A(28), was approved March 15, 1989. However, Laws 1989, ch. 387, § 16, effective July 1, 1989, also amending this section, in Subsection A(20) substituting “regulation and licensing department” for “commerce and industry department”; in Subsection A(24) inserting “manufactured housing” preceding “division” and substituting “regulation and licensing department” for “commerce and industry department”; adding present Subsection A(27); and redesignating former Subsection A(27) as present Subsection A(28), was approved April 7, 1989. This section is set out as amended by Laws 1989, ch. 387, § 16. See 12-1-8 NMSA 1978.

**The 1990 amendment,** effective May 16, 1990, in Subsection A, substituted “professional engineers and surveyors” for “professional engineers and land surveyors” in Paragraph (16), substituted “construction industries commission and construction industries division” for “construction industries committee and division” in Paragraph (20), deleted “Polygraphy Act and the” preceding “Private Investigators Act” in Paragraph (25), added present Paragraphs (28) to (34), designated former Paragraph (28) as present Paragraph (35), and made a minor stylistic change.

**The 1991 amendment,** effective June 14, 1991, in Subsection A, added Paragraphs (35) and (36), designated former Paragraph (35) as Paragraph (37) and made a related stylistic change, and made a minor stylistic change in Subsection E.

**1993 amendments.** — Laws 1993, ch. 49, § 31, effective July 1, 1993, which, in Subsection A, deleted “state” preceding “board” in Paragraph (19), added Paragraph (27), and renumbered former Paragraphs (27) through (37) as Paragraphs (28) through (38), was approved March 18, 1993. Laws 1993, ch. 171, § 25, effective June 18, 1993, also amending this section by rewriting it to the extent that a detailed comparison is impracticable, was approved April 2, 1993. However, Laws 1993, ch. 295, § 1, effective June 18, 1993, also amending this section by rewriting Subsection A, but not giving effect to the changes made by the first two 1993 amendments, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 295, § 1. See 12-1-8 NMSA 1978.

**The 2002 amendment,** effective March 5, 2002, added Subsection F.

### **61-1-3. Opportunity for licensee or applicant to have hearing.**

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action which would result in:

A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;

B. denial of a license after examination for any cause other than failure to pass an examination;

C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for any cause other than:

(1) failure to pay the required renewal fee;

(2) failure to meet continuing education requirements; or

(3) issuance of a temporary license extension if authorized by statute;

E. suspension of a license;

F. revocation of a license;

G. restrictions or limitations on the scope of a practice;

H. the requirement that the applicant complete a program of remedial education or treatment;

I. monitoring of the practice by a supervisor approved by the board;

J. the censure or reprimand of the licensee or applicant;

K. compliance with conditions of probation or suspension for a specific period of time;

L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;

- M. corrective action, as specified by the board; or  
 N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

**History:** 1953 Comp., § 67-26-3, enacted by Laws 1957, ch. 247, § 3; 1981, ch. 349, § 2; 1993, ch. 295, § 2.

The 1993 amendment, effective June 18, 1993, added the Paragraph (1) designation and Paragraphs (2) and (3) to Subsection D; added Subsections G through N; and made stylistic changes throughout the section.

**Probable cause hearing not necessary before revocation proceedings.** — A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to the institution of license revocation proceedings. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

**Charging board not disqualified in hearing on charge.** — The board of medical examiners has exclusive jurisdiction of the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the absence of a provision for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Authority of pharmacy board.** — Subsection L grants the board of pharmacy authority to fine pharmacist licensees up to \$1000.00 for any violation of the Pharmacy Act, 61-11-1 et seq., NMSA 1978, or for a violation of provisions of the board's rules and regulations for which the Pharmacy Act authorizes disciplinary action. Additionally, Subsection L grants the board authority to impose fines of the same amounts upon non-pharmacist registrants and licensees over whom the board has the power to impose other forms of discipline including license or registration revocation and suspension. As to persons over whom the board lacks such disciplinary powers under the Pharmacy Act, the Uniform Licensing Act does not grant the power to impose fines. 1995 Op. Atty Gen. No. 95-01.

**Zeal in performing public duty does not disqualify.** *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits §§ 16, 57, 139.

Validity of statute or ordinance vesting discretion as to license in public officials without prescribing a rule of action, 12 A.L.R. 1435; 54 A.L.R. 1104; 92 A.L.R. 400.

Suspicion of intended violation of its conditions as ground for refusal of license, 27 A.L.R. 325.

Personal liability of public officers for refusing to grant license, 85 A.L.R. 298.

License holder's right to question propriety of issuing license to other persons, 109 A.L.R. 1259.

What amounts to conviction or satisfies requirement as to showing of conviction, within statute making conviction a ground for refusing to grant or for cancelling license or special privilege, 113 A.L.R. 1179.

Prohibition as means of controlling licensing official, 115 A.L.R. 15; 159 A.L.R. 627.

Revocability of license for fraud or other misconduct before or at the time of its issuance, 165 A.L.R. 1138.

Change in law pending application for permit or license, 169 A.L.R. 584.

Construction of "grandfather clause" of statute or ordinance regulating or licensing business or occupation, 4 A.L.R.2d 667.

Right of person wrongfully refused license upon proper application therefor to do act for which license is required, 30 A.L.R.2d 1006.

Right to attack validity of statute, ordinance or regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

53 C.J.S. Licenses §§ 43, 55.

### 61-1-3.1. Limitations.

A. An action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 or an action related to unlicensed activity shall not be initiated by a board later than two years after the discovery by the board of the conduct that would be the basis for the action, except as provided in Subsection C of this section.

B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.

C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.

D. The New Mexico public accountancy board shall not initiate an action under the 1999 Public Accountancy Act [61-28B-1 to 61-28B-29 NMSA 1978] that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery by the board of a violation of that act.

**History:** 1978 Comp., § 61-1-3.1, enacted by Laws 1981, ch. 349, § 3; 1989, ch. 41, § 1; 1992, ch. 10, § 27; 1993, ch. 218, § 40; 1993, ch. 295, § 4; 2003, ch. 334, § 1.

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "Subsection D" for "Subsections D" and added "except as provided in Subsection C of this section"; in Subsection B deleted ", transaction" following "conduct"; and added Subsection C.

The 1992 amendment, effective May 20, 1992, substituted "Subsections C and D" for "Subsection C" in Subsection A, added Subsection D, and made minor stylistic changes throughout the section.

**1993 amendments.** — Laws 1993, ch. 218, § 40, effective July 1, 1993, adding a new Subsection E, was approved April 5, 1993. However, Laws 1993, ch. 295, § 4, also amending this section by substituting "Subsections D through N" for "Subsection D, E or F" in Subsection A and the first sentence of Subsection C; inserting "the discovery of" in Subsection A; substituting "result in any of the actions" for "have any of the effects" in the first sentence of Subsection C; and rewriting Subsection D, but not giving effect to the changes made by the first 1993 amendment, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 295. See 12-1-8 NMSA 1978.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "or an action related to unlicensed activity", "by the board" and substituted "Subsection C" for "Subsections C and D"; in Subsection D, inserted "1999" preceding "Public Accountancy Act".

**When limitation period begins to run.** — The limitation period of this section begins to run from the date of the licensee's culpable conduct. *Varoz v.*

*New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**Criminal prosecution tolls statute.** — The criminal prosecution of culpable conduct serves only to toll the statute if litigation is commenced during the two-year period following the criminal act. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

If tolling applies, the limitation period is tolled from the time of indictment or information until the judgment of conviction has been entered, but no longer. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**Conviction is not "conduct".** — Although the fact of conviction may provide a separate and independent basis for revoking a professional license, a conviction is not "conduct" within the meaning of this section and, therefore, the two-year limitation period begins to run from the time of the conduct, transaction, or occurrence that underlies the conviction rather than from the date of conviction. *Varoz v. New Mexico Bd. of Podiatry*, 104 N.M. 454, 722 P.2d 1176 (1986).

**Evidence outside of limitations period proper.** — Where psychologist failed to object at the administrative hearing to evidence concerning events that occurred outside of the statute of limitations; as such, the evidence of the therapeutic relationship was properly presented in order to provide context and background. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 62 N.M. 1244, 62 P.3d 1244, cert. denied, N.M. P.3d (2003).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Applicability of statute of limitations or doctrine of laches to proceeding to revoke or suspend license to practice medicine, 51 A.L.R.4th 1147.

### 61-1-3.2. Unlicensed activity; disciplinary proceedings; civil penalty.

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A 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 a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

**History:** Laws 2003, ch. 334, § 3.

**Effective dates.** — Laws 2003, ch. 334, § 4 makes the act effective on July 1, 2003.

### 61-1-4. Notice of contemplated board action; request for hearing; notice of hearing.

A. For the purpose of investigating complaints against licensees, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

B. When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement:

- (1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
- (2) indicating in what respects the applicant has failed to satisfy the board;
- (3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and
- (4) calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978.

C. In any board proceeding to take any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

D. When a board contemplates taking any action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement:

- (1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;
- (2) indicating the general nature of the evidence;
- (3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board will take the contemplated action; and
- (4) calling the licensee's attention to his rights as provided in Section 61-1-8 NMSA 1978.

E. If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review.

F. If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and regulations authorizing the board to take the contemplated action. The hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice of hearing.

G. Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees or if they prevail at the hearing and an action specified in Section 61-1-3 NMSA 1978 is not taken by the board.

**History:** 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1993, ch. 295, § 3; 2003, ch. 334, § 2.

**The 1993 amendment,** effective June 18, 1993, added present Subsection A; redesignated the former first paragraph of Subsection A as present Subsection B; rewrote the former second paragraph of Subsection A as present Subsection C; redesignated former Subsections B through D as Subsections D through F; substituted "D through N" for "D, E or F" in the introductory language of Subsection D; added Subsection G; and made stylistic changes in Subsections B, D, and F.

**The 2003 amendment,** effective July 1, 2003, in Paragraph D(4), substituted "as provided in" for "under"; in Subsection F, added "of hearing" at the end.

**Probable cause hearing not necessary before revocation proceedings.** — A licensee is not deprived of any due process rights when no probable cause hearing is conducted prior to the institution of license revocation proceedings. *Keney v. Derbyshire*, 718 F.2d 352 (10th Cir. 1983).

**Charging board not disqualified in hearing on charge.** — The board of medical examiners has exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and was, therefore, an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Zeal in performing public duty does not disqualify.** *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Requirement of actual notice to licensee.** — The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license, pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act, must

follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

**Content of notice.** — The "evidence" to be set out in the notice of contemplated action under this statute is the evidence of the ground or grounds to be relied upon in taking the contemplated action under former 61-5-14 NMSA 1978, not the evidence to be adduced by way of explanation and determination of rehabilitation under the Criminal Offender Employment Act, 28-2-1 et seq. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Notice of contemplated action sufficient.** — The Notice of Contemplated Action in this case was sufficient to provide the licensee with notice, even though it did not state that the qualifying party certificate was in jeopardy; the licensee knew the general nature of the proceedings against him and that is all that notice pleading requires. Further, the licensee waived the lack of notice issue by appearing at the administrative hearing and defending on the

merits. *Oden v. State, Regulation & Licensing Dep't*, 1996-NMSC-022, 121 N.M. 670, 916 P.2d 1337.

Psychologist was afforded adequate notice that she might be questioned regarding what means she had used to assess her former patient's needs and potential for exploitation; the relevant board rules, which were quoted in the notice of contemplated action, provided that personal relationships with former clients could only be entered with "caution and deliberateness", which should be reflected by the psychologist considering issues such as the need for future treatment and the potential for exploitation of the client. *N.M. State Bd. of Psychologist Exam'rs v. Land*, 2003-NMCA-034, 62 N.M. 1244, 62 P.3d 1244, cert. denied, N.M. , P.3d (2003).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 60.

Rights as to notice and hearing in proceeding to revoke or suspend license to practice medicine, 10 A.L.R.5th 1.

53 C.J.S. Licenses §§ 43, 55, 56.

### 61-1-5. Method of service.

Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978, may be served either personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last know [known] address as shown by the records of the board. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the Rules of Civil Procedure for the District Courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

**History:** 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5.

**Bracketed material.** — The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

**Cross references.** — For service of process, see Rule 1-004 NMRA.

**Requirement of actual notice to licensee.** — The Uniform Licensing Act requires actual notice to be given to an individual who may lose a license,

pursuant to the hearing requirements contained in the law. In that case, a public policy-making body which convenes a hearing on a licensing matter and which is subject to the provisions of the act, must follow the act's specific notice tenets. In these cases, mere posting of such notice is insufficient as it affects the individual licensee. 1990 Op. Att'y Gen. No. 90-29.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 37, 54.

### 61-1-6. Venue of hearing.

Board hearings held under the Uniform Licensing Act [61-1-1 NMSA 1978] shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county.

**History:** 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6.

### 61-1-7. Hearing officers; hearings; public; exception; excusal; protection of witness and information.

A. All hearings under the Uniform Licensing Act [61-1-1 NMSA 1978] shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing officer shall, within thirty days after any hearing, submit to the board a report setting forth his findings of fact.

B. All hearings under the Uniform Licensing Act shall be open to the public, provided that in cases in which any constitutional right of privacy of an applicant or licensee may be irreparably damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The applicant or licensee may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may peremptorily excuse one board member or a hearing officer by filing with the board a notice of peremptory excusal at least twenty days prior to the date of the hearing, but this privilege of peremptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hear or decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of peremptory excusals and excusals for good cause would result in less than a quorum of the board being able to hear or decide the matter, the peremptory excusals that would result in removing the member or members of the board necessary for a quorum shall not be effective.

D. In any case in which excusals for cause result in less than a quorum of the board being able to hear or decide the matter, the governor shall, upon request by the board, appoint as many temporary board members as are necessary for a quorum to hear or decide the matter. These temporary members shall have all of the qualifications required for permanent members of the board.

E. In any case in which excusals result in less than a quorum of the board being able to hear or decide the matter, the board, including any board members who have been excused, may designate a hearing officer to conduct the entire hearing.

F. Each board shall have power where a proceeding has been dismissed, either on the merits or otherwise, to relieve the applicant or licensee from any possible odium that may attach by reason of the proceeding, by such public exoneration as it shall see fit to make, if requested by the applicant or licensee to do so.

G. There shall be no liability on the part of and no action for damages against a person who provides information to a board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to a board shall be subject to disciplinary action.

**History:** 1953 Comp., § 67-26-7, enacted by Laws 1957, ch. 247, § 7; 1981, ch. 349, § 6; 1993, ch. 295, § 5.

The 1993 amendment, effective June 18, 1993, substituted "excusal; protection of witness and information" for "disqualification" in the catchline; substituted "any constitutional right of privacy" for "the reputation" in the first sentence of Subsection B; rewrote Subsection C; substituted "excusals for cause" for "disqualifications" in the first sentence of Subsection D; substituted "excusals" for "disqualifications" and "excused" for "disqualified" in Subsection E; and added Subsection G.

**Charging board not disqualified in licensing on charge.** — The board of medical examiners has

exclusive jurisdiction regarding the granting and revoking of certificates admitting physicians and surgeons to practice and, in view of the fact that the statutes do not provide for disqualification of board members, proceedings before the board may not be restrained merely by reason of the fact that the board itself initiated the proceedings against a physician and is therefore an interested party. *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Zeal in performing public duty does not disqualify.** *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Due process violated where hearing conducted by prejudiced tribunal.** — Any utilization



of this section which has the effect of allowing an administrative hearing, punitive in nature, to be conducted by a patently prejudiced tribunal must necessarily violate the due process provisions of the fifth and fourteenth amendments of the United States Constitution and N.M. Const., art. II, § 18. *Reid v. New Mexico Bd. of Exmrs. in Optometry*, 92 N.M. 414, 589 P.2d 198 (1979).

One peremptory disqualification allowed. —

Interpretation of this section by the Manufactured Homes Committee to allow only one peremptory disqualification of a committee member at a hearing was correct. *Rex, Inc. v. Manufactured Hous. Comm.*, 119 N.M. 500, 892 P.2d 947 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** —  
51 Am. Jur. 2d Licenses and Permits §§ 60, 61.  
53 C.J.S. Licenses §§ 43, 54, 55, 59.

### 61-1-8. Rights of person entitled to hearing.

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas *ducēs tecum* issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

**History:** 1953 Comp., § 67-26-8, enacted by Laws 1957, ch. 247, § 8; 1981, ch. 349, § 7.

Section provides right to examine all opposing witnesses. *McCaughy v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Law reviews.** — For article, "An Administrative

Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** —  
51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 43, 54, 58, 59.

### 61-1-9. Powers of board or hearing officer in connection with hearings.

A. In connection with any hearing held under the Uniform Licensing Act [61-1-1 NMSA 1978], the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discovery and of the hearing; witnesses and relevant books, papers, documents and other evidence; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Boards or hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant or licensee.

B. Geographical limits upon the subpoena power shall be the same as if the board or hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service, including tendering of witness and mileage fees, shall be the same as that under the Rules of Civil Procedure for the District

Courts, except that those rules requiring the tender of fees in advance shall not apply to the state.

C. The board or hearing officer may impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena.

**History:** 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1981, ch. 349, § 8.

**Administrative body has only the authority given it by law.** In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

**Granting continuance to allow discovery.** — This section allows the board to grant a prehearing continuance to assure that the licensee obtains full

and complete discovery. *Molina v. McQuinn*, 107 N.M. 384, 758 P.2d 798 (1988).

**Law reviews.** — For article, "An Administrative Procedure Act For New Mexico," see 8 Nat. Resources J. 114 (1968).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 51. 53 C.J.S. Licenses §§ 43, 58, 59.

### 61-1-10. Enforcement of board orders and contempt procedure.

In proceedings before a board or hearing officer under the Uniform Licensing Act [61-1-1 NMSA 1978], if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the district court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court may issue such order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt.

**History:** 1953 Comp., § 67-26-10, enacted by Laws 1957, ch. 247, § 10; 1981, ch. 349, § 9.

### 61-1-11. Rules of evidence.

A. In proceedings held under the Uniform Licensing Act [61-1-1 NMSA 1978], boards and hearing officers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. Boards and hearing officers may in their discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. In proceedings involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Documentary evidence may be received in the form of copies or excerpts.

B. Boards and hearing officers may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When any board or hearing officer takes notice of a fact, the applicant or licensee shall be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

C. Boards and hearing officers may utilize their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

**History:** 1953 Comp., § 67-26-11, enacted by Laws 1957, ch. 247, § 11; 1981, ch. 349, § 10.

**Reliable evidence given probative effect.** — Evidence of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs may be given probative effect under this section. *Young v. Board of Pharmacy*, 81 N.M. 5, 462 P.2d 139 (1969). See note under 61-1-1 NMSA 1978.

**Necessity of expert testimony.** — Expert testimony was not required to support charges that a dentist submitted a false claim for reimbursement and that the dentist was guilty of unprofessional conduct and failed to practice dentistry in a professionally competent manner. Where the agency con-

ducting the hearing is itself composed of experts qualified to make a judgment as to the licensee's adherence to standards of professional conduct, there is no need for the kind of assistance an expert provides in the form of an opinion. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Hearsay admissible.** — This section clearly contemplates that a board may admit and consider hearsay evidence, if it is of a kind commonly relied upon by reasonably prudent men in the conduct of serious affairs. In re Willoughby, 82 N.M. 443, 483 P.2d 498 (1971).

Because an agency has wide discretion in receiving

and excluding evidence in proceedings under the Uniform Licensing Act, any error in allowing reference to an indictment against a dentist was harmless. *Weiss v. New Mexico Bd. of Dentistry*, 110 N.M. 574, 798 P.2d 175 (1990).

**Standard of proof applied in administrative proceedings**, with few exceptions, is a preponderance of the evidence. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

**Substantial evidence must support revocation.** — The revocation or suspension of a license to conduct a business or profession must not be based solely upon hearsay evidence, as other legally competent evidence, together with the hearsay evidence, must substantially support the findings upon which the revocation or suspension is based. In *re Willoughby*, 82 N.M. 443, 483 P.2d 498 (1971).

**Higher burden to prove fraud.** — If fraud is charged in an administrative proceeding, the evidence in support of a finding of fraud is not deemed substantial "if it is not clear, strong and convincing." *Seidenberg v. New Mexico Bd. of Medical Exmrs.*, 80 N.M. 135, 452 P.2d 469 (1969).

**Special weight given to technical findings.** — Courts may properly give special weight and credence to findings concerning technical or scientific

matters by administrative bodies whose members, by education, training or experience, are especially qualified and are functioning within the perimeters of their expertise since legislative approval of the treatment of the findings of these boards is implicit in this section. *McDaniel v. New Mexico Bd. of Medical Exmrs.*, 86 N.M. 447, 525 P.2d 374 (1974).

**Law reviews.** — For article, "An Administrative Procedure Act For New Mexico," see 8 *Nat. Resources J.* 114 (1968).

For article, "The Use of the Substantial Evidence Rule to Review Administrative Findings of Fact in New Mexico," see 10 *N.M. L. Rev.* 103 (1979-80).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 *Am. Jur. 2d Licenses and Permits* §§ 62, 71, 79, 80, 83.

Hearsay in proceedings for suspension or revocation of license to conduct business or profession, 142 *A.L.R.* 1388.

Hearsay evidence in proceedings before state administrative agencies, 36 *A.L.R.3d* 12.

Necessity of expert evidence in proceeding for revocation or suspension of license of physician, surgeon, or dentist, 74 *A.L.R.4th* 969.

53 *C.J.S. Licenses* §§ 43, 58, 59.

## 61-1-12. Record.

In all hearings conducted under the Uniform Licensing Act [61-1-1 NMSA 1978], a complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the board, by tape recording. The board shall observe any standards pertaining to tape recordings established for the district courts of this state.

**History:** 1953 *Comp.*, § 67-26-12, enacted by *Laws 1957, ch. 247, § 12; 1981, ch. 349, § 11.*

Section provides for complete transcript.

*McCaughy v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

## 61-1-13. Decision.

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A decision based on the hearing shall be made by a quorum of the board and signed by the person designated by the board within sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing.

**History:** 1953 *Comp.*, § 67-26-13, enacted by *Laws 1957, ch. 247, § 13; 1981, ch. 349, § 12; 1993, ch. 295, § 6.*

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "a quorum of the board" for "the board at a meeting where a majority of the members are present and participating in the deci-

sion" at the end of the first sentence; and made stylistic changes in the second and third sentences.

**Standard of proof for a hearing under this section** is by a preponderance of the evidence. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

Section requires that decision be made by

majority of the members of the board. *McCaughtry v. New Mexico Real Estate Comm'n*, 82 N.M. 116, 477 P.2d 292 (1970).

**Effect of failure to timely sign decision.** — Failure of the board of dentistry to render and sign its decision suspending a dentist's license within 90 days after completion of the hearing made the decision null and void. *Foster v. Board of Dentistry*, 103 N.M. 776, 714 P.2d 580 (1986).

The 90-day time limit imposed by this section is expressly jurisdictional. Where the board fails to take action within the required 90-day period, its decision is void and must be reversed. *Lopez v. New Mexico Bd. of Medical Exmrs.*, 107 N.M. 145, 754 P.2d 522 (1988).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 53 C.J.S. Licenses §§ 43, 60.

### 61-1-14. Service of decision.

Within fifteen days after the decision is rendered and signed, the board shall serve upon the applicant or licensee a copy of the written decision.

**History:** 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14.

### 61-1-15. Procedure where person fails to request or appear for hearing.

If a person who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give the person notice as required by Sections 61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

**History:** 1953 Comp., § 67-26-15, enacted by Laws 1957, ch. 247, § 15; 1981, ch. 349, § 14.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits §§ 60, 61.

53 C.J.S. Licenses §§ 43, 61.

### 61-1-16. Contents of decision.

The decision of the board shall contain findings of fact made by the board; conclusions of law reached by the board; the order of the board based upon these findings of fact and conclusions of law; and a statement informing the applicant or licensee of his right to judicial review and the time within which such review must be sought.

**History:** 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1981, ch. 349, § 15.

### 61-1-17. Petition for review.

A person entitled to a hearing provided for in the Uniform Licensing Act [61-1-1 NMSA 1978], who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History:** 1953 Comp., § 67-26-17, enacted by Laws 1957, ch. 247, § 17; 1993, ch. 295, § 7; 1998, ch. 55, § 73; 1999, ch. 265, § 76.

The 1993 amendment, effective June 18, 1993, inserted "office of the attorney general and on the" in

the second sentence and made stylistic changes in the second and fourth sentences.

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

**Compiler's notes.** — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Section applies only to licensing decisions.** — This section sets forth venue provisions governing the judicial review only of orders of the board which relate to the denial, suspension or revocation of licenses. It is inapplicable to judicial review of price

agreement order of state board of barber examiners. *Tudesque v. New Mexico State Bd. of Barber Exmrs.*, 65 N.M. 42, 331 P.2d 1104 (1958).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 51.

Stay pending review of judgment or order revoking or suspending a professional, trade or occupational license, 166 A.L.R. 575.

53 C.J.S. Licenses §§ 43, 62.

### 61-1-18. Repealed.

**Repeals.** — Laws 1998, ch. 55, § 94 61-1-18 NMSA 1978 as enacted by Laws 1957, ch. 247, § 18, relating to records filed by the board and contents of

the records, effective September 1, 1998. For former provisions, see 1993 Replacement Pamphlet and 1998 Cumulative Supplement.

### 61-1-19. Stay.

At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved person may apply to the board or file a motion in accordance with the Rules of Civil Procedure for the District Courts in the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The board or court may grant or deny the stay in its discretion. No order granting or denying a stay shall be reviewable.

**History:** 1953 Comp., § 67-26-19, enacted by Laws 1957, ch. 247, § 19; 1976, ch. 4, § 1; 1981, ch. 349, § 16; 1998, ch. 55, § 74.

**Cross references.** — For appeal of final decisions by agencies to district court, see 39-3-1.1 NMSA 1978. For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, inserted "pursuant to Section 61-1-17 NMSA 1978" and deleted "such" following "No".

**Compiler's notes.** — For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs*, 120 N.M. 778, 907 P.2d 182 (1995).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 84.

Validity and construction of state statutory provision forbidding court to stay, pending review, judgment or order revoking or suspending professional, trade, or occupational license, 42 A.L.R.4th 516.

### 61-1-20. Repealed.

**Repeals.** — Laws 1998, ch. 55, § 94 repeals 61-1-20 NMSA 1978, as enacted by Laws 1957, ch. 247, § 20, relating to scope of review, effective September

1, 1998. For former provisions, see 1998 Cumulative Supplement.

### 61-1-21. Power of board to reopen the case.

A. At any time after the hearing and prior to the filing of a petition for review, the person aggrieved may request the board to reopen the case to receive additional evidence or for other cause.

B. The board need not reconvene and may be polled about whether to grant or refuse a request to reopen the case. The board shall grant or refuse the request in writing, and that decision and the request shall be made a part of the record. The decision to grant or refuse a request to reopen the case shall be made, signed by the person designated by the board, and served upon the applicant or licensee within fifteen days after the board receives the request.

C. The granting or refusing of a request to reopen the case shall be within the board's discretion. The board may reopen the case on its own motion at any time before petition for review is filed; thereafter, it may do so only with the permission of the reviewing court. If the board reopens the case, it shall provide notice and a hearing to the applicant or licensee. The notice of the hearing shall be served upon the applicant or licensee within fifteen days after service of the decision to reopen the case. The hearing shall be held within forty-five days

after service of the notice, and a decision shall be rendered, signed and served upon the applicant or licensee within thirty days after the hearing.

D. The board's decision to refuse a request to reopen the case shall not be reviewable except for an abuse of discretion.

**History:** 1953 Comp., § 67-26-21, enacted by Laws 1957, ch. 247, § 21; 1981, ch. 349, § 17.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 51.

53 C.J.S. Licenses §§ 43, 61.

### 61-1-22, 61-1-23. Repealed.

**Repeals.** — Laws 1998, ch. 55, § 94 repeals 61-1-22 and 61-1-23 NMSA 1978 as enacted by Laws 1957, ch. 247, §§ 22 and 23, relating to remand for hearing newly discovered evidence; procedure before

the board; appeal to supreme court, effective September 1, 1998. For former provisions, see 1996 Replacement Pamphlet.

### 61-1-24. Power of board to seek injunctive relief.

Any board may appear in its own name in the courts of the state and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of rules and regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations.

**History:** 1953 Comp., § 67-26-24, enacted by Laws 1957, ch. 247, § 24.

**Law reviews.** — For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits §§ 85, 149. 53 C.J.S. Licenses § 85.

### 61-1-25. Declaratory judgment.

The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the district court of Santa Fe county when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board.

**History:** 1953 Comp., § 67-26-25, enacted by Laws 1957, ch. 247, § 25.

**Cross references.** — For declaratory judgments, see 44-6-1 NMSA 1978 et seq.

**Law reviews.** — For note, "Police Power and the Design of Buildings," see 5 Nat. Resources J. 122 (1965).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 22A Am. Jur. 2d Declaratory Judgments §§ 73, 76. 53 C.J.S. Licenses § 37.

### 61-1-26. Repealed.

**Repeals.** — Laws 1998, ch. 55, § 94 repeals 61-1-26 NMSA 1978, as enacted by Laws 1957, ch. 247, § 26, providing a uniform method of judicial review

of board actions of the kind, effective September 1, 1998. For former provisions, see 1996 Replacement Pamphlet.

### 61-1-27. Amending and repealing.

The provisions of the Uniform Licensing Act [61-1-1 NMSA 1978] may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of this act being amended, repealed or superseded.

History: 1953 Comp., § 67-26-27, enacted by Laws 1957, ch. 247, § 27; 1981, ch. 349, § 18.

### 61-1-28. Purpose of act; liberal interpretation.

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act [61-1-1 NMSA 1978] is to promote uniformity with respect to the conduct of board hearings and judicial review and that the Uniform Licensing Act is to be liberally construed to carry out its purpose.

History: 1953 Comp., § 67-26-28, enacted by Laws 1957, ch. 247, § 28.  
Severability clauses. — Laws 1957, ch. 247,

§ 29, provides for the severability of the act if any part or application thereof is held invalid.

### 61-1-29. Adoption of regulations; notice and hearing.

A. The procedures specified in Sections 61-1-29 through 61-1-31 NMSA 1978 shall be applicable to proceedings by a board to adopt, amend or repeal rules or regulations of general applicability which implement or interpret a law enforced or administered by the board. These procedures shall not apply to:

- (1) statements, policies, procedures or regulations concerning only internal management or discipline of a board and not affecting the rights of or procedures available to licensees, applicants or the public generally;
- (2) declaratory rulings issued pursuant to Section 61-1-33 NMSA 1978;
- (3) decisions, statements or interpretations issued or actions taken in the course of disciplinary proceedings against a licensee; or
- (4) formal or informal opinions of the attorney general issued pursuant to requests of the board.

B. No regulation or amendment or repeal thereof shall be adopted by the board until after a public hearing by the board.

C. The board shall make reasonable efforts to give notice of any rulemaking proceeding to its licensees and to the members of the public. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulations. The notice of the public hearing shall include but not necessarily be limited to publishing the notice in a newspaper of general circulation in the state, and the board shall give notice to all persons who have made a written request to the board for advance notice.

D. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board. The board may designate a hearing officer to take evidence in the hearing. A record shall be made of all proceedings at the hearing.

E. No regulation or amendment or repeal thereof shall become effective until thirty days after its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

History: 1953 Comp., § 67-26-29, enacted by Laws 1971, ch. 54, § 3; 1981, ch. 349, § 19.

Cross references. — For legal newspaper, see 14-11-2 NMSA 1978.

Notice procedure of pharmacy board does not violate due process. *Montoya v. O'Toole*, 94 N.M. 303, 610 P.2d 190 (1980).

Board must disclose reasoning behind regulation. — In propounding regulations the board of pharmacy need not make formal findings. The only requirements which it must meet are that the public and the reviewing courts are informed as to the

reasoning behind the regulation. The comments of one board member suffice in this regard. *Pharmaceutical Mfrs. Ass'n v. New Mexico Bd. of Pharmacy*, 86 N.M. 571, 525 P.2d 931 (Ct. App. 1974).

Subsection C is applicable to repeal of regulations by an administrative agency. *Rivas v. Board of Cosmetologists*, 101 N.M. 592, 686 P.2d 934 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 51 Am. Jur. 2d Licenses and Permits §§ 46, 125. 53 C.J.S. Licenses § 37.

### 61-1-30. Emergency regulations; appeal.

A. If the board determines that an emergency exists which requires immediate action to protect the public peace, health, welfare or safety, it may, with the written concurrence of the governor, adopt a regulation or amendment or repeal thereof, and the emergency regulation shall become effective immediately upon its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978]. The emergency regulation shall not continue in effect longer than forty-five days unless within that time the board commences proceedings to adopt the regulation by issuing the notice required under Section 61-1-29 NMSA 1978. If the board commences proceedings under Section 61-1-29 NMSA 1978, the emergency regulation shall remain in effect until a permanent regulation takes effect or until the procedures are otherwise completed. In no event shall any emergency regulation remain in effect for more than one hundred twenty days.

B. Any person who is or may be affected by an emergency regulation adopted by the board may appeal to the court of appeals for relief. An appeal of an emergency regulation is perfected by filing a notice of appeal with the court of appeals and the board within the period of time the emergency regulation is in effect. The notice of appeal shall be accompanied by a copy of the emergency regulation. Within three days of the date the board receives the notice of appeal, the board shall file with the court of appeals a statement setting forth the facts requiring the emergency action. The board shall also deliver a copy of the statement to the appellant. The appellant shall have five days to file with the court of appeals a written response to the board's statement. The appellant shall also deliver a copy of its response to the board. The court of appeals may set aside the emergency regulation only if it finds that the board's exercise of its emergency regulation-making authority is arbitrary, capricious, contrary to law or an abuse of discretion.

**History:** 1953 Comp., § 67-26-30, enacted by Laws 1971, ch. 54, § 4; 1981, ch. 349, § 20.

### 61-1-31. Validity of regulation; judicial review.

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for relief. All appeals shall be upon the record made at the hearing by the board and shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. An appeal to the court of appeals under this section is perfected by the timely filing of a notice of appeal with the court of appeals, with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the board.

- C. Upon appeal, the court of appeals shall set aside the regulation only if found to be:
- (1) arbitrary, capricious or an abuse of discretion;
  - (2) contrary to law; or
  - (3) against the clear weight of substantial evidence of the record.

**History:** 1953 Comp., § 67-26-31, enacted by Laws 1971, ch. 54, § 5; 1981, ch. 349, § 21.

**Interpretations overturned only if clearly wrong.** — Reviewing courts overturn the administrative interpretation of a statute by appropriate agencies only if they are clearly incorrect. Since detailmen handle controlled drugs and are part of the interstate drug shipment operation, even though they do not ship drugs themselves, the interpreta-

tion by the board of pharmacy of 26-1-16 NMSA 1978 to allow licensing of detailmen is not clearly erroneous and will not be overturned by a reviewing court. *Pharmaceutical Mfrs. Ass'n v. New Mexico Bd. of Pharmacy*, 86 N.M. 571, 525 P.2d 931 (Ct. App. 1974).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 51 Am. Jur. 2d Licenses and Permits § 51.

Right to attack validity of statute, ordinance or



regulation relating to occupational or professional license as affected by applying for, or securing, license, 65 A.L.R.2d 660.

53 C.J.S. Licenses § 37.

### **61-1-32. Petition for adoption, amendment or repeal of regulations.**

Any interested person may request in writing that a board adopt, amend or repeal a regulation. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with Section 61-1-29 NMSA 1978 to adopt the regulation or issue a concise written statement of its reason for denial of the request. The denial of such a request is not subject to judicial review.

History: 1978 Comp., § 61-1-32, enacted by Laws 1981, ch. 349, § 22.

### **61-1-33. Declaratory rulings.**

A. Any licensee of a board whose rights may be affected by the application of any statute enforced or administered by that board or by any decision, order or regulation of that board, may request in writing a declaratory ruling from the board concerning the applicability of the statute, decision, order or regulation to a particular set of facts. The board shall respond in writing to such a written request within one hundred twenty days.

B. The board may also issue declaratory rulings on its own motion.

C. The effect of a declaratory ruling shall be limited to the board and to the licensee, if any, who requested the declaratory ruling.

History: 1978 Comp., § 61-1-33, enacted by Laws 1981, ch. 349, § 23.  
Severability clauses. — Laws 1981, ch. 349,

§ 25, provides for the severability of the Uniform Licensing Act if any part or application thereof is held invalid.