

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 5 DISCIPLINARY POWER OF THE BOARD

16.10.5.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.5.1 NMAC - Rp 16 NMAC 10.5.1, 4/18/02]

16.10.5.2 SCOPE: This part applies to licensees and applicants for licensure.
[16.10.5.2 NMAC - Rp 16 NMAC 10.5.2, 4/18/02]

16.10.5.3 STATUTORY AUTHORITY: This part is promulgated pursuant to and in accordance with the Medical Practice Act, Sections 61-6-1 through 61-6-35 NMSA 1978, the Uniform Licensing Act, section 61-1-1 through 61-1-33 NMSA 1978, and the Impaired Health Care Provider Act, section 61-7-1 through 61-7-12 NMSA 1978.
[16.10.5.3 NMAC - Rp 16 NMAC 10.5.3, 4/18/02; A, 1/1/09]

16.10.5.4 DURATION: Permanent
[16.10.5.4 NMAC - Rp 16 NMAC 10.5.4, 4/18/02]

16.10.5.5 EFFECTIVE DATE: April 18, 2002, unless a later date at the end of a section.
[16.10.5.5 NMAC - Rp 16 NMAC 10.5.5, 4/18/02]

16.10.5.6 OBJECTIVE: This part establishes procedures for license denial, revocation of license, suspension of license, probation, censure and reprimand, fines, costs and stipulations.
[16.10.5.6 NMAC - Rp 16 NMAC 10.5.6, 4/18/02]

16.10.5.7 DEFINITIONS:

A. "License" means a document granting legal permission to a physician, a physician assistant, [ø] anesthesiologist assistant, genetic counselor, or a polysomnographic technologist to practice in the state of New Mexico.

B. "Licensee" means a physician, physician assistant, [ø] anesthesiologist assistant, genetic counselor, or a polysomnographic technologist who has been granted permission to practice in the state of New Mexico.
[16.10.5.7 NMAC - Rp 16 NMAC 10.5.7, 4/18/02; A, 1/1/09]

16.10.5.8 DISCIPLINARY POWER OF THE BOARD: Pursuant to 61-6-5, 61-6-8, 61-6-15 and 61-7-8 NMSA, 1978, the board has the power to suspend or revoke a license, place a licensee on probation under such terms and conditions as the board deems necessary after a hearing or pursuant to a stipulation with a licensee. Further, under the Medical Practice Act the board has the power to deny a license application, to deny a license renewal, to censure, to reprimand or to fine a licensee.
[16.10.5.8 NMAC - Rp 16 NMAC 10.5.8, 4/18/02]

16.10.5.9 REVOCATION OF LICENSE:

A. Action prior to revocation. Prior to revoking any license for any violation of the Medical Practice Act, or the Impaired Health Care Provider Act, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

B. Terms of revocation. A licensee whose license is revoked may not practice in any manner under that license.

C. Relicensing after revocation under the Medical Practice Act. All revocations pursuant to the Medical Practice Act are permanent and no such license revoked shall be reinstated. Persons seeking licensure after revocation under the Medical Practice Act shall file a new application for licensure with the board, under the rules for new applicants, only if permitted in the revocation order.

D. Relicensing after revocation under the Impaired Health Care Provider Act. A physician or physician assistant whose license has been revoked pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to section 61-7-9 NMSA 1978.
[16.10.5.9 NMAC - Rp 16 NMAC 10.5.10, 4/18/02; A, 1/1/09]

16.10.5.10 SUSPENSION OF LICENSE.

A. Action prior to suspension. Except as provided in the Impaired Health Care Provider Act, or in a disciplinary order entered after a hearing, or pursuant to Subsection C of 16.10.5.15 NMAC below, prior to suspending any license, the board shall give the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act.

B. Terms of suspension. The board may suspend a license for either a specified period of time or indefinitely. A licensee whose license is suspended may not practice in any manner under that license during the period of suspension.

C. Reinstatement. Unless otherwise established by the board:

(1) If the board has suspended a license indefinitely, the licensee must petition the board for reinstatement. If reinstatement is initially denied, the licensee may petition for reinstatement on a yearly basis thereafter.

(2) If the board sets a date after which a license may be reinstated, the board will consider a petition for reinstatement only after that date. The licensee may petition for reinstatement on a yearly basis thereafter.

(3) A physician whose license has been suspended pursuant to the Impaired Health Care Provider Act may petition for reinstatement pursuant to 61-7-9 NMSA, 1978, if the physician can meet the statutory requirements. If the reinstatement is denied, the licensee may petition for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC - Rp 16 NMAC 10.5.11, 4/18/02; A, 1/1/09]

16.10.5.11 PROBATION:

A. General. The board may stay any disciplinary action taken and place a licensee on probation with a requirement that the licensee comply with terms of probation. The board may also place a licensee on probation without taking other disciplinary action.

B. Terms of probation. The terms of the probation shall be set forth in writing. The licensee on probation may continue to practice under the license so long as the licensee complies with all terms of probation.

C. Violation of probation. If probation is granted and the terms of the probation are then violated, the board shall give the applicant written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act prior to taking further disciplinary action, unless the order of probation contains a provision for the summary suspension of the license.

[16.10.5.11 NMAC - Rp 16 NMAC 10.5.13, 4/18/02; A, 1/1/09]

16.10.5.12 CENSURE AND REPRIMAND: The board may issue a letter of censure or reprimand to a licensee for any *minor* violation of the Medical Practice Act. If the board intends to issue a letter of censure or reprimand, the licensee shall be notified in writing pursuant to the Uniform Licensing Act.

[16.10.5.12 NMAC - Rp 16 NMAC 10.5.14, 4/18/02]

16.10.5.13 FINES: The board may impose a fine on a licensee for each violation of the Medical Practice Act after giving the licensee written notice and an opportunity to request a hearing pursuant to the Uniform Licensing Act. If the licensee's action constitutes more than one violation of the Medical Practice Act, the board may impose a fine for each violation.

[16.10.5.13 NMAC - Rp 16 NMAC 10.5.15, 4/18/02; A, 1/1/09]

16.10.5.14 [Reserved]

[16.10.5.14 NMAC - Rp 16 NMAC 10.5.16, 4/18/02; - Repealed, 4/3/05]

16.10.5.15 STIPULATION:

A. Power to enter into stipulations. The board may come to an agreement and enter into a stipulation with a licensee at any time. In a stipulation, the parties may agree to any disciplinary or other action that the board is authorized to take by law.

B. Contents. The stipulation shall be in writing, shall contain the agreed upon restrictions on the licensee and shall be signed by the board and the licensee. The stipulation shall contain statements that the licensee:

(1) knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the board; and

(2) understands that entering into a stipulation regarding the case results in a waiver of the licensee's rights under the Uniform Licensing Act, the Medical Practice Act, or the Impaired Health Care Provider Act, as applicable, including the right to appeal;

C. Violation of a stipulation. The licensee and the board may agree that the board may take immediate action to suspend a license, as set forth in the stipulation, if the board has reasonable cause to believe that the stipulation has been violated, without the licensee being given an opportunity to request a hearing. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the last known address of the licensee pursuant to the provisions of the Uniform Licensing Act.

D. Costs. In all appropriate cases, the payment of costs of preparing the case, including reasonable prosecuting attorney's fees, may be negotiated as part of the stipulation.

[16.10.5.15 NMAC - Rp 16 NMAC 10.5.17, 4/18/02; A, 1/1/09]

16.10.5.16 SUMMARY SUSPENSION: This is a formal preliminary disciplinary action that immediately suspends a licensee's right to practice. The summary suspension remains in effect until a further order of the board is entered. The licensee has an opportunity for a full hearing before the board on the summary suspension.

A. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with, or at any time after, the issuance of a notice of contemplated action (NCA) and the initiation of proceedings for a hearing provided for under the Uniform Licensing Act on the NCA, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to their practice or for any violent criminal offense in this state or a substantially equivalent criminal offense in another U.S. jurisdiction.

B. A licensee is not required to comply with a summary action until service of the action has been made personally or by certified mail, return receipt requested, at the licensee's last known address as shown in the board's records, or the licensee has actual knowledge of the order, whichever occurs first. The board's executive director may sign a summary suspension order that the board has authorized.

C. A licensee whose license is summarily suspended is entitled to a hearing before the board on the summary suspension order, pursuant to the Uniform Licensing Act, within fifteen (15) days from the date the licensee requests a hearing. This hearing request shall be in writing, addressed to the board, delivered by certified mail, return receipt requested.

[16.10.5.16 NMAC - N, 1/1/09]

HISTORY OF 16.10.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 7, Disciplinary Power of Board Over Physician Assistants, filed 06-21-93

BME Rule 7, Disciplinary Power of Board Over Physician Assistants filed 12-19-89

BME MD01-MD031, Board of Medical Examiners Model Disciplinary Order, filed 1-22-85

BME MDG1-MDG20, Manual of Disciplinary Guideline and Model Disciplinary Orders, filed 01-22-85.

History of Repealed Material:

16 NMAC 10.5, Disciplinary Power of the Board - Repealed 4/18/02