

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 10 REPORT OF SETTLEMENTS, JUDGMENTS, ADVERSE ACTIONS AND CREDENTIALING DISCREPANCIES

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

16.10.10.2 SCOPE: This part applies to licensees and any entity that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care.
[16.10.10.2 NMAC - Rp 16 NMAC 10.10.2, 7/15/01; A, 1/6/12]

16.10.10.3 STATUTORY AUTHORITY: This part is adopted pursuant to the Health Care Quality Improvement Act of 1986, 42 U.S.C.A. Sections 11131-11152 and Sections 61-6-15(D) 21 and 61-6-16, NMSA 1978.
[16.10.10.3 NMAC - Rp 16 NMAC 10.10.3, 7/15/01; A, 8/6/04]

16.10.10.4 DURATION: Permanent
[16.10.10.4 NMAC - Rp 16 NMAC 10.10.4, 7/15/01]

16.10.10.5 EFFECTIVE DATE: July 15, 2001 unless a later date is cited at the end of a section.
[16.10.10.5 NMAC - Rp 16 NMAC 10.10.5, 7/15/01]

16.10.10.6 OBJECTIVE: This part provides requirements for health care entities to provide reports to the board of all malpractice payments made on behalf of licensees, and all actions adversely affecting licensing or clinical privileges of licensees. This part also provides requirements for licensees to report adverse actions that affect licensing or clinical privileges, or are taken by a governmental or law enforcement agency.
[16.10.10.6 NMAC - Rp 16 NMAC 10.10.6, 7/15/01; A, 8/6/04; A, 1/6/12]

16.10.10.7 DEFINITIONS:

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

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

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

D. “Health care entity” means:

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

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

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

E. “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.

F. “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 an individual physician or physician assistant or other health care practitioner which affects or could affect adversely the health or welfare of a patient or patients;
and,

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

G. “Professional review activity” means an activity of a health care entity with respect to an individual physician or physician assistant:

(1) to determine whether the physician or physician assistant 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.

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

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

16.10.10.8 REPORTING OF MEDICAL MALPRACTICE PAYMENTS. 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 containing the information listed below.

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

B. include at a minimum the name, license number, and social security number of the named physician or physician assistant;

C. the name and address of the person or entity making the payment;

D. name, title and telephone number of the official submitting the report on behalf of the entity; date or dates on which the act(s) or omission(s) giving rise to the claim occurred;

E. date of judgment or settlement;

F. amount paid, date of payment and whether payment is in satisfaction of a judgment or constitutes a settlement;

G. description of terms of the judgment or settlement and any conditions attached thereto, including terms of payment;

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

I. the physician or physician assistant’s official addendum to the data bank report.

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

16.10.10.9 REPORTING OF ADVERSE ACTIONS ON CLINICAL PRIVILEGES.

A. Actions that must be reported by the health care entity:

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

(2) acceptance of the surrender of clinical privileges or any restriction of such privileges while the physician or physician assistant is under investigation by the entity relating to possible incompetency or improper professional conduct; or, in return for not conducting an investigation or proceeding;

(3) in the case of a professional society, when it takes professional review action which adversely affects the membership of a physician or physician assistant in the society;

(4) failure to complete medical records if the failure is related to the physician’s professional competence or conduct and adversely affects or could adversely affect a patient’s health or welfare;

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

B. Report contents. All adverse actions must:

(1) be reported to the board within thirty days of final action;

(2) include at a minimum the name, license number, and social security number of the physician or physician assistant; a description of the act(s) or omission(s) or other reasons for the action or for the surrender of privileges; action taken, date of the action and effective date of action; and,

- (3) any physician or physician assistant's official addendum to the data bank report shall be reported.
 - C. The following actions do not require reporting to the board:**
 - (1) actions based on the physician or physician assistant's association, or lack of association, with a professional society or association;
 - (2) actions based on fees, advertising, or other competitive acts intended to solicit or retain business;
 - (3) actions based on the physician or physician assistant's participation in prepaid group health plans;
 - (4) actions based on the physician or physician assistant's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice; or
 - (5) any other matter that does not relate to the competence or professional conduct of a physician or physician assistant;
 - (6) failure to complete charts (except to the extent reportable under Paragraph (4) of Subsection A of this part), maintain insurance or perform other administrative obligations that results in a suspension of clinical privileges.
- [16.10.10.9 NMAC - Rp 16 NMAC 10.10.8.3, 7/15/01; A, 4/18/02; A, 1/6/12]

16.10.10.10 REPORTING OF CREDENTIALING DISCREPANCIES. Any health care entity that has received information from a physician or physician assistant where a discrepancy has been identified on an application or re-application that includes a signed attestation of accuracy, must report the discrepancy to the board within 90 days.

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

16.10.10.11 SANCTIONS FOR FAILURE TO REPORT.

- A. Medical malpractice payments.** Any health care entity or person failing to report malpractice payments required by this rule shall be subject to a civil penalty not to exceed \$10,000.
- B. Adverse actions.** Any hospital, health care entity or professional review body failing to comply with the reporting requirements set forth in Section 9 of this part shall be subject to a civil penalty not to exceed \$10,000 and will be reported by the board to the data bank as required by 42 U.S.C.§ 11133.

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

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

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

16.10.10.13 LICENSEE REPORTING REQUIREMENTS.

- A.** Consistent with Section 61-6-15(D)(21) NMSA 1978, in addition to the reporting requirements in Sections 8, 9 and 10 of this part, a licensee is required to report to the board any adverse action 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. Reports shall be received by the board within 45 days from the date the action occurs. For the purpose of this section, the "action occurs" on the date when the decision-making body has made a final decision. Any appeal of the final decision does not alter or add to the time of the requirement that the action be reported within 45 days from the date the decision-making body makes the decision. In the case of an arrest, the arrest shall be reported within 45 days of occurrence. In the case of adverse action taken by a peer review body, health care entity, or professional or medical society or association, refer to Section 9 of this part to determine what action must be reported.
- B.** Failure to report any adverse action shall constitute unprofessional or dishonorable conduct pursuant to Subsection D of Section 61-6-15 NMSA 1978 of the Medical Practice Act and shall be subject to any penalty that may be imposed pursuant to Section 61-6-15 NMSA 1978.

[16.10.10.13 NMAC - N, 8/6/04; A, 1/6/12]

HISTORY OF 16.10.10 NMAC:
Pre-NMAC History: Material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:
 Rule 16, Report of Settlements and Judgments and Adverse Action, 7/10/90
 Rule 15, Report of Settlements and Judgments and Adverse Action, 6/21/93

NMAC History:

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

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

History of Repealed Material:

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