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, 16.10.5.1 NMAC, 12/5/2023]

16.10.5.2 SCOPE: This part applies to licensees and applicants for licensure.
[16.10.5.2 NMAC - Rp, 16.10.5.2 NMAC, 12/5/2023]

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, the Impaired Health Care Provider Act, Section 61-7-1 through 61-7-12 NMSA 1978, the Genetic Counseling Act, Section 61-6A-1 through 61-6A-10 NMSA 1978, the Polysomnography Practice Act, Section 61-6B-1 through 61-6B-10 NMSA 1978, the Naprapathic Act, Sections 61-12F-1 through 61-12F-13 NMSA 1978, and the Naturopathic Doctors' Act, Section 61-12G-1 through 61-12G-11 NMSA 1978.
[16.10.5.3 NMAC - Rp, 16.10.5.3 NMAC, 12/5/2023]

16.10.5.4 DURATION: Permanent.
[16.10.5.4 NMAC - Rp, 16.10.5.4 NMAC, 12/5/2023]

16.10.5.5 EFFECTIVE DATE: December 5, 2023, unless a later date at the end of a section.
[16.10.5.5 NMAC - Rp, 16.10.5.5 NMAC, 12/5/2023]

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, 16.10.5.6 NMAC, 12/5/2023]

16.10.5.7 DEFINITIONS:

A. "License" means a document granting legal permission to any practitioner licensed pursuant to the medical practice act, to practice in the state of New Mexico.

B. "Licensee" means any practitioner governed by the medical practice act, who has been granted permission to practice in the state of New Mexico.

[16.10.5.7 NMAC - Rp, 16.10.5.7 NMAC, 12/5/2023]

16.10.5.8 DISCIPLINARY POWER OF THE BOARD: Pursuant to Sections 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, 16.10.5.8 NMAC, 12/5/2023]

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. 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.

D. Relicensing after revocation under the Impaired Health Care Provider Act: A licensee 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, 16.10.5.9 NMAC, 12/5/2023]

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 a specified period of time. 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 sets a date after which a license may be reinstated, the board will consider an application for reinstatement only after that date. The licensee may apply for reinstatement on a yearly basis thereafter.

(2) A licensee whose license has been suspended pursuant to the Impaired Health Care Provider Act may apply for reinstatement pursuant to Section 61-7-9 NMSA1978, if the licensee can meet the statutory requirements. If the reinstatement is denied, the licensee may apply for reinstatement on a yearly basis thereafter.

[16.10.5.10 NMAC - Rp, 16.10.5.10 NMAC, 12/5/2023]

16.10.5.11 PROBATION:

A. General: Probation means to allow, for a stated period of time, the conduct authorized by a license, subject to a licensee's license conditions or other restrictions that are reasonably related to the grounds for such restrictions. The board may stay any disciplinary action taken and place a licensee on probation with a requirement that the licensee comply with certain terms and conditions. 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 the terms of the probation are 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 immediate suspension of the license. The initial order of probation may also contain a provision for a new stated period or term of probation if any term of probation is violated.

D. Conditions of probation: Conditions of probation may include monitoring or other directed management or supervision during the stated period of probation.

[16.10.5.11 NMAC - Rp, 16.10.5.11 NMAC, 12/5/2023]

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 pursuant to Section 61-1-3 of the Uniform Licensing Act.

[16.10.5.12 NMAC - Rp, 16.10.5.12 NMAC, 12/5/2023]

16.10.5.13 FINES:

A. 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.

B. The board may impose a fine in an amount not to exceed ten thousand dollars ($10,000) for each violation against a person who, without an active license, engages in a violation of the Medical Practice Act.

C. All fines collected by the board pursuant to Subsection B of 16.10.5.13 NMAC shall be deposited to the credit of the current school fund as provided in Section 4 of Article 12 of the constitution of New Mexico.

[16.10.5.13 NMAC - Rp, 16.10.5.13 NMAC, 12/5/2023]

16.10.5.14 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 conditions or 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, by accepting a stipulation, agrees the board may immediately suspend a license if the board has reasonable cause to believe that any term of the stipulation has been violated, without the licensee being given an opportunity to request a hearing. The immediate suspension remains in effect until a further order of the board is entered. The board shall issue a notice of contemplated action within 10 days of the issuance of an immediate suspension. In this case, the stipulation shall provide that the board shall give notice of the disciplinary action to the licensee at the address of record maintained by the board of the licensee pursuant to the provisions of the Uniform Licensing Act. An immediate suspension is separate and distinct from a summary suspension described in 16.10.5.15 NMAC below.

[16.10.5.14 NMAC - Rp, 16.10.5.14 NMAC, 12/5/2023]

16.10.5.15 SUMMARY SUSPENSION: This is a formal preliminary disciplinary action that summarily 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; or

(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 address of record maintained by the board, 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 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.

[16.10.5.15 NMAC - Rp, 16.10.5.15 NMAC, 12/5/2023]

16.10.5.16 LIMITATIONS:

A. Limitations on actions are governed by Section 61-6-24 NMSA 1978.

B. For purposes of Subsection 1 of Section 61-1-3 NMSA 1978, discovery of the conduct by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the licensee was received by the board or board staff.

C. Receipt of a complaint by the board or board staff is established by the complaint and investigation process published in 16.10.6.8 NMAC.

[16.10.5.16 NMAC - Rp, 16.10.5.16 NMAC, 12/5/2023]

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 6/21/1993.

BME Rule 7, Disciplinary Power of Board Over Physician Assistants filed 12/19/1989.

BME MD01-MD031, Board of Medical Examiners Model Disciplinary Order, filed 1/22/1985.

BME MDG1-MDG20, Manual of Disciplinary Guideline and Model Disciplinary Orders, filed 1/22/1985.

History of Repealed Material:
16 NMAC 10.5, Disciplinary Power of the Board filed 3/5/1997 - Repealed effective 4/18/2002.
16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002, emergency Repealed 7/7/2023.
16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002, Repealed 12/5/2023.

Other:
16 NMAC 10.5, Disciplinary Power of the Board filed 3/5/1997 was Replaced by 16.10.5 NMAC - Disciplinary Power of the Board effective 4/18/2002.
16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002 was emergency Replaced by 16.10.5 NMAC - Disciplinary Power of the Board 7/7/2023.
16.10.5 NMAC - Disciplinary Power of the Board filed 3/18/2002 was Replaced by 16.10.5 NMAC - Disciplinary Power of the Board 12/5/2023.