TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 10 MEDICINE AND SURGERY PRACTITIONERS
PART 6 COMPLAINT PROCEDURE AND INSTITUTION OF DISCIPLINARY ACTION

16.10.6.1 ISSUING AGENCY: New Mexico Medical Board, hereafter called the board.
[16.10.6.1 NMAC - Rp, 16.10.6.1 NMAC, 12/5/2023]

16.10.6.2 SCOPE: This part applies to applicants, licensees and members of the board.
[16.10.6.2 NMAC - Rp, 16.10.6.2 NMAC, 12/5/2023]

16.10.6.3 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, Impaired Physician Act, Section 61-7-1 through 61-7-12 NMSA 1978 and the Parental Responsibility Act Section 40-5A-1 through 13 NMSA 1978.
[16.10.6.3 NMAC - Rp, 16.10.6.3 NMAC, 12/5/2023]

16.10.6.4 DURATION: Permanent.
[16.10.6.4 NMAC - Rp, 16.10.6.4 NMAC, 12/5/2023]

16.10.6.5 EFFECTIVE DATE: December 5, 2023, unless a later date at the end of a section.
[16.10.6.5 NMAC - Rp, 16.10.6.5 NMAC, 12/5/2023]

16.10.6.6 OBJECTIVE: This part establishes a procedure for investigating complaints, issuing notices of contemplated action, holding hearings and making decisions in disciplinary proceedings.
[16.10.6.6 NMAC - Rp, 16.10.6.6 NMAC, 12/5/2023]

16.10.6.7 DEFINITIONS: "Licensee" as used in this part means a physician, a physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist who holds a current license to practice in New Mexico or who is applying for licensure, license renewal or license reinstatement.
[16.10.6.7 NMAC - Rp, 16.10.6.7 NMAC, 12/5/2023]

16.10.6.8 COMPLAINTS: A complaint may be filed against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist. All complaints must be in writing. The date of receipt of the complaint shall begin the running of the statute of limitation.
[16.10.6.8 NMAC - Rp, 16.10.6.8 NMAC, 12/5/2023]

16.10.6.9 COMPLAINT RECORD: The board shall maintain a record of all complaints filed. The complaint record is confidential.
[16.10.6.9 NMAC - Rp, 16.10.6.9 NMAC, 12/5/2023]

16.10.6.10 COMPLAINT COMMITTEE: The chair of the board shall appoint at least one member of the board to serve on each complaint committee. A complaint committee shall review each complaint charging a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist with unprofessional conduct or other violations under the Medical Practice Act.

A. The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

B. Upon completion of an investigation, the complaint committee shall submit its recommendations to the board. After submitting their recommendations to the board, the members of the complaint committee shall recuse themselves from all further proceedings in that case.

C. The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in 61-1-10 NMSA 1978 or in the service of a notice of contemplated action (NCA) pursuant Subsection D of Section 61-6-15 NMSA 1978.
[16.10.6.10 NMAC - Rp, 16.10.6.10 NMAC, 12/5/2023]

16.10.6.11 NOTICE TO ANY PRACTITIONER LICENSED BY THE BOARD: If the complaint committee determines that it will not impede an investigation and will not interfere with the procurement of

testimony or development of the case, the complaint committee may inform the practitioner licensed by the board about whom the complaint is made, of the nature of the complaint and may request a response to the allegations.
[16.10.6.11 NMAC - Rp, 16.10.6.11 NMAC, 12/5/2023]

16.10.6.12 INVESTIGATIVE SUBPOENA. Pursuant to Sections 61-6-23 and 61-1-9 NMSA 1978 the board may issue investigative subpoenas. Investigative subpoenas may be signed by the executive director of the board at the request of the chair or complaint committee. Failure to comply with a subpoena may result in the initiation of a contempt procedure as set forth in Section 61-1-10, NMSA 1978 of the service of a notice of contemplated action pursuant to Subsection D of Section 61-6-15 NMSA 1978.
[16.10.6.12 NMAC - Rp, 16.10.6.12 NMAC, 12/5/2023]

16.10.6.13 NOTICE OF CONTEMPLATED ACTION. Pursuant to a complaint or on its own motion, the board may serve upon an applicant or licensee a notice of contemplated action for any alleged violation of the Medical Practice Act or the Impaired Health Care Provider Act. All notices of contemplated action shall comply with the Uniform Licensing Act, Section 61-1-4 NMSA 1978, and shall be served on the applicant or licensee personally or by certified mail, return receipt requested, at the applicant's or licensee's last known address as shown in the board's records. The executive director may sign a notice of contemplated action that is the result of a formal board action.
[16.10.6.13 NMAC - Rp, 16.10.6.13 NMAC, 12/5/2023]

16.10.6.14 PROCEDURE:

A. If an applicant or licensee requests a hearing after receiving a notice of contemplated action, all proceedings, including the hearing before the board, shall be governed by the Uniform Licensing Act.

B. The parties may agree to conduct any hearing by virtual remote means and the hearing shall be recorded.

C. Correspondence sent by a licensee, applicant, or unlicensed person through other methods, including electronic or physical mail, should be reasonably accepted, and processed by the board.

D. Correspondence to the board during an administrative prosecution, beginning with the filing of a notice of summary suspension and notice of contemplated action, shall not be accepted and processed by the board or board staff.

E. Correspondence during an administrative prosecution shall be sent to the hearing officer for receipt and inclusion in the record. Any action shall be taken by the hearing officer and not a member of the board or board staff.
[16.10.6.14 NMAC - Rp, 16.10.6.14 NMAC, 12/5/2023]

16.10.6.15 CASE MANAGEMENT: Once the board serves a notice of contemplated action, an administrative prosecutor shall prepare the case for prosecution before the board. The board as a whole shall not participate in the development of the case after it serves a notice of contemplated action.
[16.10.6.15 NMAC - Rp, 16.10.6.15 NMAC, 12/5/2023]

16.10.6.16 DISQUALIFICATION OF BOARD MEMBERS:

A. Excusal of a board member or hearing officer initiated by a party: Excusal of a board member or hearing officer shall be in accordance with Section 61-1-7 NMSA 1978. Untimely excusals or request for excusals will not be allowed.

B. Disqualification of a board member: A board member may disqualify him or herself from hearing and rendering a decision in the case if the board member believes it is in the best interest of the board or the parties to do so. Any member of the board who is unable to make an unbiased decision in a hearing because of pre-hearing review of documents or interview of witnesses must disqualify him or herself from participation in formal disciplinary action.

C. Peremptory challenge of hearing officer in the case of more than one hearing under one case number: When the board initiates a case proceeding under one case number and the proceeding includes both a notice of summary suspension and a notice of contemplated action and the appointment of a hearing officer only one peremptory challenge shall be allowed. Once a peremptory challenge is made for a summary suspension hearing, no additional peremptory challenge is allowed before the hearing on the notice of contemplated action. If no peremptory challenge is made before a summary suspension hearing, a peremptory challenge may be timely made before the hearing on the notice of contemplated action.

[16.10.6.16 NMAC - Rp, 16.10.6.16 NMAC, 12/5/2023]

16.10.6.17 PRE-HEARING CONFERENCE: Pursuant to Section 61-1-9 NMSA 1978, or upon the motion of a party, the board or hearing officer may conduct a pre-hearing conference. At the conference the parties shall determine the feasibility of settlement, formulate or simplify the issues in the proceeding, consider the necessity or desirability of amending the pleadings, obtain admissions and stipulations of fact, place limitations upon or determine the number of witnesses, distribute written testimony and exhibits, and dispose of such other matters as may aid in the disposition of the case. The board shall give all parties at least 10 days notice of the pre-hearing conference, provided however that parties may waive the 10 day notice requirement. Any settlement or simplification of issues resulting from the pre-hearing conference must be consented to by the licensee or applicant.
[16.10.6.17 NMAC - Rp, 16.10.6.17 NMAC, 12/5/2023]

16.10.6.18 MOTIONS MADE PRIOR TO THE HEARING: Motions may be made prior to or during a hearing. Motions made during the hearing are governed by Subsection B of 16.10.6.21 NMAC. Pre-hearing motions may be accompanied by a memorandum of law in support of the motion and must be in writing. The moving party shall serve one copy of the motion on all other parties, including the prosecutor. Unless otherwise agreed upon by the parties, parties opposing the motion must respond within 10 days of service of the motion. If the motion is served within 10 days of the hearing, a response may be given at the hearing, either orally or in writing. The board may consider motions made without response as unopposed motions.
[16.10.6.18 NMAC - Rp, 16.10.6.18 NMAC, 12/5/2023]

16.10.6.19 EX PARTE COMMUNICATION: No party in a contested case shall communicate with any member of the board or any board staff, including the executive director, during the administrative proceedings. All communications, including correspondence, shall be directed to the hearing officer for receipt and inclusion in the record in an administrative prosecution.
[16.10.6.19 NMAC - Rp, 16.10.6.19 NMAC, 12/5/2023]

16.10.6.20 ENTRY OF APPEARANCE: All attorneys representing physicians, physician assistants, anethesiologist assistants, genetic counselors, or polysomnographic technologists in matters before the board shall file an entry of appearance.
[16.10.6.20 NMAC - Rp, 16.10.6.20 NMAC, 12/5/2023]

16.10.6.21 HEARING PROCEDURE:

A. The board chair, or his designated representative, on behalf of the board, shall decide whether the hearing shall be before the board or a hearing officer. If the chair of the board, or his designated representative, decides that the matter shall be heard before the board or a hearing officer and the board disagrees with that decision, the board may reverse the decision and designate whether the hearing shall be before it or a hearing officer.

B. If the board or the chair of the board, or the board chair's designated representative, decides that the matter shall be before a hearing officer, the board, the chair of the board, or his designated representative shall appoint a person to act as the hearing officer.

C. Motions may be submitted in writing or made orally during the hearings. The board may request parties to submit a memorandum of law following the hearing in support of a motion made orally. The board may defer judgment on a motion made during the hearing until it has had an opportunity to hear the presentation of evidence. All motions not specifically acted upon during the hearing shall be acted upon in the board's final decision.

D. A hearing is completed and closed after the conclusion of the evidentiary hearing and the date of the final submission of all proposed findings of fact and proposed conclusions of law and arguments, if any, submitted to the hearing officer by the parties. The hearing officer and parties may also agree to a date for the completion and closure of a hearing. Once a hearing is completed and closed, the hearing officer shall prepare and submit to the board a report within 30 days of the completion and closure of the hearing. The hearing officer's report may include recommendations.

E. No other submissions, including evidence, shall be filed by the parties after the completion and closure of the hearing.
[16.10.6.21 NMAC - Rp, 16.10.6.21 NMAC, 12/5/2023]

16.10.6.22 TRANSCRIPTS:

A. Record of hearing. The board or hearing officer shall cause a record to be made of all formal hearings. The record shall be as recorded by a court reporter appointed by the board or taped (audio or video) at the discretion of the board in the manner authorized by the rules of civil procedure for the district court. The record shall include all evidence proffered but not admitted and admitted evidence. The record shall also designate and seal those portions of the record that are privileged, confidential or redacted either at the direction of the hearing officer, the request of a party or the request of a witness. Evidence proffered but not admitted shall be separated in the record, marked as proffered but not admitted and not presented to the board.

B. Correction: Parties wishing to correct the transcript or record may request correction within 10 calendar days after the transcript is filed in the proceeding. All suggested corrections shall be in writing and shall be served upon each party or his attorney, the official reporter and the board or hearing officer. If no objection is made to the proposed corrections, the board or hearing officer, may direct that the corrections be made.

C. Objections to record: Objections shall be made in writing within 10 calendar days from the filing of the suggested correction. The board or hearing officer shall, with or without hearing, determine what changes, if any, shall be made in the record.

D. Copies of transcripts and tapes: Any party may request copies of transcripts and tapes of formal proceedings. Any party who requests and receives transcripts and tapes shall pay the specified costs to the reporter.
[16.10.6.22 NMAC - Rp, 16.10.6.22 NMAC, 12/5/2023]

16.10.6.23 RULES OF EVIDENCE:

A. General: The board shall follow the rules of evidence set forth in Section 61-1-11 NMSA 1978 in proceedings held under the Uniform Licensing Act. Rules regarding evidence, not otherwise addressed by these rules or the Uniform Licensing Act, shall be governed by the rules of evidence for the district courts.

B. Testimony under oath: Witnesses testifying by deposition or before the board in formal hearings shall be placed under oath.

C. Stipulation as to facts: The parties to any investigation or proceeding before the board may stipulate to any facts in a document filed with the board or entered orally in the record. The stipulation shall be binding upon the parties and may be regarded and used by either party as evidence at the hearing.
[16.10.6.23 NMAC - Rp, 16.10.6.23 NMAC, 12/5/2023]

16.10.6.24 PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, BRIEFS AND ORAL ARGUMENTS:

A. Proposed findings of fact and conclusions of law: The board or hearing officer may require all parties to submit proposed findings of fact and conclusions of law. The board or hearing officer shall determine the time for submission of the proposed findings and conclusions. Each proposed finding and conclusion shall be clearly stated.

B. Briefs: The board or the hearing officer may require all parties to submit briefs.

(1) Unless otherwise ordered by the board or hearing officer, including directing the submission of briefs on a date certain, the prosecution shall file its brief-in-chief within 15 days after receipt of the transcript. The respondent shall file its answer brief within 15 days thereafter. Reply briefs must be filed within seven days after filing of the answer brief.

(2) Each party must serve one copy of its brief on all other parties.

(3) Briefs shall be concise and shall include transcript citations for each statement of fact. Briefs shall contain a table of contents with page references.

C. Oral argument: The board or the hearing officer may require all parties to present oral arguments after parties have filed briefs. Even though a hearing officer conducts the hearing the board may require oral arguments to be presented to it. Any party may request oral arguments before the hearing officer or the board. The hearing officer or the board will determine whether oral argument is necessary.
[16.10.6.24 NMAC - Rp, 16.10.6.24 NMAC, 12/5/2023]

16.10.6.25 WRITTEN DECISION: Within 90 days after the completion and closure of the hearing the board shall issue written findings of fact, conclusions of law, and the order of the board regarding any disciplinary action based on the findings of fact and conclusions of law. The board shall also issue a statement informing the applicant or licensee of his right to judicial review and the time within which review must be sought. The board may issue an oral decision prior to issuance of a written order. The board shall serve the written findings, conclusions, order and statements concerning judicial review upon the licensee personally or by certified mail, return receipt requested within 15 days after the decision is rendered and signed.

[16.10.6.25 NMAC - Rp, 16.10.6.25 NMAC, 12/5/2023]

16.10.6.26 HEARING OFFICER'S REPORT AND RECOMMENDATION: If a hearing officer conducts the hearing, the hearing officer shall prepare a report of findings of fact and may make recommendations. All board members participating in the decision making process, but not present at the hearing, shall familiarize themselves with the record and hearing officer's report prior to rendering a decision. The board may adopt, modify or reject the hearing officer's report.
[16.10.6.26NMAC - Rp, 16.10.6.26 NMAC, 12/5/2023]

16.10.6.27 SIMULTANEOUS ACTIONS UNDER THE MEDICAL PRACTICE ACT AND THE IMPAIRED HEALTH CARE PROVIDERS ACT: Formal proceedings against a physician, physician assistant, anesthesiologist assistant, genetic counselor, or polysomnographic technologist may be taken by the board in accordance with the provisions of the Uniform Licensing Act. No action or investigation or proceedings under the Impaired Health Care Provider Act (Section 61-7-1 through Section 61-7-12 NMSA 1978) precludes the board from investigating or acting simultaneously, in its sole discretion, under the Medical Practice Act. (61-6-1 through 61-6-34 NMSA 1978).
[16.10.6.27 NMAC - Rp, 16.10.6.27 NMAC, 12/5/2023]

16.10.6.28 EVALUATION OF COMPETENCE: When the board has reason to believe that an applicant for licensure or a licensee is not competent to practice, it may require the applicant or licensee to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved the board.
[16.10.6.28 NMAC - Rp, 16.10.6.28 NMAC, 12/5/2023]

16.10.6.29 PARENTAL RESPONSIBILITY ACT COMPLIANCE: This section is adopted pursuant to the Parental Responsibility Act Sections 40-5A-1 through 40-5A-13 NMSA 1978. If an applicant for licensure or a licensee is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support relating to child support proceedings, the board shall have grounds to deny an application for a license, deny the renewal of a license or to suspend or revoke a license and shall initiate a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act, Sections 61-1-1 through 61-1-3 NMSA 1978, subject to the following procedures.

A. Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the obligors' names against the board's list of licensees and applicants.

B. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.

C. Upon determination that an applicant or licensee appears on the certified list, the board shall issue a formal letter giving the licensee until the next certified list is received from HSD to provide the board with a statement of compliance from HSD. If the applicant or licensee fails to provide this statement in the specified time, the board shall, upon its own motion, issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act.

D. If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

E. In any hearing under this section, relevant evidence is limited to the following: A statement of non-compliance from HSD is conclusive evidence that requires the board to take the appropriate action under the Parental Responsibility Act, unless the applicant or licensee provides the board with a statement of compliance from HSD, which shall preclude the board from taking action under this section.

F. When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the board order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance from HSD. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.
[16.10.6.29 NMAC - Rp, 16.10.6.29 NMAC, 12/5/2023]

16.10.6.30 VENUE OF HEARING: Venue shall be determined by Section 61-1-6 NMSA 1978. In a proceeding involving a licensee without a residence in New Mexico, venue shall be in the county where the board maintains its office.

[16.10.6.30 NMAC - N, 12/5/2023]

History of 16.10.6 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:
Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 6/21/1993.
BME Rule 8, Complaint Procedure Under the Medical Practice and Physician Assistant Acts, filed 12/19/1989.
Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 6/21/1993.
BME Rule 9, Institution of Disciplinary Action and Prehearing Procedure, filed 12/19/1989
Rule 10, Hearings, filed 6/21/1993.
BME Rule 10, Hearings, filed 12/19/1989.
BME Rule 11, Transcripts, filed 12/19/1989.
BME R1-15, Transcripts, filed 1/22/1985.
Rule 12, Rules of Evidences, filed 6/21/1993.
BME Rule 12, Rules of Evidence, filed 12/19/1989.
BME Rule 13, Proposed Finding of Fact, Conclusions of Law Decision and Oral Arguments, filed 12/19/1989.
BME R1-15, Proposed Finding of Fact, Conclusions of Law, Decision and Oral Arguments, filed 1/22/1985.
Rule 14, Finding of Fact, Conclusions of Law, Decision and Order, filed 6/21/1993.
BME Rule 14 Finding of Fact, Conclusions of Law, Decision and Order, filed 12/19/1989.
Rule 22, Involuntary Restriction of License Under the Impaired Physician Act, filed 6/21/1993.

History of Repealed Material:
16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action filed 3/5/1997, - Repealed effective 4/18/2002.
16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022, (Emergency) Repealed effective 7/7/2023.
16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022, Repealed effective 12/5/2023.

Other:
16 NMAC 10.6 Complaint Procedure and Institution of Disciplinary Action filed 3/5/1997, - Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 4/18/2002.
16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 was Emergency Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 7/7/2023.
16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action filed 3/18/2022 was Emergency Replaced by 16.10.6 NMAC, Complaint Procedure And Institution Of Disciplinary Action, effective 12/5/2023.