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ARTICLE 1
Uniform Licensing

61-1-1. Short title.

Chapter 61, Article 1 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; 2021 (1st S.S.), ch. 3, § 7.

ANNOTATIONS

Compiler's notes. — 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.

Cross references. — For State Rules Act, *see* 14-4-1 NMSA 1978 et seq.

For criminal offender employment, *see* 28-2-1 NMSA 1978.

For the Parental Responsibility Act, *see* 40-5A-1 NMSA 1978 et seq.

The 2021 (1st S.S.) amendment, effective June 29, 2021, changed "Sections 67-26-1 through 67-26-31 NMSA 1953" to "Chapter 61, Article 1 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. N.M. State Bd. of Psychologist Exam'rs*, 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. N.M. State Bd. of Psychologist Exam'rs*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502.

Revocation must be based on substantial evidence. — 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*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

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*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

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.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

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.*, 1967-NMSC-257, 78 N.M. 536, 434 P.2d 61.

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 considered. *Young v. Board of Pharmacy*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

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. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

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

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

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:

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 the manufactured housing division of the regulation and licensing department;

(3) the crane operators licensure examining council;

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

(5) the cannabis control division of the regulation and licensing department; and

(6) any other state agency to which the Uniform Licensing Act is applied by law;

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

C. "expedited license", whether by examination, endorsement, credential or reciprocity, means a license issued to a person in this state based on licensure in another state or territory of the United States, the District of Columbia or a foreign country, as applicable;

D. "initial license" means the first regular license received from a board for a person who has not been previously licensed;

E. "license" means a certificate, permit or other authorization to engage in a profession or occupation regulated by a board;

F. "licensing jurisdiction" means another state or territory of the United States, the District of Columbia or a foreign country, as applicable;

G. "party" means a respondent licensee, applicant or unlicensed person who is the subject of a disciplinary proceeding or the civil administrative prosecutor representing the state and the board;

H. "probation" means to allow, for a stated period of time, the conduct authorized by a license, subject to conditions or other restrictions that are reasonably related to the grounds for probation;

I. "regular license" means a license that is not issued as a temporary or provisional license;

J. "revocation" means to prohibit the conduct authorized by the license for an indefinite period of time; and

K. "suspension" means to prohibit, for a stated period of time, the conduct authorized by the license.

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; 1978 Comp., § 61-1-2 ,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; 2022, ch. 39, § 1; 2023, ch. 190, § 1; 2024, ch. 38, § 18.

ANNOTATIONS

The 2024 amendment, effective July 1, 2024, added the cannabis control division to the list of agencies under the definition of "board" as used in the Uniform Licensing Act; and in Subsection A, added a new Paragraph A(5) and redesignated former Paragraph A(5) as Paragraph A(6).

The 2023 amendment, effective July 1, 2023, defined "party," "probationer," "revocation" and "suspension"; added new Subsections G and H and redesignated former Subsections G through I as Subsections I through K, respectively; in Subsection J, deleted "revoke a license" and added "revocation", and after "by the license", added "for an indefinite period of time"; and in Subsection K, deleted "suspend a license" and added "suspension", and deleted "'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.".

The 2022 amendment, effective May 18, 2022, included "the crane operators licensure examining council" within the definition of "board", revised the definition of "license", removed the definition of "emergency", and defined "expedited license", "initial license", "licensing jurisdiction" and "regular license", as used in the Uniform Licensing Act; in Subsection A, added a new Paragraph A(3) and redesignated former Paragraphs A(3) and A(4) as Paragraphs A(4) and A(5), respectively; added new Subsections C and D and redesignated former Subsection C as Subsection E; in Subsection E, after "to engage in", deleted "each of the professions and occupations" and added "a profession or occupation", and after "regulated by", deleted "the boards enumerated in Subsection A of this section" and added "a board"; added new Subsections F and G and redesignated former Subsections D and E as Subsections H and I, respectively; and deleted former Subsection F, which defined "emergency".

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

The 1993 amendment, effective June 18, 1993, rewrote Subsection A.

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.

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 1989 amendment, effective July 1, 1989, in Subsection A(20), substituted "regulation and licensing department" for "commerce and industry department"; in Subsection A(24), inserted "manufactured housing" preceding "division" and substituted "regulation and licensing department" for "commerce and industry department"; added Subsection A(27); and redesignated former Subsection A(27) as Subsection A(28).

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 that would result in:

A. denial of permission to take an examination for licensing for which a complete 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 a complete application has been properly made as required by board rule on the basis of expedited licensure, reciprocity or endorsement or acceptance of a national certificate of qualification;

D. withholding the renewal of a license for which a complete application has been properly made for any cause other than:

(1) failure to pay any 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. probation of a license, including 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, excluding supervision required for initial licensure;

J. the censure or reprimand of the licensee or applicant, including an action that constitutes formal discipline or is subject to reporting to a state or national organization;

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

L. payment of a fine;

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; 1978 Comp., § 61-1-3;1981, ch. 349, § 2; 1993, ch. 295, § 2; 2020, ch. 6, § 3; 2023, ch. 190, § 2.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified certain provisions related to affording an applicant for licensure notice and an opportunity to be heard prior to any board action; in Subsections A and C, added "a complete" preceding "application", and in Subsection C, after "on the basis of", added "expedited licensure"; in Subsection D, after "renewal of a license", added "for which a complete application has been properly made"; in Subsection G, added "probation of a license, including"; in Subsection I, added "excluding supervision required for initial licensure"; in Subsection J, added "including an action that constitutes formal discipline or is subject to reporting to a state or national organization"; and in Subsection L, deleted "for a violation not to exceed one thousand dollars ($1,000) for each violation, unless a greater amount is provided by law".

The 2020 amendment, effective July 1, 2020, in the introductory paragraph, after "take any action", deleted "which" and added "that".

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.

Sufficiency of notice and hearing determined under due process standards. – Because there is no precise statutory guideline for a proceeding under this section and due process requires adequate notice and a hearing before the state can take action seeking remuneration against a licensee, the sufficiency of the notice and hearing must be determined under a constitutional due process analysis. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

A constitutional due process analysis under this section must consider and balance three factors: (1) the private interest affected, (2) the risk of an erroneous deprivation of the interest with the procedures used, and (3) the government's interest, including the fiscal and administrative burdens of providing additional procedures. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Due process requirements were satisfied where the notice of contemplated action cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence, and where the licensee had a full and fair opportunity to be heard on the issue of whether collateral estoppel applied on the issues of misrepresentation and loss by the consumers. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

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. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

County and municipal officials exceeded their authority by enacting abortion-related ordinances preempted by state law. — Where several counties and municipalities (respondents) enacted local ordinances prohibiting the mailing or receipt of any abortion-related instrumentality and creating licensing schemes exclusive to abortion clinics and providers, and where the state of New Mexico sought a writ of mandamus and stay of respondents enforcement of the ordinances and to invalidate the ordinances as preempted by state law, the writ of mandamus was granted because the ordinances plainly conflicted with the provisions of the Uniform Licensing Act, which imposes uniformity in the licensure of professionals in the state of New Mexico and promotes uniformity with respect to the conduct of board hearings and judicial reviews. The pervasive regulatory scheme under the Uniform Licensing Act demonstrates the legislature's intent to occupy the field of medical licensure specifically, and state professional licensure generally. *State ex rel. Torrez v. Bd. of Cnty. Comm'rs for Lea Cnty.*, 2025-NMSC-011.

Authority of pharmacy board. — Subsection L grants the board of pharmacy authority to fine pharmacist licensees up to $1,000.00 for any violation of the Pharmacy Act, Section 61-11-1 NMSA 1978 et seq., 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. Att'y Gen. No. 95-01.

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 this section or otherwise provided by law. Discovery by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the person was received by a board or board staff.

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 [Chapter 61, Article 28B 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; 2023, ch. 190, § 3.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified when the statute of limitations begins to run in an action related to licensure or unlicensed activity; in Subsection A, after "provided in", deleted "Subsection C of", and after "this section", added "or otherwise provided by law. Discovery by the board is considered the date on which a complaint or other information that would reasonably connect the allegations to the person was received by a board or board staff."

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".

The 1993 amendment, effective June 18, 1993, substituted "Subsections D through N" for "Subsection D, E or F" in Subsection A and the first sentence of Subsection C; inserted "the discovery of" in Subsection A; substituted "result in any of the actions" for "have any of the effects" in the first sentence of Subsection C; and rewrote Subsection D. This section was also amended by Laws 1993, ch. 218, § 40. The section is set out as amended by Laws 1993, ch. 295, § 4. *See* 12-1-8 NMSA 1978.

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.

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.

When limitation period began to run under the 1993 version of the statute. — The 1993 version of the two-year limitations began to run when the licensing board discovered the conduct giving rise to a disciplinary action against a licensee, not when someone else, such as a complaining party, discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

Where a complaint was filed with the New Mexico real estate commission in October 2008 against the licensed real estate broker which alleged that the broker was guilty of ethical violations in connection with a real estate contract executed by a seller of real estate and the broker as buyer; the commission investigated the matter and, in May 2010, filed a notice of contemplated action against the broker threatening to revoke the broker's license; the notice of contemplated action was filed more than two years after the complaining party discovered the broker's alleged unethical conduct, but less than two years after the commission discovered the conduct; the 1993 version of the statute did not specify whose discovery of unethical conduct triggered the limitations period; and the 2003 amendment specified that discovery of the unethical conduct by the commission triggered the limitations period, the limitations period began to run under the 1993 version of the statute when the commission discovered the broker's conduct, not when the complaining party discovered the conduct. *N.M. Real Estate Comm'n v. Barger*, 2012-NMCA-081, 284 P.3d 1112.

Disciplinary action may not be taken against a party later than two years after the improper conduct is discovered by the board. — Where the New Mexico real estate commission (NMREC) issued a notice of contemplated action indicating formal action against petitioners for the revocation of their real estate licenses two years and six days after NMREC received notice from the New Mexico attorney general's office regarding a complaint from a homeowner alleging that petitioners made false statements regarding their business relationship with the homeowner and acted in bad faith regarding negotiations for the short sale of the homeowner's home, the disciplinary action was time-barred by the statute of limitations. A licensing board, subject to the Uniform Licensing Act, §§ 61-1-1 through 61-1-37 NMSA 1978, cannot take disciplinary action against a party later than two years after the improper conduct is discovered by the board. *Trubow v. N.M. Real Est. Comm'n*, 2022-NMCA-044, cert. granted.

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. N.M. Bd. of Podiatry, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

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. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

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. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

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. N.M. Bd. of Podiatry*, 1986-NMSC-051, 104 N.M. 454, 722 P.2d 1176.

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, 133 N.M. 362, 62 P.3d 1244, cert. denied, 133 N.M. 413, 63 P.3d 516.

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 ten thousand dollars ($10,000) for each violation against a person who, without an active license, engages in a profession or occupation regulated by the board.

History: Laws 2003, ch. 334, § 3; 2023, ch. 190, § 4.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, raised the maximum amount for civil penalties that may be imposed by the board, and struck language authorizing the board to assess administrative costs; and in Subsection B, after "not to exceed", deleted "one thousand dollars ($1,000)" and added "ten thousand dollars ($10,000) for each violation", added "an active" preceding "license", and deleted "In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.".

61-1-3.3. Conversion therapy; grounds for disciplinary action.

A. A person licensed pursuant to provisions of Chapter 61 NMSA 1978 shall not provide conversion therapy to any person under eighteen years of age. The provision of conversion therapy in violation of the provisions of this subsection shall be grounds for disciplinary action by a board in accordance with the provisions of the Uniform Licensing Act.

B. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate

or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth; and

(3) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

History: Laws 2017, ch. 132, § 1.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 132 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

61-1-3.4. Fingerprints not required for license renewal.

When a professional or occupational board requires submission of fingerprints as part of the initial license application, and a licensee has provided fingerprints and the license has been issued, the board shall not require a licensee to submit fingerprints again to renew the license, but a licensee shall submit to a background investigation if required by law or rule of the board.

History: Laws 2019, ch. 209, § 4; 2023, ch. 190, § 5.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "shall submit to a background investigation if required", added "by law or rule of the board".

61-1-3.5. Incomplete application; notice; expiration.

An application for licensure is considered incomplete if it is submitted on an application form missing required information or without providing required supporting documentation. If a board or a board's designee deems an application for licensure incomplete, the board or designee shall notify the applicant within thirty days from the date the application was received by the board or designee and include how the application is

incomplete and what is needed to complete the application. An incomplete application expires one year from the date the application was first received by the board.

History: Laws 2022, ch. 39, § 3; 2023, ch. 190, § 6.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified when an application for licensure is considered incomplete, specified the time period for notifying an applicant of an incomplete application, and clarified that an incomplete application expires one year from the date the application was first received by the board; added "An application for licensure is considered incomplete if it is submitted on an application form missing required information or without providing required supporting documentation."; after "within thirty days", deleted "including the way in which" and added "from the date the application was received by the board or designee and include how"; after "application is incomplete", added "and what is needed to complete the application; and after "one year", added "from the date the application was first received by the board".

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

A. When investigating complaints against licensees, applicants or unlicensed persons, a board may issue civil investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section. The authority to issue a specific civil investigative subpoena under this section may be delegated by the board to staff.

B. When a board contemplates taking an 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 the applicant's 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 the applicant's rights under Section 61-1-8 NMSA 1978.

C. In a board proceeding to take an 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 an action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978 or Section 61-1-3.2 NMSA 1978, it shall serve upon the licensee, applicant or unlicensed person a written notice containing a statement:

(1) that the board has sufficient evidence that, if not rebutted or explained, may justify the board in taking the contemplated action;

(2) indicating the general nature of the evidence and allegations, including specific laws or rules that are alleged to have been violated;

(3) that unless the licensee, applicant or unlicensed person 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 may take the contemplated action; and

(4) calling the licensee's, applicant's or unlicensed person's attention to the rights provided in Section 61-1-8 NMSA 1978.

E. Except as provided in Section 61-1-15 NMSA 1978, if the licensee, applicant or unlicensed person 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 as a matter of right.

F. If the licensee, applicant or unlicensed person 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, applicant or unlicensed person of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and rules 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 the notice of hearing is deposited in the mail, certified return receipt requested, or the date of personal service.

G. All fines collected by a board shall be deposited to the credit of the current school fund as provided in Article 12, Section 4 of the constitution of New Mexico.

History: 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1978 Comp., § 61-1-4; 1993, ch. 295, § 3; 2003, ch. 334, § 2; 2022, ch. 39, § 4; 2023, ch. 190, § 7.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees, and struck language requiring licensees to bear the cost of disciplinary proceedings; in Subsection A, after "against licensees", added "applicants or unlicensed persons", added "civil" preceding "investigative subpoenas", and added "The authority to issue a specific civil investigative subpoena under this section may be delegated by the board to staff."; in Subsection D, in the introductory clause, after "Section 61-1-3 NMSA 1978", added "or Section 61-1-3.2 NMSA 1978", and after "serve upon the licensee", added "applicant or unlicensed person"; in Paragraph D(1), after "explained", deleted "will" and added "may"; in Paragraph D(2), added "and allegations, including specific laws or rules that are alleged to have been violated"; in Paragraph D(3), after "licensee", added "applicant or unlicensed person", and after "the board", deleted "shall" and added "may"; in Paragraph D(4), after "licensee's", added "applicant's or unlicensed person's"; in Subsection E, after "applicant", added "or unlicensed person", and after "judicial review", added "as a matter of right"; in Subsection F, after each occurrence of "applicant", added "or unlicensed person", and after "notice of hearing", added "is deposited in the mail, certified return receipt requested, or the date of personal service"; and deleted former Subsection G and redesignated former Subsection H as Subsection G.

The 2022 amendment, effective May 18, 2022, clarified that a licensee or applicant that has received notice of contemplated action and fails to request a hearing as required may apply to the board to reopen proceedings under certain circumstances, and provided that all fines collected by the board shall be deposited in the current school fund; in Subsection E, added "Except as provided in Section 61-1-15 NMSA 1978"; and added Subsection H.

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.

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.

Guide to assessment of costs. — Rule 1-054 NMRA and Section 61-32-24(F) NMSA 1978 provide guidance to the board when considering a cost assessment, but neither provision is an exhaustive list of the types of costs that are assessable to a disciplined licensee and any costs that are not included in either provision are to be reviewed to determine whether the board acted fraudulently, arbitrarily or capriciously; whether assessment of the cost is supported by substantial evidence; and whether the board acted in accordance with law. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Assessable costs. — Transcription costs, and if the board is the prevailing party, the costs of at least one expert witness, are assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

Non-assessable costs. — The hearing officer's costs, the cost of a hearing room and board member's per diem and mileage costs are not assessable to a disciplined licensee. *N.M. Bd. of Veterinary Med. v. Riegger*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 949.

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. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

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 Section 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, Section 28-2-1 NMSA 1978 et seq. *Weiss v. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

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, 133 N.M. 413, 63 P.3d 516.

The notice of contemplated action was adequate where it cited the statute and the rules the committee relied upon in contemplating the attachment of the consumer bond, contained information about the actual bond, and outlined the general nature of the evidence. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

The manufacturer was not prejudiced by the omission of the right to subpoena witnesses in the notice of contemplated action because the hearing was based upon the judgment and findings of the district court in an Unfair Practices Act action, and the manufacturer did not have the right to relitigate them. *Rex, Inc. v. Manufactured Hous. Comm.*, 2003-NMCA-134, 134 N.M. 533, 80 P.3d 470.

Rule 1-054 NMRA does not govern the award of costs in an administrative disciplinary action under the Uniform Licensing Act. N.M. Bd. of Veterinary Med. v. Riegger, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of cost of stenographic record to licensee in disciplinary hearing was not arbitrary or capricious because employing a stenographer, rather than tape recording the proceedings, was a permissible and logical choice. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

Assessment of board members' per diem and mileage costs to licensee in disciplinary hearing was proper. *N.M. Bd. of Veterinary Med. v. Riegger*, 2006-NMCA-069, 139 N.M. 679, 137 P.3d 619, *aff'd in part, rev'd in part*, 2007-NMSC-044, 142 N.M. 248, 164 P.3d 947.

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.

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, applicant or unlicensed person at the last known address as shown by the records of the board. Unlicensed persons with no address on record with the board shall receive notice by personal service. 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. Service of correspondence sent by a licensee, applicant or unlicensed person through other methods, including electronic mail or physical mail, should be reasonably accepted and processed by the board.

History: 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5; 1978 Comp., § 61-1-5;1981, ch. 349, § 5; 2023, ch. 190, § 8.

ANNOTATIONS

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

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees, provided that unlicensed persons with no address on record with the board shall receive notice by personal service, and provided that service of electronic or other correspondence sent by a licensee, applicant or unlicensed person should be reasonably accepted by the board; after "applicant", added "or unlicensed person"; added "Unlicensed persons with no address on record with the board shall receive notice by personal service."; and added "Service of correspondence sent by a licensee, applicant or unlicensed person through other methods, including electronic mail or physical mail, should be reasonably accepted and processed by the board.".

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 pursuant to provisions of the Uniform Licensing Act shall be conducted at the election of the board in the county in which the licensee, applicant or unlicensed person maintains residence or in a county in which the act 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 or application is involved or the person who performed the unlicensed act and the board may agree that the hearing is to be held in some other county or by virtual remote means.

History: 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6; 1978 Comp., § 61-1-6; 2023, ch. 190, § 9.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; after "in the county in which", deleted "the person whose license is involved" and added "the licensee, applicant or unlicensed person"; after "the person whose

license", added "or application"; after "is involved", added "or the person who performed the unlicensed act"; and after "some other county", added "or by virtual remote means".

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

A. All hearings held pursuant to provisions of the Uniform Licensing Act 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 a hearing, submit to the board a report setting forth the hearing officer's findings of fact and recommendations.

B. All hearings held pursuant to provisions of the Uniform Licensing Act shall be open to the public; provided that in cases in which a constitutional right of privacy of a licensee, applicant or unlicensed person 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 licensee, applicant or unlicensed person 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 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 licensee, applicant or unlicensed person from any possible odium that may attach by reason of the proceeding, by such public exoneration as it sees fit to make, if requested by the licensee, applicant or unlicensed person 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 party who directly or through an agent intimidates, threatens, injures or takes 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; 1978 Comp., § 61-1-7; 1981, ch. 349, § 6; 1993, ch. 295, § 5; 2023, ch. 190, § 10.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; in Subsection A, after "findings of fact", added "and recommendations"; in Subsections B and F, after each occurrence of "licensee", added "applicant or unlicensed person"; and in Subsection G, after "A", deleted "licensee" and added "party".

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. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

Zeal in performing public duty does not disqualify. *Seidenberg v. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

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. N.M. Bd. of Exam'rs in Optometry*, 1979-NMSC-005, 92 N.M. 414, 589 P.2d 198.

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.*, 1995-NMSC-023, 119 N.M. 500, 892 P.2d 947.

Peremptory excusals must be exercised prior to the first of sequential hearings in a disciplinary action. — Where, following the receipt of five patient complaints regarding petitioner, the New Mexico medical board (board) initiated two disciplinary actions against petitioner, each based on the complaints filed against him, a notice of summary suspension and a notice of contemplated action, both of which were assigned the same case number, and where petitioner requested hearings as to each notice, and where, following the summary suspension hearing, the hearing officer issued proposed findings of fact and conclusions of law recommending suspension of petitioner's medical license, and where the board adopted the hearing officer's recommendation of suspension, and where a second hearing was scheduled on the notice of contemplated action before the same hearing officer who presided over the summary suspension hearing, and where petitioner filed a motion for change of hearing officer, in which he stated that he was electing to exercise his right to a peremptory excusal of the assigned hearing officer, and where the hearing officer filed an order denying petitioner's motion on the basis that the peremptory excusal was not timely, stating that a peremptory excusal was not available to petitioner because NMSA 1978, § 61-1-7(C), provides for peremptory excusal at least twenty days prior to the first hearing, and where the board affirmed the hearing officer's order denying petitioner's motion for change of hearing officer, and where the contemplated action hearing was held as scheduled, resulting in the hearing officer's report recommending that petitioner's license be revoked, and where the board adopted the hearing officer's findings and ultimately issued its decision and order revoking petitioner's license, the board did not err in affirming the hearing officer's order denying petitioner's motion for change of hearing officer, because in light of the facts

of the case and the plain language of the statute, the board's interpretation of § 61-1-7(C), that peremptory excusals must be exercised prior to the first of a series of hearings since the notices and hearings, together, constituted the disciplinary action against petitioner, was reasonable and representative of the obvious spirit of the statute. *Rauth v. N.M. Medical Bd.*, 2023-NMCA-059, cert. denied.

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 party entitled to hearing.

A. A party entitled to be heard pursuant to the provisions of the Uniform Licensing Act shall have the right to be represented by counsel; to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who appear on a matter relevant to the issues; and to have subpoenas and subpoenas duces 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 for them 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 documents or items that the other party will or may introduce in evidence at the hearing.

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

D. A 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; 1978 Comp., § 61-1-8; 1981, ch. 349, § 7; 2023, ch. 190, § 11.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section; and struck language allowing a party the right to be represented by a licensed member of the party's profession or occupation or both; substituted "person" with "party" throughout the section; in Subsection A, after "represented by counsel", deleted "or by a licensed member of his own profession or occupation or both"; and redesignated former Subsection C as Subsection D.

Section provides right to examine all opposing witnesses. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. 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, 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 party.

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 or other person who fails to provide discovery or to comply with a subpoena.

History: 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1978 Comp., § 61-1-9; 1981, ch. 349, § 8; 2023, ch. 190, § 12.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified that disciplinary action can also apply to applicants or unlicensed persons in addition to licensees; in Subsection A, after "consent of the", deleted "applicant or licensee" and added "party"; and in Subsection C, after "against a party", added "or other person".

Administrative body has only the authority given it by law. *In re Willoughby*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

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*, 1988-NMSC-060, 107 N.M. 384, 758 P.2d 798.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. 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, 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.

61-1-10.1. Prohibiting certain actions by boards against licensees or license applicants.

A board shall not take an action pursuant to the Uniform Licensing Act against a license holder or license applicant based solely on a licensee's or license applicant's:

A. provision of, authorization of, recommendation of, assistance in, referral for or other participation in a protected health care activity, as defined in the Reproductive and Gender-Affirming Health Care Protection Act [24-35-1 to 24-35-8 NMSA 1978], in accordance with the laws of New Mexico, including the medical standards of care, whether the protected health care activity is provided to a resident of this state or to a resident of another state; or

B. actual or alleged violation of another state's laws prohibiting the provision of, authorization of, recommendation of, assistance in, referral for or other participation in a protected health care activity, as defined in the Reproductive and Gender-Affirming Health Care Protection Act, if the protected health care activity provided would have been in accordance with the laws of New Mexico, including the medical standards of care.

History: Laws 2023, ch. 167, § 10.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 167 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2023, 90 days after adjournment of the legislature.

61-1-11. Rules of evidence.

A. In proceedings held under the Uniform Licensing Act, 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.

ANNOTATIONS

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*, 1969-NMSC-168, 81 N.M. 5, 462 P.2d 139.

Necessity of expert testimony. — Expert testimony is not required to establish negligence or a failure to comply with the standards of professional conduct. A board is required to rely on substantial evidence in reaching its decision; while the court will defer to the board's expert interpretation of evidence, the court will not allow the board to take disciplinary action without substantial evidence in the record to justify the application of the board's expertise. *Gonzales v. N.M. Bd. of Chiropractic Exam'rs*, 1998-NMSC-021, 125 N.M. 418, 962 P.2d 1253.

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 conducting 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. N.M. Bd. of Dentistry*, 1990-NMSC-077, 110 N.M. 574, 798 P.2d 175.

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*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

Reference to indictment. — 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. N.M. Bd. of Dentistry*, 1990-NMSC-077110 N.M. 574, 798 P.2d 175.

Standard of proof applied in administrative proceedings, with few exceptions, is a preponderance of the evidence. *Foster v. Bd. of Dentistry*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

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*, 1971-NMSC-040, 82 N.M. 443, 483 P.2d 498.

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. N.M. Bd. of Med. Exam'rs*, 1969-NMSC-028, 80 N.M. 135, 452 P.2d 469.

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. N.M. Bd. of Med. Exam'rs*, 1974-NMSC-062, 86 N.M. 447, 525 P.2d 374.

Law reviews. — For article, "An Administrative Procedure Act for New Mexico," see 8 Nat. Res. 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 pursuant to the Uniform Licensing Act, 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 digital recording technology. The board shall observe any standards pertaining to digital recordings established for the district courts of this state.

History: 1953 Comp., § 67-26-12, enacted by Laws 1957, ch. 247, § 12; 1978 Comp., § 61-1-12; 1981, ch. 349, § 11; 2023, ch. 190, § 13.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section; deleted "tape" and added "digital" preceding "recording", after "recording", added "technology", and deleted "tape" and added "digital" preceding "recordings".

Section provides for complete transcript. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

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 final decision and order based on the hearing shall be made by a quorum of the board and signed and executed by the person designated by the board within ninety days after the hearing is closed by the board.

History: 1953 Comp., § 67-26-13, enacted by Laws 1957, ch. 247, § 13; 1978 Comp., § 61-1-13; 1981, ch. 349, § 12; 1993, ch. 295, § 6; 2023, ch. 190, § 14.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified certain language in the section, and revised the deadline by which the board must submit a final decision and order following a hearing; and in Subsection B, after "A", added "final", after "decision", added "and order", after "signed", added "and executed", after "by the board within", deleted "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", and after "after the hearing", added "is closed by the board."

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 decision" 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*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

Section requires that decision be made by majority of the members of the board. *McCaughtry v. N.M. Real Estate Comm'n*, 1970-NMSC-143, 82 N.M. 116, 477 P.2d 292.

The board is not required to give deference to a hearing officer's report. — Where the hearing officer was appointed to take evidence on a complaint that the dentist engaged in unprofessional conduct, the hearing officer found that the dentist had not engaged in unprofessional conduct and recommended that no disciplinary action be taken; the board reviewed the hearing officer's report and the evidence, and concluded that the dentist had engaged in unprofessional conduct; and the Uniform Licensing Act only permits the hearing officer to make findings, but not to make conclusions of law or recommendations regarding disciplinary action and requires the board to use its knowledge and expertise to make its own findings and conclusions, and to determine what disciplinary action is appropriate, the district court erred by concluding that the board acted arbitrarily and capriciously when it failed to defer to the hearing officer's report. *N.M. Bd. of Dental Health Care v. Jaime*, 2013-NMCA-040, 296 P.3d 1261.

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*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

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. N.M. Bd. of Med. Exam'rs*, 1988-NMSC-039, 107 N.M. 145, 754 P.2d 522.

Authority of secretary of public education to revoke teachers' licenses. — Article XII, Section 6 of the New Mexico Constitution, the Uniform Licensing Act, Sections 61-1-1 et seq. NMSA 1978, the Public Education Department Act, Chapter 9, Article 24 NMSA 1978, the Public School Code, Chapter 22 NMSA 1978, and the School Personnel Act, Chapter 22, Article 10A NMSA 1978, do not preclude the secretary of public education from having exclusive authority to make the final decision to revoke a teacher's license. *Skowronski v. N.M. Pub. Educ. Dep't*, 2013-NMCA-034, 298 P.3d 469, cert. granted, 2013-NMCERT-003.

Uniform Licensing Act is not a tax statute, and does not carry with it the presumption of correctness and burden of persuasion that favors the state in tax matters. *Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't*, 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *aff'd*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

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 signed and executed, the board shall serve upon the parties a copy of the written decision.

History: 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14; 1978 Comp., § 61-1-14; 1981, ch. 349, § 13; 2023, ch. 190, § 15.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "decision is", deleted "rendered and", after "signed", added "and executed", and after "shall serve upon the", deleted "applicant or licensee" and added "parties".

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 weight of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where, because of accident, sickness or other extraordinary cause, a person fails to request a hearing or fails to appear for a hearing that the person 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; 1978 Comp., § 61-1-15; 1981, ch. 349, § 14; 2023, ch. 190, § 16.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "on the basis of the", added "weight of the", and added "extraordinary" preceding "cause".

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 final decision and order 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 the applicant's or licensee's right to judicial review and the time within which such review shall be sought.

History: 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1978 Comp., § 61-1-16; 1981, ch. 349, § 15; 2023, ch. 190, § 17.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, added "final" preceding "decision", and after "decision", added "and order", deleted "his" and added "the applicant's or licensee's" preceding "right to judicial review", and after "such review", deleted "must" and added "shall".

61-1-17. Petition for review.

A party entitled to a hearing provided for in the Uniform Licensing Act, 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; 1978 Comp., § 61-1-17; 1993, ch. 295, § 7; 1998, ch. 55, § 73; 1999, ch. 265, § 76; 2023, ch. 190, § 18.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, deleted "person" and added "party".

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

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

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.

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. N.M. State Bd. of Barber Exam'rs*, 1958-NMSC-128, 65 N.M. 42, 331 P.2d 1104.

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.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 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 provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

61-1-19. Stay.

At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved party 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; 1978 Comp., § 61-1-19; 1981, ch. 349, § 16; 1998, ch. 55, § 74; 2023, ch. 190, § 19.

ANNOTATIONS

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 2023 amendment, effective July 1, 2023, deleted "person" and added "party".

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

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.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 61-1-20 NMSA 1978, as enacted by Laws 1957, ch. 247, § 20, relating to scope of review, effective September 1, 1998. For provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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 party 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 within fifteen days after the board receives the request and served upon the parties.

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; 1978 Comp., § 61-1-21; 1981, ch. 349, § 17; 2023, ch. 190, § 20.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, in Subsection A, deleted "person" and added "party"; and in Subsection B, added "within fifteen days after the board receives the request", and deleted "applicant or licensee within fifteen days after the board receives the request" and added "parties".

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.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 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 provisions of former sections, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

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.

ANNOTATIONS

Law reviews. — For note, "Police Power and the Design of Buildings," see 5 Nat. Res. 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.

ANNOTATIONS

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. Res. 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.

61-1-25.1. Preliminary injunction and hearing; summary suspension or probation.

A. When a board finds that evidence in its possession indicates that a licensee poses a clear and immediate danger to the public health and safety if the licensee continues to practice, the board may seek a preliminary injunction from the district court in the county in which the principal office of the licensee is located or, if the principal office is not in New Mexico, in the district court for Santa Fe county. If the injunction is granted, the board shall hold an expedited hearing for the suspension of the license or probation of the licensee. The board shall follow the hearing procedures of the Uniform Licensing Act, but times shall be shortened in accordance with the injunction or at the request of the licensee.

B. A board may summarily suspend a license issued by the board or place a licensee on probation without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided pursuant to the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

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

(2) has pled guilty to or been found guilty of any offense directly related to the practice of the respective license.

C. A licensee is not required to comply with a summary action until service has been made or the licensee has actual knowledge of the order, whichever occurs first. The licensee may appeal the summary suspension as a final agency action as provided in Section 39-3-1.1 NMSA 1978.

D. When a board takes action to summarily suspend a license or place a licensee on probation pursuant to this section, it shall serve upon the licensee a written notice containing a statement:

(1) that the board has sufficient evidence to justify the board in issuing the summary suspension or probation;

(2) indicating the general nature of the evidence and allegations, including specific laws or rules that are alleged to have been violated;

(3) that unless the licensee within thirty 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 summary suspension or probation shall be final; and

(4) that the licensee is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date a request for hearing is received by the board from the licensee.

History: 1978 Comp., § 61-1-25.1, enacted by Laws 2023, ch. 190, § 21.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 190, § 54 made Laws 2023, ch. 190, § 21 effective July 1, 2023.

61-1-26. Repealed.

ANNOTATIONS

Repeals. — Laws 1998, ch. 55, § 94 repealed 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 provisions of former section, *see* the 1997 NMSA 1978 on *NMOneSource.com.*

61-1-27. Repealed.

History: 1953 Comp., § 67-26-27, enacted by Laws 1957, ch. 247, § 27; 1981, ch. 349, § 18; 1978 Comp., § 61-1-27, repealed by Laws 2022, ch. 39, § 106.

ANNOTATIONS

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-27 NMSA 1978, as enacted by Laws 1957, ch. 247, § 27, relating to amending and repealing, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

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

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act 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.

ANNOTATIONS

Severability. — Laws 1957, ch. 247, § 29 provided for the severability of the act if any part or application thereof is held invalid.

County and municipal officials exceeded their authority by enacting abortion-related ordinances preempted by state law. — Where several counties and municipalities (respondents) enacted local ordinances prohibiting the mailing or receipt of any abortion-related instrumentality and creating licensing schemes exclusive to abortion clinics and providers, and where the state of New Mexico sought a writ of mandamus and stay of respondents enforcement of the ordinances and to invalidate the ordinances as preempted by state law, the writ of mandamus was granted because the ordinances plainly conflicted with the provisions of the Uniform Licensing Act, which imposes uniformity in the licensure of professionals in the state of New Mexico and promotes uniformity with respect to the conduct of board hearings and judicial reviews. The pervasive regulatory scheme under the Uniform Licensing Act demonstrates the legislature's intent to occupy the field of medical licensure specifically, and state professional licensure generally. *State ex rel. Torrez v. Bd. of Cnty. Comm'rs for Lea Cnty.*, 2025-NMSC-011.

61-1-29. Adoption of rules; notice and hearing.

Rulemaking procedures of a board shall be as provided in 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; 2022, ch. 39, § 5.

ANNOTATIONS

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

The 2022 amendment, effective May 18, 2022, eliminated the rulemaking requirements in the Uniform Licensing Act and required all boards subject to the Uniform Licensing Act to be subject to the State Rules Act for all rulemaking, removed the requirement for publication of the notice of rulemaking, and eliminated the "thirty day after filing" effective date for final rules; in the section heading, deleted "regulations" and

added "rules"; added "Rulemaking" preceding, "procedures" and added "shall be as provided in the State Rules Act", and deleted the remainder of former Subsection A; and deleted former Subsection B through E.

Notice procedure of pharmacy board does not violate due process. *Montoya v. O'Toole*, 1980-NMSC-045, 94 N.M. 303, 610 P.2d 190.

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. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

Subsection C is applicable to repeal of regulations by an administrative agency. *Rivas v. Board of Cosmetologists*, 1984-NMSC-076, 101 N.M. 592, 686 P.2d 934.

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. Repealed.

History: 1953 Comp., § 67-26-30, enacted by Laws 1971, ch. 54, § 4; 1981, ch. 349, § 20; 1978 Comp., § 61-1-30, repealed by Laws 2022, ch. 39, § 106.

ANNOTATIONS

Repeals. — Laws 2022, ch. 39, § 106 repealed 61-1-30 NMSA 1978, as enacted by Laws 1971, ch. 54, § 4, relating to emergency regulations, appeal, effective May 18, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

61-1-31. Validity of rule; judicial review.

A. A person who is or may be affected by a rule promulgated by a 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 rule pursuant to 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 rule from which the appeal is taken. The appellant shall certify in the appellant's 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 the appellant's appeal to the court, at the expense of the appellant, including three copies that the appellant shall furnish to the board.

C. Upon appeal, the court of appeals shall set aside the rule only if it is 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; 2022, ch. 39, § 6.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified the procedure for appeal by a person affected by a final rule promulgated by a board; in the section heading, after "validity of", deleted "regulation" and added "rule"; and replaced "regulation" with "rule" throughout the section.

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 interpretation by the board of pharmacy of 54-6-41, 1953 Comp. (now Section 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. N.M. Bd. of Pharmacy*, 1974-NMCA-038, 86 N.M. 571, 525 P.2d 931, cert. quashed, 86 N.M. 657, 526 P.2d 799.

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.

61-1-31.1. Expedited licensure; issuance.

A. A board that issues an occupational or professional license shall, as soon as practicable but no later than thirty days after an out-of-state licensee files a complete application for an expedited license accompanied by any required fees:

(1) process the completed application; and

(2) issue a license to the qualified applicant who submits satisfactory evidence that the applicant:

(a) holds a license that is current and in good standing issued by another licensing jurisdiction;

(b) has practiced and held an active license in the profession or occupation for which expedited licensure is sought for a period required by New Mexico law; and

(c) provides fingerprints and other information necessary for a state or national criminal background check or both if required by law or rule of the board.

B. An expedited license is a one-year provisional license that confers the same rights, privileges and responsibilities as regular licenses issued by a board; provided that a board may allow for the initial term of an expedited license to be greater than one year by board rule or may extend an expedited license upon a showing of extenuating circumstances.

C. Before the end of the expedited license term and upon application, a board shall issue a regular license through its license renewal process. If a board requires a state or national examination for initial licensure that was not required when the out-of-state applicant was licensed in the other licensing jurisdiction, the board shall issue the expedited license and may require the license holder to pass the required examination prior to renewing the license.

D. A board by rule shall determine those states and territories of the United States and the District of Columbia from which the board will not accept an applicant for expedited licensure and determine any foreign countries from which the board will accept an applicant for expedited licensure. The list of those licensing jurisdictions shall be posted on the board's website. The list of disapproved licensing jurisdictions shall include the specific reasons for disapproval. The lists shall be reviewed by the board annually to determine if amendments to the rule are warranted.

History: Laws 2016, ch. 19, § 1; 2020, ch. 6, § 4; 2022, ch. 39, § 7; 2023, ch. 190, § 22.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, clarified language in the section, and provided that the board may allow for an initial term of an expedited license to be greater than one year by board rule; in Subsection A, in the introductory clause, after "licensee files", deleted "an" and added "a complete"; in Paragraph A(1), added "completed" preceding "application"; in Subparagraph A(2)(b), after "has practiced", added "and held an active license"; and in Subsection B, added "allow for the initial term of an expedited license to be greater than one year by board rule or may".

The 2022 amendment, effective May 18, 2022, revised procedures for expedited licensure for professional and occupational license applicants that hold a license that is current and in good standing in another licensing jurisdiction, provided that a license issued under the expedited licensure process will effectively be a one-year provisional license that confers the same rights, privileges and responsibilities as a regular license, provided that a board may extend an expedited license upon a showing of extenuating circumstances, provided that a board shall issue a regular license, upon application, through its license renewal process before the end of the expedited license period, required a board to determine by rule, and to post on its website, which states and territories of the United States or the District of Columbia from which the board will not accept an applicant for expedited licensure and those foreign countries from which the board will accept an applicant for expedited licensure, required that the list of disapproved licensing jurisdictions include a reason for disapproval, and required the board to review the lists annually to determine if amendments to the rule are needed; in Subsection A, after "license pursuant to", deleted Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "this 2022 act", after "as soon as practicable", added "but no later than thirty days", after the next occurrence of "after", deleted "a person" and added "an out-of-state licensee", and after "files an application for", deleted "a" and added "an expedited"; in Subparagraph A(2)(a), after "issued by another", added "licensing", and after "jurisdiction", deleted "in the United States that has met the minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license the applicant applies for pursuant to Chapter 61, Articles 2 through 14E, 24, 24A and 31 NMSA 1978; and", added a new Subparagraph A(2)(b) and redesignated former Subparagraph A(2)(b) as Subparagraph A(2)(c); in Subsection B, added "An expedited", after "license is", deleted "not", added "one-year" preceding "provisional license", after "rights, privileges and responsibilities as", deleted "a license" and added "regular licenses", and after "issued", deleted "pursuant to Chapter 61 Articles 2 through 14E, 24, 24A and 31 NMSA 1978" and added "by a board; provided that a board may extend an expedited license upon a showing of extenuating circumstances"; and added Subsections C and D.

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2020 amendment, effective July 1, 2020, in Subsection A, in the introductory paragraph, after "accompanied by", deleted "the" and added "any".

61-1-31.2. Temporary or provisional license; evidence of insurance.

A board may issue a temporary or other provisional license, including an expedited license, to a person licensed in another licensing jurisdiction, which may be limited as to time, practice or other condition of a regular license. If a board requires licensees to carry professional or occupational liability or other insurance, the board shall require the applicant for a temporary or provisional license to show evidence of having required insurance that will cover the person in New Mexico during the term of the temporary or provisional license. Each board shall provide information on the board's website that describes the insurance requirements for practice in New Mexico, if applicable.

History: Laws 2022, ch. 39, § 8; 2023, ch. 190, § 23.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, deleted "license is" and added "may be" preceding "limited as to time", and after "practice or other", deleted "requirement" and added "condition".

61-1-32. Petition for adoption, amendment or repeal of rules.

An interested person may request in writing that a board subject to the Uniform Licensing Act adopt, amend or repeal a rule. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978] 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; 2022, ch. 39, § 9.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, clarified a provision that allows members of the public to make a written request to a board to adopt, amend, or repeal a rule; in the section heading, deleted "regulations" and added "rules"; after "may request in writing that a board", added "subject to the Uniform Licensing Act", and after "proceedings in accordance with", deleted "Section 61-1-29 NMSA 1978 to adopt the regulation" and added "the State Rules Act".

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.

ANNOTATIONS

Severability. — Laws 1981, ch. 349, § 25 provided for the severability of the Uniform Licensing Act if any part or application thereof is held invalid.

61-1-34. Expedited licensure; military service members, including spouses and dependents, and veterans; waiver of fees.

A. A board that issues an occupational or professional license pursuant to Chapter 61 NMSA 1978 shall, as soon as practicable but no later than thirty days after a military service member or a veteran files a complete application, and provides a background check if required:

(1) process the application; and

(2) issue a license prima facie to a qualified applicant who submits satisfactory evidence that the applicant holds a license that is current and in good standing, issued by another jurisdiction, including a branch of the armed forces of the United States.

B. A license issued pursuant to this section is a provisional license but shall confer the same rights, privileges and responsibilities as a regular license. If the military service member or veteran was licensed in a licensing jurisdiction that did not require examination, a board may require the military service member or veteran to take a board-required examination prior to renewing the license.

C. A military service member or a veteran who is issued a license pursuant to this section shall not be charged an initial or renewal licensing fee for the first three years of licensure.

D. Each board that issues a license to practice a trade or profession shall, upon the conclusion of the state fiscal year, prepare a report on the number and type of licenses that were issued during the fiscal year under this section. The report shall be provided to the director of the office of military base planning and support not later than ninety days after the end of the fiscal year.

E. As used in this section:

(1) "licensing fee" means a fee charged at the time an initial or renewal application for a professional or occupational license is submitted to the state agency, board or commission and any fee charged for the processing of the application for such license; "licensing fee" does not include a fee for an

annual inspection or examination of a licensee, a late fee or a fee charged for copies of documents, replacement licenses or other expenses related to a professional or occupational license;

(2) "military service member" means a person who is:

(a) serving in the armed forces of the United States as an active duty member, or in an active reserve component of the armed forces of the United States, including the national guard;

(b) the spouse of a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard, or a surviving spouse of a member who at the time of the member's death was serving on active duty; or

(c) the child of a military service member if the child is also a dependent of that person for federal income tax purposes; and

(3) "veteran" means a person who has received an honorable discharge or separation from military service.

History: Laws 2013, ch. 33, § 1; 2020, ch. 6, § 5; 2021, ch. 92, § 8; 2022, ch. 39, § 10; 2023, ch. 190, § 24.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised the definition of "licensing fee"; in Subsection A, in the introductory clause, added "a complete" preceding "application"; in Subsection B, after "required examination", deleted "before making application for renewal" and added "prior to renewing the license"; in Subsection C, added "an initial or renewal"; and in Subsection E, Paragraph E(1), after "charged at the time an", added "initial or renewal", and after "examination of a licensee", added "a late fee".

The 2022 amendment, effective May 18, 2022, clarified expedited licensing provisions for military service members, their spouses and dependent children, and for veterans, provided that a license issued pursuant to this section is a provisional license but confers the same rights, privileges and responsibilities as a regular license, eliminated the requirement to evaluate whether a qualified applicant has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the license that the applicant is applying for, provided that the board may require a military service member or veteran who is licensed in a jurisdiction that did not require examination to take a board-required examination prior to renewal of the license; in Subsection A, after "background check if required", deleted "for a license accompanied by any required fees", and in Paragraph A(2), after "armed forces of the United States", deleted "and has met minimal licensing requirements that are substantially equivalent to the licensing requirements for the occupational or professional license that the applicant applies for pursuant to Chapter 61 NMSA 1978"; in Subsection B, after "A license issued pursuant to this section is", deleted "not", after "privileges and responsibilities as a", added "regular", and after "license", deleted "issued pursuant to Chapter 61 NMSA 1978" and added "If the military service member or veteran was licensed in a licensing jurisdiction that did not require examination, a board may require the military service member or veteran to take a board-required examination before making application for renewal."; deleted former Subsection C and redesignated former Subsections D through F as Subsection C through E, respectively; in Subsection C, deleted "Notwithstanding the provisions of Subsection A of this section", and after "the first three years", deleted "a license issued pursuant to this section is valid" and added "of licensure"; and in Subsection E, deleted former Paragraph E(1), which defined "license", and redesignated former Paragraphs E(2) through E(4) as Paragraphs E(1) through E(3), respectively, and in Subparagraph E(2)(c), deleted "person who is serving in the armed forces of the United States as an active duty member, or in an active reserve

component of the armed forces of the United States, including the national guard, provided that" and added "military service member if the".

Temporary provisions. — Laws 2022, ch. 39, § 104 provided that a board that is required by Laws 2022, ch. 39 to change its licensing provisions to allow for new or different expedited licensure shall have rules in place and operational by January 1, 2023.

The 2021 amendment, effective June 18, 2021, amended the existing provision, which provides for expedited licensure and waiver of certain fees for military service members, to include all veterans, shortened the time in which the state agency, board or commission that issues an occupational or professional license must process an application from a military service member or veteran, defined "license", as used in this section, and revised the definition of "veteran", removed the definition of "recent veteran", and revised the definition of "military service member" to include a surviving spouse of a member who at the time of the member's death was serving on active duty; after "dependents", added "and veterans", and after "waiver of fees", deleted "recent veterans"; in Subsection A, after "no later than", changed "sixty" to "thirty", and after "provides", deleted "all of the documents required for the application" and added "a background check if required", and in Paragraph A(2), after "issue a license", added "prima facie"; in Subsection D, deleted "recent" preceding "veteran"; added a new Subsection E and redesignated former Subsection E as Subsection F; and in Subsection F, added Paragraph F(1) and redesignated former Paragraphs E(1) through E(3) as Paragraphs F(2) through F(4), respectively, in Paragraph F(3), Subparagraph F(3)(a), after "United States", added "as an active duty member", in Subparagraph F(3)(b), after "national guard", added "or a surviving spouse of a member who at the time of the member's death was serving on active duty", in Subparagraph F(3)(c), after "United States", added "as an active duty member", and in Paragraph F(4), deleted "recent" preceding "veteran", and after "military service", deleted "within the three years immediately preceding the date the person applied for a professional or occupational license pursuant to this section".

The 2020 amendment, effective July 1, 2020, required state agencies, boards or commissions that issue occupational or professional licenses to process and issue a license to qualified military service members and recent veterans within sixty days of application, waived the licensing fees for the first three years of a valid license for military service members and recent veterans; defined "licensing fee" and "recent veteran" and amended the definition of "military service member" as used in this section, and after "Chapter 61", deleted "Articles 2 through 34" throughout the section; in the section heading, added "and dependents; waiver of fees; recent"; in Subsection A, after "as soon as practicable", added "but no later than sixty days", after "military service member", deleted "the spouse of a military service member", and after "files an application", added "and provides all of the documents required for the application"; in Subsection B, after "provisional license and", deleted "must" and added "shall"; deleted former Subsections D and E; added a new Subsection D and redesignated former Subsection F as Subsection E; in Subsection E, added a new Paragraph E(1) and redesignated former Paragraph E(1) as Paragraph E(2), in Paragraph E(2), added Subparagraphs E(2)(b) and E(2)(c); and deleted former Paragraph E(2) and added Paragraph E(3).

61-1-35. Occupational or professional licenses and certification; qualification.

A. It is the policy of this state that a person is eligible for occupational or professional licensure or certification for which that person is qualified, regardless of the person's citizenship or immigration status.

B. No administrative rule or agency procedure shall be adopted or enforced that conflicts with the policy stated in Subsection A of this section.

C. This section serves as the affirmation of eligibility in this state pursuant to 8 U.S.C. Section 1621(d) for persons not lawfully present in the United States to be licensed or certified.

History: Laws 2020, ch. 53 § 1.

ANNOTATIONS

Effective dates. — Laws 2020, ch. 53 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 2020, 90 days after adjournment of the legislature.

61-1-36. Criminal convictions; exclusion from licensure; disclosure requirement.

A. A board shall not exclude from licensure a person who is otherwise qualified on the sole basis that the person has been previously arrested for or convicted of a crime, unless the person has a disqualifying criminal conviction.

B. By December 31, 2021, each board shall promulgate and post on the board's website rules relating to licensing requirements to list the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Rules relating to licensing requirements promulgated by a board shall not use the terms "moral turpitude" or "good character". A board shall only list potentially disqualifying criminal convictions.

C. In an administrative hearing or agency appeal, a board shall carry the burden of proof on the question of whether the exclusion from occupational or professional licensure is based upon a potentially disqualifying criminal conviction.

D. No later than October 31 of each year, while ensuring the confidentiality of individual applicants, a board shall make available to the public an annual report for the prior fiscal year containing the following information:

(1) the number of applicants for licensure and, of that number, the number granted a license;

(2) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who received notice of potential disqualification;

(3) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who provided a written justification with evidence of mitigation or rehabilitation; and

(4) the number of applicants for licensure or license renewal with a potential disqualifying criminal conviction who were granted a license, denied a license for any reason or denied a license because of the conviction.

E. As used in this section, "disqualifying criminal conviction" means a conviction for a crime that is job-related for the position in question and consistent with business necessity.

History: Laws 2021 (1st S.S.), ch. 3, § 8; 2023, ch. 190, § 25.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, in Subsections B and C, added "potentially" preceding "disqualifying".

61-1-37. Residency in New Mexico not a requirement for licensure.

A person who otherwise meets the requirements for a professional or occupational license shall not be denied licensure or license renewal because the person does not live in New Mexico.

History: Laws 2022, ch. 39, § 2; 2023, ch. 190, § 26.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, after "denied licensure or", deleted "relicensure" and added "license renewal".