BEFORE THE BOARD OF NURSING
FOR THE STATE OF NEW MEXICO

IN RE:

RULEMAKING PROCEEDING FOR THE
AMENDMENT OF 16.12.2 NMAC (NURSE LICENSURE).

CONCISE EXPLANATORY STATEMENT

The New Mexico Board of Nursing (hereinafter the “Board”) hereby adopts rules that amend the Board’s administrative code, specifically Part 2 (“Nurse Licensure”). The published rule is codified in 16.12.2 NMAC.

(1) Statutory Authority for Rule Promulgation:

The Nursing Practice Act, NMSA 1978, Sections 61-3-1 to -30 (1968, as amended through 2019), among other provisions, requires the Board to “adopt and revise such rules and regulations as may be necessary to enable it to carry into effect the provisions of the Nursing Practice Act and to maintain high standards of practice.” Section 61-3-10(A). Even more specifically, NMSA 1978, Section 61-3-23.5 (2019), requires the Board to “promulgate regulations for a nurse practitioner or clinical nurse specialist who supervises a psychologist in the prescribing of psychotropic medication pursuant to the Professional Psychologist Act.”

(2) Effective Date of Rule:

March 26, 2020

(3) Date of Adoption of Rule:

February 13, 2020

(4) Date of Meeting Approving Rule:

February 6, 2020

(5) Reasons for Adopting Rule:

The rule was adopted in accordance with statutory changes to the Nursing Practice Act that occurred during the 2019 Legislative Session. See S.B. 9, 54th Leg., 1st Sess. (N.M. 2019), available at https://www.nmlegis.gov/Sessions/19%20Regular/final/SB0009.pdf. As now-codified in Section 61-3-23.5, this new provision of the Nursing Practice Act obligated the Board to “promulgate regulations for a nurse practitioner or clinical nurse specialist who supervises a psychologist in the prescribing of psychotropic medication pursuant to the
Professional Psychologist Act.” In carrying out this statutory mandate, the Board intended to fulfill its mission to protect public health and safety by ensuring that those supervising the prescription of psychotropic medication were qualified and adequately trained.

(6) Reasons for Changes from Published Rule:

The Board only made non-substantive changes from the published rule. These changes fixed simple typographical errors, most notably the two erroneous references to the “Professional Psychological Act” when the proper legal name of the statute is the “Professional Psychologist Act.” See NMSA 1978, § 61-9-1. The other corrected typographical error was in the new subsection (M) in 16.12.2.15 NMAC, which had accidentally placed a provision under the wrong subheading. None of these changes substantively altered the proposed rule.

(7) Reasons for Not Accepting Substantive Arguments from Public Comment:

The only substantive argument against the proposed rule made through public comment argued that the amendment to 16.12.2.14 NMAC was too narrow. Multiple commenters argued that all certified nurse practitioners should be permitted to supervise psychologists in the prescribing of psychotropic medication, instead of limiting such supervision to certified nurse practitioners with certification and experience in psychiatry and mental health. The Board did not accept this argument because it found, as a factual matter informed by its technical subject-matter expertise, that allowing supervision by certified nurse practitioners operating outside their scope of practice and lacking in experience and certification in psychiatry and mental health could pose a risk to “the public health, safety and welfare.” Section 61-3-2. This determination was properly made by the Board by virtue of Section 61-3-23.5’s specific provision stating that supervision by nurse practitioners was “[s]ubject to rules promulgated by the board.”

The proposed rule, as authorized by the Board during its regular meeting held February 6, 2020, is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

2/13/20
DATE

ON BEHALF OF THE NEW MEXICO BOARD OF NURSING

Dr. Lynda Ann Green, CHAIR