

BEFORE THE BOARD OF NURSING
FOR THE STATE OF NEW MEXICO

IN RE:

RULEMAKING PROCEEDING FOR THE
REPEAL AND REPLACEMENT OF 16.12.1
NMAC (“GENERAL PROVISIONS”) AND
ADOPTION OF 16.12.12 NMAC (“DISCIPLINE
AND APPLICATION DENIALS”).

CONCISE EXPLANATORY STATEMENT

The New Mexico Board of Nursing (the “Board”) hereby adopts rules that amend the Board’s administrative code, including a repeal and replacement of Part 1 (“General Provisions”) and an adoption of a new Part 12 (“Discipline and Application Denials”). The published rule is codified in 16.12.1 and 16.12.12 NMAC.

(1) Statutory Authority for Rule Promulgation:

Section 61-3-10(A) of the Nursing Practice Act, NMSA 1978, Sections 61-3-1 to -30 (1968, as amended through 2020), specifically authorizes 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.” In addition, Section 61-1-36 of the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -36 (1957, as amended through 2021), requires the Board to “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.”

(2) Effective Date of Rule:

December 30, 2021

(3) Date of Adoption of Rule:

November 12, 2021

(4) Date of Meeting Approving Rule:

November 4, 2021

(5) Reasons for Adopting Rule:

The Board adopted the proposed rules in the interests of providing greater clarity with respect to previously existing provisions, ensuring continued high levels of professionalism among

licensees and certificate holders, and to generally satisfy the Board’s statutory obligation to “promote, preserve and protect the public health, safety and welfare.” Section 61-3-2.

Many of the previous provisions in Part 1, specifically 16.12.1.9 NMAC (10/1/2016), were updated and relocated into the new Part 12. For example, 16.12.1.9(B) NMAC (10/1/2016) became 16.12.12.8 NMAC, 16.12.1.9(C) NMAC (10/1/2016) became 16.12.12.9 NMAC, 16.12.1.9(E) NMAC (10/1/2016) became 16.12.12.11 NMAC, 16.12.1.9(F) NMAC (10/1/2016) became 16.12.12.12 and 16.12.12.13 NMAC, 16.12.1.9(J) NMAC (10/1/2016) became 16.12.12.15 NMAC, and 16.12.1.9(K) NMAC (10/1/2016) became 16.12.12.16 NMAC. In general, these relocated and amended provisions establish procedures for disciplinary and application proceedings conducted by the Board as well as the substantive grounds for disciplinary action and application denials by the Board, again in the interest of ensuring greater clarity, professionalism, and public health, safety, and welfare.

Also notably, the Board adopted 16.12.12.10 NMAC and its included list of disqualifying criminal convictions in order to abide by the statutory mandate of the ULA’s Section 61-1-36. Each crime listed in 16.12.12.10(A) NMAC was determined to be job related and consistent with business necessity because, among other reasons, nurses practice autonomously in providing care to vulnerable individuals. As described by the September 20, 2021 public comment submitted by Mr. William Duran (which was consistent with the Board’s reasoning), crimes of violence, fraud, theft, sexual misconduct, and other descriptions listed in 16.12.12.10(A) NMAC “potentially place patients, healthcare employers, and the public at future risk of harm.”

(6) Reasons for Changes from Published Rule:

The Board made only three substantive changes from the originally published rule and did so (in each respect) in response to public comment. This included modifying 16.12.1.11(A) NMAC to include language providing that advisory committees may consist of at least one Board member and at least two members expert in the pertinent field of relevant health care, a change which was intended to mirror the language in the Nursing Practice Act. Similarly, the Board also modified 16.12.1.13 NMAC to allow a licensee or certificate holder up to 30 days to update contact information and employer information on file with the Board and to eliminate language that previously suggested that failure to update such information could provide the basis for revocation. Finally, the Board agreed with several commenters who raised concerns as to the potential breadth of the proposed 16.12.12.7(I)(4) NMAC, ultimately limiting the provision to physical threats against the Board and its staff. All of these modifications were made based on public comment and in the interest of preserving and protecting the public health.

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

Although the Board largely accepted the substantive arguments made through public comment and made minor changes accordingly, several suggested changes to the proposed rules were rejected as unnecessary or incompatible with the Nursing Practice Act. For example, one commenter objected to the word “intemperance” as a basis for disciplinary action, but Section

61-3-28(A)(4) provides that the Board may take disciplinary action upon finding that a licensee is “intemperate.” Similarly, another comment requested the addition of language providing that members of the Board are appointed by the Governor and are accountable to the Governor for the enforcement of the Nursing Practice Act, but the Board’s membership and accountability is subject to the express language of the Nursing Practice Act itself.

The proposed rule, as authorized by the Board during its regular meeting held November 4, 2021, is hereby adopted as of the date of this Concise Explanatory Statement.

IT IS SO ORDERED.

/s/ Jacqueline Kaiser
Jacqueline Kaiser, Chair
New Mexico Board of Nursing

11/12/2021
Date

*Executed electronic signature via email
authorization dated 11/12/2021*