### New Mexico Board of Nursing

Exhibits for the 27 September 2021 Public Hearing of Proposed Rulemaking

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Legal notice published in the New Mexico Register</td>
<td>8/24/2021</td>
</tr>
<tr>
<td>2</td>
<td>Legal notice published in the Albuquerque Journal</td>
<td>8/22 &amp; 25/2021</td>
</tr>
<tr>
<td>3</td>
<td>Notice sent to the Sunshine Portal</td>
<td>8/16/2021</td>
</tr>
<tr>
<td>4</td>
<td>Notice sent to Legislative Council</td>
<td>8/20/2021</td>
</tr>
<tr>
<td>5</td>
<td>Notice posted on Board of Nursing website</td>
<td>8/16/2021</td>
</tr>
<tr>
<td>6</td>
<td>Notice posted at physical headquarters of Board of Nursing</td>
<td>8/16/2021</td>
</tr>
<tr>
<td>7</td>
<td>Proposed amendments to 16.12.1 NMAC (titled “General Provisions”) of the Board’s rules</td>
<td>8/5/2021</td>
</tr>
<tr>
<td>8</td>
<td>Proposed new rule 16.12.12 NMAC (titled “Discipline and Application Denials”)</td>
<td>8/5/2021</td>
</tr>
<tr>
<td>9</td>
<td>All Written Public Comments Received</td>
<td>8/25/2021</td>
</tr>
</tbody>
</table>

Updated 01.24.2020
If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**NURSING, BOARD OF***

**NOTICE OF PROPOSED RULEMAKING**

The New Mexico Board of Nursing (hereinafter the “Board”) will hold a public rule hearing on Monday, September 27, 2021 at 9:00 a.m. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically via Zoom teleconferencing. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the Hearing Officer during the hearing.

To attend the hearing online, please use the following link: https://us02web.zoom.us/j/83068857429

To join the meeting by phone, please call: (253) 215 8782 or (346) 248 7799 or (669) 900 9128 or (301) 715 8592 or (312) 626 6799 or (646) 558 8656.

Webinar ID: 830 6885 7429

The purpose of the rule hearing is to consider a proposal to repeal and replace 16.12.1 NMAC (“General Provisions”) and to promulgate a new 16.12.12 NMAC ("Discipline and Application Denials").

Persons desiring to view the proposed rules may download them from https://nmbon.sks.com/rule-changes.aspx. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9083.

The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sasha.poole@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing
ATTN: NMBON Public Comments
6301 Indian School Road, NE, Suite 710
Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Friday, September 25, 2021, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing. All written comments will be posted to the Board’s website no later than three business days following receipt to allow for public viewing.

Designated Hearing Officer Melissa Charlie, PhD, RN, Director of Education and Practice, will preside over the hearing in lieu of the Board. Following the hearing, the Hearing Officer will send the Board a memorandum summarizing the contents of the hearing along with the hearing transcript, written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

**Statutory Authority:** Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, 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 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, 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.”

**Purpose of the proposed rules:**
The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure 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. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf.

**Summary of Proposed Changes:**
The Board summarizes its proposed changes to its administrative rules as follows:
16.12.1 NMAC - General Provisions
The proposed changes to Part 1 of the Board’s current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board’s rules. It would also set general procedural requirements for the Board and the Board’s staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board’s various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining maintain the current and accurate name and mailing address of the licensee or certificate holder’s employer on file with the board.

16.12.12 NMAC - Discipline and Application Denials
This new rule, which recodifies and amends many of the existing provisions in 16.12.1.9 NMAC, would create a new Part 12 of the Board’s rules governing discipline and application denials. As a general overview, the new Part 12 would 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. Notably, the rule amends and clarifies the definitions of “incompetent” and “unprofessional conduct,” revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board’s use of serious letters of concern. The rule also adds new language governing the Board’s consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board’s consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public’s continued confidence in the profession.

Technical Information: No technical information provided the basis for either of the proposed rules.

PRIVATE INVESTIGATIONS ADVISORY BOARD
NOTICE OF PROPOSED RULEMAKING AND RULE HEARING
The Regulation and Licensing Department (Department) Private Investigations Advisory Board will hold a rule hearing on Friday, September 24, 2021 at 9:00 a.m. to 1:00 p.m. The rule hearing will be held via Cisco WebEx, please use the following link:

https://nmrd.webex.com/nmrd/onstage/g.php?MTID=eef119fc708f0e1d5fc027b248021f81

To join the meeting by phone: 1-415-655-0002 United States Toll
Event Number (Access Code): 1463047074; no password

The purpose of the rule hearing is to consider proposed amendments to the following rules:
16.48.2 NMAC – Requirements for Licensure
16.48.3 NMAC – Standards of Practice
16.48.4 NMAC – Mandatory Firearms Training
16.48.6 NMAC – Continuing Education
16.48.7 NMAC – License Renewal,

Inactive Status and Reinstatement
16.48.8 NMAC – Licensure for Military Service Members, Spouses and Veterans

On August 24, 2021 you may obtain and review copies of the proposed changes and public comments, by going to the Private Investigation’s website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/ or by contacting the Boards and Commissions Division at (505)690-5032.

The Department will begin accepting public comments on the proposed amendments beginning August 24, 2021. Please submit written comments on the proposed changes to Austin Basham, Board Administrator, via electronic mail at: pipolygraph@state.nm.us, or by regular mail at P.O. Box 25101, Santa Fe, NM 87504 no later than Thursday, September 23, 2021. Comments received prior to the rule hearing will be posted to the RLD website at: https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/private-investigations/pi-laws-rules-and-policies/

Persons will also be given the opportunity to present their comments during the rule hearing.

An individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing, please contact Austin Basham, Board Administrator (505)690-5032.

Statutory Authority: Legal authority for this rulemaking may be found in the Private Investigations Act, Sections 61-27B-1 through 61-27B-36 NMSA 1978, which among other provisions, specifically authorizes the Department to “adopt and enforce rules necessary to carry out the provision of the Private Investigations Act, including establishing professional ethical
NOTICE OF PROPOSED RULEMAKING The New Mexico Board of Nursing (hereinafter the "Board") will hold a public rule hearing on Monday, September 27, 2021 at 9:00 a.m. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically via Zoom teleconferencing. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd, NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the Hearing Officer during the hearing. To attend the hearing online, please use the following link: https://us02web.zoom.us/j/83068857429 To join the meeting by phone, please call: (253) 215 8782 or (346) 248 7799 or (669) 900 9128 or (301) 715 8592 or (312) 626 6799 or (646) 558 8656. Webinar ID: 830 6885 7429 The purpose of the rule hearing is to consider a proposal to repeal and replace 16.12.1 NMAC ("General Provisions") and to promulgate a new 16.12.12 NMAC ("Discipline and Application Denials"). Persons desiring to view the proposed rules may download them from https://nmbon.sks.com/rule-changes.aspx. If you do not have internet access, a copy of the proposed rules may be requested by contacting the NMBON at (505) 841-9083. The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sasha.poole@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to: New Mexico Board of Nursing ATTN: NMBON Public Comments 6301 Indian School Road, NE, Suite 710 Albuquerque, NM 87110 The Board will accept written public comment received at or before 5:00 PM on Friday, September 25, 2021, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing. All written comments will be posted to the Board's website no later than three business days following receipt to allow for public viewing. Designated Hearing Officer Melissa Charlie, PhD, RN, Director of Education and Practice, will preside over the hearing in lieu of the Board. Following the hearing, the Hearing Officer will send the Board a memorandum summarizing the contents of the hearing along with the hearing transcript, written public comments, and any exhibits admitted during the hearing. If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations. Statutory Authority: Section A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, 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 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, 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." Purpose of the proposed rules: The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure 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. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Special/final/SB0002.pdf, and H.B. 120, 55th Leg., 1st Sess. (N.M. 2021), available at https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0120.pdf. Summary of Proposed Changes: The Board summarizes its proposed changes to its administrative rules as follows: 16.12.1 NMAC - General Provisions The proposed changes to Part 1 of the Board's current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board's rules. It would also set general procedural requirements for
the Board and the Board's staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board's various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining maintain the current and accurate name and mailing address of the licensee or certificate holder's employer on file with the board. 16.12.12 NMAC - Discipline and Application Denials This new rule, which recodifies and amends many of the existing provisions in 16.12.1.9 NMAC, would create a new Part 12 of the Board's rules governing discipline and application denials. As a general overview, the new Part 12 would 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. Notably, the rule amends and clarifies the definitions of "incompetent" and "unprofessional conduct," revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board's use of serious letters of concern. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession. Technical Information: No technical information provided the basis for either of the proposed rules. Journal: August 22, 25, 2021
Proposed Rule Name: NOTICE OF PUBLIC RULEMAKING HEARING
Agency: Board of Nursing
Purpose: The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure continued high levels of professionalism among licensees and certificate holders, and to generally restructure the Board's statutory obligation to "promote, preserve and protect the public health, safety and welfare." Section 61-3-2. In addition, several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.B. (N.M., 2021), available at https://www.nmlegis.gov/Sessions/21%20Special/final/SB002.pdf, and H.B. 120, 55th Leg., 1st Sess. (N.M., 2021), available at https://www.nmlegis.gov/Sessions/21%20Regular/final/HB120.pdf.
Summary:
16.12.1 NMAC - General Provisions
The proposed changes to Part 1 of the Board's current rules consist of replacing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board's rules. It would also set general procedural requirements for the Board and the Board's staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board's various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining the current and accurate name and mailing address of the licensee or certificate holder on file with the board.
16.12.2 NMAC - Discipline and Application Denials
This new rule, which recodifies and amends many of the existing provisions in 16.12.19 NMAC, would create a new Part 12 of the Board's rules governing discipline and application denials. As a general overview, the new Part 12 would 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. Notably, the rule amends and clarifies the definitions of "incompetent" and "unprofessional conduct," revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board's use of serious letters of concern. The rule also adds new language governing the Board's consideration of criminal convictions in applications and disciplinary matters. Pursuant to Section 61-3-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board's consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public's continued confidence in the profession.

How to submit Comments:
The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sasha.poole@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

New Mexico Board of Nursing
ATTN: NMEON Public Comments
6301 Indian School Road, NE, Suite 710
Albuquerque, NM 87110

When are comments due:
9/25/2021 5:00 PM

Hearing Date:
9/27/2021 9:00 AM

Public Hearing Location:
To attend the hearing online, please use the following link:
https://us02web.zoom.us/j/83098857429

To join the meeting by phone, please call:
(233) 215 8752 or (340) 248 7799 or (600) 900 0126 or (301) 715 8562 or (312) 626 0799 or (466) 558 8559.

Webinar ID: 830 9885 7429 9/27/2021 (9:00 AM -12:00 PM)

How to participate:
The Board is currently accepting public comments on the proposed amendments. Please submit written comments on the proposed changes via email to sasha.poole@state.nm.us. Alternatively, members of the public may submit written comments by sending an original, signed copy to:

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ATTN: NMEON Public Comments
6301 Indian School Road, NE, Suite 710
Albuquerque, NM 87110

The Board will accept written public comment received at or before 5:00 PM on Friday, September 25, 2021, as well as written public comment hand-delivered between approximately 8:00 a.m. to 9:00 a.m. at the above-referenced address on the date of the rule hearing.

Statutes:
NMSA 1978, § 61-3-10
NMSA 1978, § 61-1-35
Administrative Codes:
Rule Complete Copy: https://nmsonline.sks.com/rule-changes.aspx
Corrections:
Not available
Rule Explanatory Statement:
Not available
If the document is not visible on the previewer, please download the file.

<table>
<thead>
<tr>
<th>File</th>
<th>File Name</th>
<th>File Type</th>
<th>Description</th>
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<tr>
<td>View Document</td>
<td>18 12.1 Integrated pre-approved 7.28.2021</td>
<td>PDF</td>
<td></td>
</tr>
<tr>
<td>View Document</td>
<td>BON Rulemaking Notice</td>
<td>WORD_X</td>
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</tr>
</tbody>
</table>
Dear Legislative Council Service,

Attached please find the Notice of Proposed Rulemaking and the proposed rulemaking language. Several of the proposed rule changes are intended to address recent statutory changes to the Uniform Licensing Act. See S.B. 2, 55th Leg., 1st S.S. (N.M. 2021). Briefly:

16.12.1 NMAC - General Provisions
The proposed changes to Part 1 of the Board’s current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board’s rules. It would also set general procedural requirements for the Board and the Board’s staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board’s various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining the current and accurate name and mailing address of the licensee or certificate holder’s employer on file with the board.

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Please do not hesitate to reach out to me if you have any questions or concerns.

Respectfully,

Sasha N. Poole, PhD, RN (she/her/hers)
Executive Director, New Mexico Board of Nursing

Phone 505-841-9083  Mobile 505-228-8644
Web www.nmbon.sks.com  Email sasha.poole@state.nm.us
6301 Indian School Rd, NE, Suite 710
NM BON Mission: Protect the public safety through effective regulation of nursing care and services.
Rule Changes

Home > Laws & Rules > Rule Changes

Current Hearings

Nurse Licensure Compact (NLC) Notice Proposed Rules & Notice of Public Hearing

The New Mexico Board of Nursing (hereinafter the “Board”) will hold a public rule hearing on Monday, September 27, 2021 at 9:00 a.m. Due to the COVID-19 pandemic and state of emergency, the rule hearing will be held online and telephonically via Zoom teleconferencing. A Board staff member will also be present on the day of the hearing from approximately 8:00 a.m. to 9:00 a.m. at 6301 Indian School Rd. NE, Suite 710, Albuquerque, NM 87110, to accept comments in written form and submit those comments to the Hearing Officer during the hearing.

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Webinar ID: 830 6885 7429

The purpose of the rule hearing is to consider a proposal to repeal and replace 16.12.1 NMAC (“General Provisions”) and to promulgate a new 16.12.12 NMAC ("Discipline and Application Denials").

Summary of Proposed Changes: The Board summarizes its proposed changes to its administrative rules as follows:

16.12.1 NMAC - General Provisions

The proposed changes to Part 1 of the Board’s current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board’s rules. It would also set general procedural requirements for the Board and the Board’s staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board’s various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining current and accurate name and mailing address of the licensee or certificate holder’s employer on file with the board.

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16.12.1 Integrated pre-approved 7.28.2021
Formal Notice of Public Rulemaking Hearing
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Designated Hearing Officer Melissa Charlie, PhD, RN, Director of Education and Practice, will preside over the hearing in lieu of the Board. Following the hearing, the Hearing Officer will send the Board a memorandum summarizing the contents of the hearing along with the hearing transcript, written public comments, and any exhibits admitted during the hearing.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the NMBON at (505) 841-9083. The NMBON requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Statutory Authority: Subsection A of Section 61-3-10 NMSA 1978 of the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, 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 NMSA 1978 of the Uniform Licensing Act, Sections 61-1-1 to -36 NMSA 1978, 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.”

Purpose of the proposed rules: The proposed rules are intended to provide greater clarity in existing regulatory and statutory requirements, ensure 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

Posted in BON Lobby 8.16.2021

**Summary of Proposed Changes:** The Board summarizes its proposed changes to its administrative rules as follows:

16.12.1 NMAC - General Provisions
The proposed changes to Part 1 of the Board’s current rules consist of repealing the existing language in its entirety and replacing it with modified language. The new Part 1 would set forth critical definitions applicable to all of the Board’s rules. It would also set general procedural requirements for the Board and the Board’s staff such as the election of Board officers, the responsibilities and authority of the Executive Director, and requirements for Board meetings. The new Part 1 would also clarify the roles and functions of the Board’s various committees and set ethical standards for Board members and staff. Finally, the new Part 1 would set new informational obligations on licensees and certificate holders such as maintaining current and accurate contact information on file with the board and maintaining maintain the current and accurate name and mailing address of the licensee or certificate holder’s employer on file with the board.

16.12.12 NMAC - Discipline and Application Denials
This new rule, which recodifies and amends many of the existing provisions in 16.12.1.9 NMAC, would create a new Part 12 of the Board’s rules governing discipline and application denials. As a general overview, the new Part 12 would establish procedures for disciplinary and application proceedings conducted by the Board as well as the substantive grounds for action and application denials by the Board. Notably, the rule amends and clarifies the definitions of “incompetent” and “unprofessional conduct,” revises the requirements for former licensees and certificate holders to reinstate revoked licenses and certificates, and clarifies the Board’s use of serious letters of concern. The rule also adds new language governing the Board’s consideration of criminal convictions in applications and disciplinary matters, pursuant to Section 61-1-36 of the Uniform Licensing Act, listing the specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction and adding related limitations on the Board’s consideration of such convictions. The purpose of the rule is to ensure that applications and complaints against licensees and certificate holders are evaluated and adjudicated in a fair and impartial manner that complies with due process while ensuring the public’s continued confidence in the profession.

**Technical Information:** No technical information provided the basis for either of the proposed rules.
16.12.1.1 ISSUING AGENCY: New Mexico Board of Nursing.

16.12.1.2 SCOPE: These rules apply to the board and all those licensed by or subject to the jurisdiction of the board.

16.12.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978 and the Lactation Care Provider Act, Sections 61-36-1 to -6 NMSA 1978.

16.12.1.4 DURATION: Permanent.

16.12.1.5 EFFECTIVE DATE: XXXXX xx, 2021, unless a later date is cited at the end of a section.

16.12.1.6 OBJECTIVE: The objective of Part 1 is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, lactation care providers, certified medication aides, certified hemodialysis technicians, approve schools of nursing and medication aide and hemodialysis technician training programs in the state.

16.12.1.7 DEFINITIONS:
   A. “Board” means the New Mexico board of nursing.
   B. “Certificate” means a legal document granting permission to an unlicensed person to perform specific functions considered the practice of nursing.
   C. “CEU” is the abbreviation for continuing education unit.
   D. “CHT” is the abbreviation for certified hemodialysis technician.
   E. “CMA” is the abbreviation for certified medication aide.
   F. “Client” means any person domiciled, residing, or receiving care, service or treatment from a licensed nurse, licensed lactation care provider, or certified unlicensed assistive person. This includes but is not limited to patients, residents, or consumers.
   G. “Contact hour” means the unit of measurement describing an approved and organized learning experience equivalent to 60 clock minutes.
   H. “Continuing education” means planned learning experiences beyond a basic nursing education program. These experiences are designed to promote the development of knowledge, skills and attitudes for the enhancement of nursing practice, thus improving health care to the public.
   I. “Continuing education unit” means 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.
   J. “Coordinated licensure information system” means an integrated process for collecting, storing and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.
   K. “License” means a legal document granting an individual the privilege and authority to engage in practice of an occupation or profession.
   L. “Licensure period” means the length of time for which a license or certificate is valid. The initial (first) licensure period is from the date of initial license or certificate issuance to the day the license or certificate expires. For subsequent licensure periods it is the day after the previous licensure period ended to the end next license or certificate expiration date.
   M. “Multistate/compact license” means a license granted through New Mexico’s participation in the nurse licensure compact that grants the licensee the legal authority to practice in all party states of the nurse licensure compact.
N. “National practitioner data bank” means the database operated by the U.S. department of health and human services that contains medical malpractice payment and adverse action reports on health care professionals.

[16.12.1.7 NMAC - Rp, 16.12.1.7 NMAC, xx/xx/2021]

16.12.1.8 MISSION OF THE BOARD: The mission of the board is to promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, schools of nursing, hemodialysis technicians, medication aides, and lactation care providers in New Mexico. The board is not an advocacy organization but is instead a regulatory body responsible at all times and in all situations for acting in the interest of the public.

[16.12.1.8 NMAC - Rp, 16.12.1.8 NMAC, xx/xx/2021]

16.12.1.9 BOARD ADMINISTRATION:

A. Organization:
(1) The board shall annually elect a chair, vice-chair, and secretary. The term of office begins immediately after the conclusion of the meeting at which the election occurred.
(2) All members of the board, including public members, are eligible to serve as an officer of the board.

C. Executive director:
(1) The board shall hire and employ a qualified registered nurse, who shall not be a member of the board, to serve as executive director.
(2) The executive director shall be accountable to the board for the administration and management of the board office and staff, including but not limited to the board’s fiscal operations, records, and management of personnel (including hiring, supervising, and firing staff).
(3) As provided in the Nursing Practice Act, the board shall not delegate to the executive director the power to grant, deny or withdraw approval for schools of nursing or to revoke, suspend or withhold any license authorized by the Nursing Practice Act.

B. Board meetings:
(1) The board shall meet at least once every three months.
(2) The board shall annually review and adopt an open meetings resolution, consistent with the Open Meetings Act, Sections 10-15-1 to -4 NMSA 1978.
(3) The board shall approve a schedule of regular meeting dates at a regular meeting prior to the beginning of the next calendar year. The board shall publish this schedule in its newsletter and on its website.
(4) Individual board members may attend meetings through telephonic or similar communications equipment when it is difficult or impossible for the person to be physically present. Whenever attending a meeting in such a manner, board members must fully comply with all requirements set by the Open Meetings Act and the board’s annual open meetings resolution.

D. Signatures: A record, order, contract, or other document requiring a signature from an authorized person on behalf of the board may be signed by the chair, vice-chair, or executive director.

[16.12.1.9 NMAC - Rp, 16.12.1.8 NMAC, xx/xx/2021]

16.12.1.10 AGENCY:

A. Verification of license or certificate:
(1) The board staff shall make informal verification of licensure or certification status available immediately on the board website.
(2) Any employer or other interested person or entity may request informal verification of the status of a license or certificate.
(3) Formal verification of licensure may only be requested through postal mail or fax through the submission of the board’s verification request form and remittance of the required fee pursuant to 16.12.2.9 NMAC.
(4) Formal verification of registered nurse or licensed practical nurse licensure for the purposes of another U.S. nursing regulatory body must be requested through the national council of state boards of nursing (NCSBN) web-based system.

B. Reporting of discipline and other licensure matters: The board staff shall complete all required reporting of disciplinary matters and other reportable actions to the national practitioner databank and coordinated licensure information system as required by federal and state law.

16.12.1 NMAC
16.12.1.11 COMMITTEES:
A. Advisory function: To assist and advise the board in its functions and mission, the board may utilize, at its discretion, committees consisting of board members, volunteers, or both. Any committee serving the board shall have a purely advisory role and shall not have any policymaking authority of any kind.
B. Membership: Except as otherwise provided in the board’s rules, the board has absolute discretion with respect to the number of individuals who may serve on a committee, provided that in no case shall a quorum of the members of the board serve on a committee.
C. Duties and responsibilities: The board shall annually, at an open meeting, review the duties and responsibilities of each committee and subsequently provide each committee with written objectives to satisfy within the following year.
D. Except as otherwise provided in the board’s rules:
(1) Committee members may serve two-year terms.
(2) The board may reappoint currently serving committee members to serve additional terms.
(3) An individual’s service on a committee is voluntary, and the individual may resign from the committee at any time upon written notification to the executive director.
(4) Advisory committee members may be reimbursed as provided in the per diem and Mileage Act, provided that mileage may only be paid when there is a total of 60 miles or more traveled.
(5) Termination of membership:
   (a) Members of committees serve at the pleasure of the board, and the board may remove a member from a committee at any board meeting.
   (b) The executive director shall automatically terminate an individual’s membership on a committee if the individual fails to attend three consecutive committee meetings.
E. Any committee shall, if ordered by the executive director or the board, meet virtually rather than in person as a means of achieving greater efficiency and productivity.

16.12.1.12 ETHICAL RESPONSIBILITIES OF BOARD MEMBERS, STAFF, AND COMMITTEE MEMBERS:
A. High ethical standards: Pursuant to the mission of the board, all members of the board, employees of the board, and committee members shall act in their official capacities in the interest of the public and not for personal gain or the benefit of the members of a particular profession.
B. All members of the board, employees of the board, and committee members shall abide by the requirements of the Governmental Conduct Act and all other New Mexico laws governing the ethical conduct of public officers and employees.
C. Code of conduct: The board shall annually adopt, at a regularly scheduled board meeting, a code of conduct for all members of the board, employees of the board, and committee members.

16.12.1.13 INFORMATIONAL OBLIGATIONS OF LICENSE AND CERTIFICATE HOLDERS:
A. Use of legal name: A licensee or certificate holder must use the licensee or certificate holder’s legal name on all applications and licenses.
B. Name changes:
   (1) A licensee or certificate holder may submit a name change to the board at any time.
   (2) A licensee or certificate holder must submit, as part of any name change request, a copy of one of the following legal documents verifying the name change: a recorded marriage certificate, a divorce decree, or a court order.
   (3) The licensee or certificate holder must continue to use the name on record with the board for work purposes until the board acknowledges the official change of name.
C. Contact information:
   (1) A licensee or certificate holder is obligated to maintain current and accurate contact information on file with the board.
   (2) A licensee or certificate holder shall notify the board within ten days of a change of the licensee or certificate holder’s contact information.
(3) Failure to disclose a change of mailing or residential address shall constitute grounds for disciplinary action up to and including revocation of the license or certificate.
(4) For the purposes of this rule, “contact information” means the licensee or certificate holder’s mailing address, residential address, email address, and telephone number.

E. Name and mailing address of employer:
   (1) A licensee or certificate holder is obligated to maintain the current and accurate name and mailing address of the licensee or certificate holder’s employer on file with the board.
   (2) A licensee or certificate holder shall notify the board within 30 days of any change in the name and address of the licensee or certificate holder’s employer.
   (3) Failure to disclose a change of the name and mailing address of the licensee or certificate holder’s employer shall constitute grounds for disciplinary action up to and including revocation of the license or certificate.

[16.12.1.13 NMAC - N, xx/xx/2021]
16.12.12.1 ISSUING AGENCY: New Mexico Board of Nursing.
[16.12.12.1 NMAC - N, xx/xx/2021]

16.12.12.2 SCOPE: These rules apply to all applicants, nurses licensed in New Mexico, nurses not licensed in New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact, certified medication aides, hemodialysis technicians, and all others licensed by the board.

16.12.12.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978, and the Lactation Care Provider Act, Sections 61-36-1 to -6 NMSA 1978.
[16.12.12.3 NMAC - N, xx/xx/2021]


16.12.12.5 EFFECTIVE DATE: XXXXX xx, 2021, unless a later date is cited at the end of a section.
[16.12.12.5 NMAC - N, xx/xx/2021]

16.12.12.6 OBJECTIVE: The objective of Part 12 is to establish the procedures for denying applications for licensure, processing complaints against licensees and applicants, reinstatement of suspended or revoked licenses, and taking disciplinary action against licensees.
[16.12.12.6 NMAC - N, xx/xx/2021]

16.12.12.7 DEFINITIONS:
A. Refer to Definitions, 16.12.1.7 NMAC.
B. “Abandonment” means, in the context of disciplinary action, a nurse’s abrupt severance of, or disengagement from, the relationship between the nurse and the patient or client without giving reasonable notice to a qualified person for the purpose of making arrangements for the continuation of care by others. This definition does not include the abandonment of employment, such as contract issues, no call, no show, refusal to work mandatory overtime, refusal to float to unfamiliar areas, or resignation from a position, since the board has no jurisdiction over employment issues. Abandonment, which can only occur after the nurse has accepted an assignment to provide care, service or treatment to the patient or client, typically consists of one or more of the following elements that, as result of the nurse’s abandonment of the patient or client, caused or may have caused harm:
   (1) failure to provide observation, including but not limited to assessment and intervention;
   (2) failure to assure competent intervention at any time, including but not limited to delayed treatment, insufficient treatment, or refusal to treat; or
   (3) failure to provide for provision of qualified coverage, including but not limited to adequate time to arrange nursing coverage of assigned care.
F. “Competency” means, in the context of the nursing profession, the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise.
C. “Complaint” means, in the context of disciplinary action, a written allegation by any person of one or more wrongful acts or omissions by an applicant, licensee, certificate holder, or anyone else subject to the jurisdiction of the board. A complaint may include knowledge of a judgment or settlement against a licensee.
D. “Disqualifying criminal conviction” has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.
E. “HSD” means the New Mexico human services department.
F. “Incompetent” means the failure to possess or to apply to a substantial degree the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by
the generally accepted standards of the profession. In performing nursing functions, whether those be direct patient care or the administration or management of that care, a nurse is under a legal duty to exercise this knowledge, skill and care. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

G. “Statement of compliance” means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

H. “Statement of non-compliance” means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

I. “Unprofessional conduct” means any departure from or failure to conform to the minimal standards of acceptable and prevailing nursing practice, including but not limited to such conduct which is or may be harmful to the health, safety, or welfare of the public or which reflects negatively on the individual’s fitness to practice nursing or on the profession more broadly. Unprofessional conduct includes, but is not limited to, the following:

(1) Misconduct involving misappropriation, such as:
   (a) Misappropriation of money, drugs, or property;
   (b) obtaining or attempting to obtain any fee for patient/client services for one’s self or for another through fraud, misrepresentation, or deceit;
   (c) obtaining, attempting to obtain, possessing, administering or furnishing prescription drugs to any person, including but not limited to one’s self, except as directed by a person authorized by law to prescribe;

(2) Misconduct involving the delivery of nursing services, such as:
   (a) intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of the individual nurse’s practice;
   (b) abandonment;
   (c) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
   (d) intemperance, addiction, incompetence, or unfitness manifesting itself during the course of employment as a nurse in a fashion or manner which is contrary to the provision of good health care;
   (e) failure to maintain appropriate professional boundaries which may cause harm to the patient;
   (f) inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;
   (g) practicing beyond the scope of a license, certificate, or other similar credential.

(3) Misconduct involving patient records, such as:
   (a) falsifying or altering patient or client records or personnel records for the purpose of reflecting incorrect or incomplete information;
   (b) making statements or disclosures that create a risk of compromising a patient’s privacy, confidentiality and dignity; or
   (c) dissemination of a patient or client’s health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital or agency policy from disclosure.

(4) Misconduct involving legal process, such as:
   (a) refusing to cooperate with the board in the course of an investigation or otherwise refusing to provide information requested by the board;
   (b) intimidating or threatening, or attempting to intimidate or threaten, the board or its staff, whether in connection with an investigation or otherwise;
   (c) obtaining or attempting to obtain a license to practice nursing for one’s self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or re-licensure process;
   (d) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;
(e) failure to report a nurse or certificate holder who is suspected of violating the New Mexico Nursing Practice Act or rules;
(f) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;
(5) Misconduct involving other procedures or policies, such as:
   (a) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;
   (b) failure to follow established procedure and documentation regarding controlled substances;
   (c) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing; or
   (d) physical, verbal, written, electronic, or other abuse of a patient, client or colleague.

[16.12.12.7 NMAC - N, xx/xx/2021]

16.12.12.8 DISCIPLINARY PHILOSOPHY: The board operates its disciplinary program with the ultimate goals of protecting the citizens of New Mexico and ensuring professionalism in the nursing profession. In carrying out this mandate, the board considers all alleged violations based on the merits of each case. Unless the licensee or applicant posed or poses a real or potential danger to the public, the board will consider, but may not eventually utilize, remedial measures of corrective action rather than denial, suspension, or revocation of a license or certificate.


16.12.12.9 GROUNDS FOR DISCIPLINARY ACTION OR DENIAL OF AN APPLICATION: The Board may take disciplinary action against a licensee or deny an application for licensure upon finding that the licensee or applicant is guilty of:
   A. committing fraud or deceit in procuring or attempting to procure a license or certificate of registration.
   B. having been convicted of a disqualifying criminal conviction;
   C. being unfit or incompetent;
   D. being intemperate or addicted to the use of habit-forming drugs;
   E. being mentally incompetent;
   F. committing unprofessional conduct;
   G. having willfully or repeatedly violated any provisions of the Nursing Practice Act or any rule or regulation adopted by the board;
   H. having been, while licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country, the subject of disciplinary action as a licensee for acts similar to acts described in this rule;
   I. using conversion therapy on a minor;
   J. unlicensed practice;
   K. failure to comply with obligations under the Parental Responsibility Act; or
   L. for hemodialysis technicians or medication aides, any of the offenses identified in 16.12.4.11 NMAC and 16.12.5.11 NMAC.


16.12.12.10 CRIMINAL CONVICTIONS:
   A. Convictions for any of the following felony offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or retaining a license or certificate issued by the board:
      (1) homicide;
      (2) aggravated assault, aggravated battery, kidnapping, false imprisonment, human trafficking, or other crimes of violence against persons;
      (3) robbery, larceny, burglary, extortion, receiving stolen property, possession of burglary tools, unlawful taking of a motor vehicle, or other crimes involving theft or appropriation of personal property or funds;
rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, child
solicitation, or other crimes constituting sexual offenses;
(5) driving under the influence of intoxicating liquor or drugs;
(6) trafficking controlled substances;
(7) crimes involving child abuse or neglect;
(8) fraud, forgery, money laundering, embezzlement, credit card fraud, counterfeiting,
financial exploitation, or other crimes of altering any instrument affecting the rights or obligations of another;
(9) making a false statement under oath or in any official document;
(10) evasion of a lawful debt or obligation, including but not limited to tax obligations; or
(11) an attempt, solicitation or conspiracy involving any of the felonies in this subsection.

B. The board shall not consider the fact of a criminal conviction as part of an application for a license
or certificate unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A
of this rule.

C. The board shall not deny, suspend or revoke a license or certificate on the sole basis of a criminal
conviction unless the conviction in question is one of the disqualifying criminal convictions listed in Subsection A
of this rule.

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee or
certificate holder on the basis of an individual’s conduct to the extent that such conduct violated the Nursing
Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime
for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection
A of this rule.

E. In connection with an application for a license or certificate, the board shall not use, distribute,
disseminate, or admit into evidence at an adjudicatory proceeding criminal records of any of the following:
(1) an arrest not followed by a valid conviction;
(2) a conviction that has been sealed, dismissed, expunged or pardoned;
(3) a juvenile adjudication; or
(4) a conviction for any crime other than the disqualifying criminal convictions listed in
Subsection A of 16.12.10 NMAC.

16.12.10 NMAC - N, xx/xx/2021

16.12.11 PARENTAL RESPONSIBILITY ACT COMPLIANCE: The board shall suspend or revoke
licensees or certificate holders and deny applications for licenses or certificates in accordance with the Parental

A. All terms defined by the Parental Responsibility Act shall have the same meaning in this section.

B. If an applicant, licensee, or certificate holder is not in compliance with a judgment and order for
support, the board:
(1) shall deny an application for a license or certificate;
(2) shall deny the renewal of a license or certificate; and
(3) has grounds for suspension or revocation of the license or certificate.

C. Upon receipt of HSD’s certified list of obligors not in compliance with a judgment and order for
support; the board shall match the applicant against the current certified list of board licensees, certificate holders,
and applicants.
(1) Upon the later receipt of an application for licensure, certification or renewal, the board
shall match the applicant against the current certified list.
(2) By the end of the month in which the certified list is received, the board shall report to
HSD the names of board applicants, licensees, and certificate holders who are on the certified list and the action the
board has taken in connection with such applicants, licensees, or certificate holders.

D. Upon determination that an applicant, licensee, or certificate holder appears on the certified list,
board staff shall automatically issue a notice of contemplated action in accordance with the Uniform Licensing Act,
Section 61-1-1 NMSA 1978, to take the appropriate action.
(1) The notice of contemplated action shall state that the board has grounds to take such
action unless the applicant, licensee, or certificate holder:
(a) mails a letter, certified mail return receipt requested, within 20 days of receipt of
the notice of contemplated action requesting a hearing; and
(b) provides the board, prior to the scheduled hearing date, with a statement of
compliance from HSD.
If the applicant, licensee, or certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant, licensee, or certificate holder should contact the HSD child support enforcement division.

E. In any hearing under this subsection, a statement of non-compliance is conclusive evidence that requires the board to take the action to deny the application or suspend or revoke the license, unless the applicant, licensee, or certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action.

F. When the board takes disciplinary action solely because the applicant, licensee, or certificate holder is not in compliance with a judgment and order for support, the final decision and order shall state that the applicant, licensee, or certificate holder shall be reinstated upon presentation of a subsequent statement of compliance.

G. Reinstatement: The executive director shall, upon presentation of a subsequent statement of compliance, reinstate a license or certificate previously revoked solely due to noncompliance with a judgment and order for support, provided that the licensee or certificate holder must meet the requirements for reinstatement and pay the appropriate reinstatement fee.

[16.12.11 NMAC - N, xx/xx/2021]

16.12.12 DISCIPLINARY AND APPLICATION PROCEEDINGS:

A. The board shall conduct all disciplinary and application proceedings in accordance with the Uniform Licensing Act and the Open Meetings Act.

B. Filing of a complaint:
   (1) A person must file a written complaint with the board before the board can initiate disciplinary proceedings.
   (2) Any person, including a member of the public, a member of the board, or an employee of the board, may file a complaint.
   (3) A nurse or certificate holder who suspects that another nurse or certificate holder has violated any provision of the Nursing Practice Act or rules of the board must file a written complaint with the board, unless the nurse or certificate holder suspected of violating the Nursing Practice Act or rules of the board is a patient and patient confidentiality therefore applies.

C. Investigation of a complaint:
   (1) The board’s staff may investigate complaints to determine whether a violation of law has occurred.
   (2) The executive director or, in the director’s absence, an assistant director or designee may authorize and sign investigative subpoenas in connection with any investigation.
   (3) Upon receipt of a complaint, board staff may forward the complaint to the applicable licensee or certificate holder and request a response within 10 business days of receipt. A licensee or certificate holder’s failure to respond to the complaint within this specified time frame shall be grounds for disciplinary action, up to and including revocation of the license at the discretion of the board.

D. Notices of contemplated action:
   (1) The board’s administrative prosecutor shall draft all notices of contemplated action.
   (2) The executive director or, in the director’s absence, an assistant director or designee shall sign all notices of contemplated action on behalf of the board.

E. Notices of hearings: Upon receipt of a respondent’s timely request for hearing, the hearing officer or board staff shall, without exception, set the matter for a hearing as required by the Uniform Licensing Act. One or both parties may file a motion to continue or stay proceedings only after the issuance of the notice of hearing, subject to other limitations as provided in these rules.

F. Settlement agreements: The board encourages settlement agreements throughout the disciplinary process as a means of resolving cases in a mutually satisfactory manner without the time and expense of formal hearings.
   (1) If the administrative prosecutor and the licensee or certificate holder agree upon a settlement agreement to propose to the board, the parties shall present the agreement in writing to the board for consideration and possible approval at a meeting.
   (2) The proposed agreement is not binding on the board until approved by the board at a meeting. The board may approve, reject, or propose an amendment to any proposed stipulation and agreement.
(3) No board member may be presumed to be biased or excused for cause based solely on the basis that the member considered, approved, or rejected a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case.

G. Default orders: If the licensee or applicant does not respond to the notice of contemplated action by timely requesting a hearing on the matter, the board may take the action contemplated in the notice of contemplated action at a meeting and that action shall be final.

H. Requests to reopen: An applicant who has been denied a license or certificate in New Mexico or a licensee or certificate holder who has had disciplinary action taken by the board and who wishes to have the case reopened may submit a written request to reopen their case prior to filing a petition for review with the district court. The administrative prosecutor shall be given an opportunity to respond to any written request to reopen a case.

[16.12.12 NMAC - N, xx/xx/2021]

16.12.12.13 Hearings and the Authority of Hearing Officers:

A. If a licensee or applicant requests an evidentiary hearing in response to a notice of contemplated action, the executive director shall designate a hearing officer to preside over the hearing. Alternatively, upon vote of the board, the entire board may preside over the hearing.

B. Subpoenas: The hearing officer or, if the board as a whole presides over the hearing, the board chair shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the board.

C. Continuances:

(1) Following the issuance of a notice of hearing, no party may file a motion for continuance, motion to vacate, or proposed settlement agreement less than seven calendar days prior to the hearing except under extraordinary, unforeseen circumstances beyond the control of the movant. In the absence of such circumstances, a hearing officer may not continue or vacate a hearing in response to a motion submitted to the board later than seven calendar days prior to the hearing. Lack of knowledge or familiarity with this rule are not extraordinary or unforeseen circumstances.

(2) Except as provided in Paragraph (1) of this section, the hearing officer may grant a continuance if the party requesting the continuances submits proof to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee’s attorney.

(3) A licensee or applicant may only request a continuance if the licensee or applicant signs an affirmative statement that the licensee or applicant waives the right to a hearing held not more than 60 days from the date of service of the notice of hearing.

D. Motions: Parties to a disciplinary case may file written motions for the consideration of the hearing officer or the full board. Any motion must state its legal grounds, including all necessary citations to legal authority, as well as the specific relief requested. Where a party raises an issue in the form of a dispositive motion, the hearing officer shall take any such dispositive motion under advisement and shall present the motion in writing to the board as part of the final hearing officer report.


16.12.12.14 Serious Letters of Concern:

A. Purpose: As an alternative to disciplinary action, the board may issue non-disciplinary serious letters of concern to licensees, certificate holders, applicants, and those accused of unlicensed practice.

B. Content: A serious letter of concern shall state expressly that it does not constitute disciplinary or corrective action, a letter of reprimand, or a determination of guilt of any kind. For the benefit of the recipient, a serious letter of concern shall identify and explain the applicable provision of the Nursing Practice Act or Board rules identified as the allegation in the complaint.

C. Function: A serious letter of concern operates as a dismissal of the complaint.


16.12.12.15 Reinstatement of License or Certificate:

A. The board shall not consider a petition to reinstate a license or certificate prior to the expiration of one year from the date of signature of the order of revocation, except for the following circumstances:

(1) Where the board revoked the license or certificate solely due to noncompliance with a judgment and order for child support; or

(2) Where the board’s written order expressly permitted reinstatement sooner than one year.
B. An individual seeking to reinstate a license or certificate must file with the board a written petition for reinstatement containing, at a minimum, the following information:

(1) The individual’s name, former license number, and the date of the individual’s prior revocation;

(2) A detailed explanation of why good cause supports reinstatement of the license or certificate, along with any accompanying documentation or evidence;

(3) An affirmative statement as to whether, as a condition of reinstatement, the individual agrees to participate in the board’s diversion program if found appropriate by the board; and

(4) An affirmative statement that the individual agrees to abide by all of the rules and regulation of the board and, where applicable, the diversion program.

B. The board’s determination of good cause and its accompanying grant or denial of a petition for reinstatement is entirely discretionary, provided that the board shall consider at least the length of time having elapsed since the license was revoked, the gravity of the violations which represented the basis for the prior order of revocation, the risk the individual might pose to public health if licensed or certified, and evidence of the individual’s rehabilitation since revoked.

C. In the event that the board grants the petition for reinstatement, the individual seeking reinstatement shall be required to submit the following prior to the issuance of the license or certificate:

(1) A completed reinstatement application;

(2) Proof of meeting the renewal requirements as set forth in these rules adopted by the board;

(3) Payment of the reinstatement fee;

(4) A completed criminal background check, unless the individual seeking to reinstate a license or certificate applies for reinstatement within less than one year of the date of signature of the order of revocation; and

(D) Any additional documents, materials, or evidence required by the board.

If the results of a criminal background check indicate that the individual seeking reinstatement has been convicted of a disqualifying criminal conviction, the matter of the individual’s reinstatement shall be decided by the board at a subsequent meeting.


16.12.16 COMPLAINTS REGARDING FIRMS, ASSOCIATIONS, INSTITUTIONS, AND CORPORATION VIOLATING THE NURSING PRACTICE ACT:

A. The board shall accept and determine the disposition of written complaints regarding firms, associations, institutions and corporations violating the nursing practice act, causing the violation of the nursing practice act, or asking employees to violate the nursing practice act by policy or directive. In determining the disposition of these complaints, the board is not obligated to abide by the Uniform Licensing Act.

B. In the event that the board receives a written complaint regarding a firm, association, institution, or corporation, the board shall give the firm, association, institution, or corporation the opportunity to respond in writing to the allegations in the complaint.

C. If the board determines that the firm, association, institution, or corporation violated Subsection A through H of Section 61-3-30 NMSA 1978 of the Nursing Practice Act, the board shall inform the firm, association, institution, or corporation of the requirements set out in Section 61-3-30 NMSA 1978 of the Nursing Practice Act.

D. The board shall keep a record of the number of complaints received and the disposition of said complaints processed in accordance with this rule.

[16.12.16 NMAC - N, xx/xx/2021]
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<td>William J. Duran, MPA</td>
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Dr. Poole, please find attached my public comment to the NMBON members for the upcoming Rules Hearing. I am submitting the letter to you in accordance with the public comments process. Thank you in advance.

Respectfully,

William J. Duran, MPA, Director of Operations
New Mexico Board of Nursing | 6301 Indian School Rd NE, Suite 710, Albuquerque, NM 87110
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NM BON Mission: Protect the public safety through effective regulation of nursing care and services.

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September 20, 2021

Members of the New Mexico Board of Nursing
6301 Indian School Road N.E., Suite 710
Albuquerque, NM 87110

Re: Comment on Proposed Changes to 16.12.1 NMAC and 16.12.12 NMAC

Dear Members,

The purpose of this letter is to address the proposed additions and changes to rules pertaining to the professions governed by the New Mexico Nursing Practice Act and the New Mexico Lactation Care Provider Act, which will be referred to as the “Acts” in this letter. In particular, this letter will provide background and supporting documentation for the proposed rules in Title 16, Occupational and Professional Licensing, Chapter 12, Nursing and Health Care Related Providers, Part 12, Discipline and Application Denials. These rules apply to all applicants, nurses licensed in New Mexico, nurses not licensed in New Mexico and who wish to practice in New Mexico pursuant to a multi-state license privilege as provided in the nurse licensure compact, certified medication aides, hemodialysis technicians, and all others licensed by the board. These individuals will be collectively referred to as “providers” throughout this letter. In addition, the members of the New Mexico Board of Nursing will be referred to as the “Board” and Agency staff will be referred to as the “Agency.”

During the 2021 Legislative Special Session, Senate Bill 2 was passed and signed by Governor Lujan-Grisham. The Bill amends the Criminal Offender Employment Act to specify the types of criminal records that may not be used or disseminated in connection with applications for public employment or licenses. This includes convictions that have been sealed, dismissed, expunged, or pardoned; juvenile adjudications; and convictions for a crime that is not job-related for the position sought and consistent with business necessity. The bill also removes misdemeanor convictions involving moral turpitude from the permissible causes for denying, revoking, or suspending public employment or a license to engage in a trade, business or profession and removes an agency’s authority to deny public employment or a professional license for convictions that do not relate to a particular employment position if the agency determines the convicted person is not sufficiently rehabilitated to warrant the public trust.

Senate Bill 2 also made related amendments to the Uniform Licensing Act, which prohibit a professional licensing board from excluding from licensure an otherwise qualified person solely because the person had been arrested for or convicted of a crime, unless the person has a “disqualifying criminal conviction.” A “disqualifying criminal conviction” is a conviction for a crime that is “job-related for the position in question and consistent with business necessity.” On or before December 31, 2021, all occupational licensing boards in New Mexico must issue and post a list of specific criminal convictions that could disqualify an applicant from receiving a
license. The proposed rules in 16.12.12 NMAC are intended to satisfy this legal obligation.

The Agency considers the crimes listed in 16.12.12.10 NMAC of the proposed rules, Criminal Convictions, to be disqualifying criminal convictions. The crimes listed in 16.12.12.10 NMAC of the proposed rules are directly related to all practices governed by the Acts for the following reasons:

(1) Although all professions governed by the Acts are unique professions, all providers practice autonomously in a wide variety of settings and provide care to individuals who are, by virtue of their illness or injury, physically, emotionally, and financially vulnerable. These individuals include the elderly; children; individuals with mental disorders; sedated and anesthetized patients; individuals with mental or cognitive disorders; and disabled and immobilized individuals. The crimes listed in 16.12.12.10 NMAC potentially place patients, healthcare employers, and the public at future risk of harm.

(2) **Crimes involving fraud or theft.** Providers often have unfettered access to individuals’ privileged information, financial information, and valuables, including medications, money, jewelry, credit cards/checkbook, and sentimental items. Providers also provide around the clock care, working night and weekend shifts at hospitals, long term care facilities, nursing homes, assisted living facilities, and in home health and home-like settings, where there is often no direct supervision of the provider. Patients in these settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a provider.

(3) **Crimes involving sexual misconduct.** Providers also frequently provide care to partially clothed or fully undressed individuals, who are particularly vulnerable to exploitation. Due to the intimate nature of health care, professional boundaries in the provider-patient relationship are extremely important. When a provider has engaged in criminal behavior involving any type of sexual misconduct in the past, the Agency is mindful that similar misconduct may be repeated in healthcare settings. Such conduct may involve touching intimate body parts when the touch is not necessary for care, voyeurism, exposure of body parts when not necessary, and surreptitious touching. As such, the Agency considers crimes involving any type of sexual misconduct to be highly relevant to an individual’s ability to provide safe healthcare.

(4) **Crimes involving lying, falsification, and deception.** Providers are expected to accurately and honestly report and record information in a variety of sources, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as report errors in their own practice. The Agency considers a criminal conviction for making a false statement under oath or on any official document, such as an application for licensure, to be highly relevant to the provider’s fitness to practice.

(5) **Crimes involving drugs and alcohol.** Providers have a duty to their patients to provide safe, effective healthcare and to be fit to practice. Providers who have a substance use disorder may exhibit impairment in both cognitive and motor functioning. A provider affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner. This danger may
be heightened when the provider works in an autonomous setting where other healthcare providers are not present to provide interventions for the patient. As such, the Agency considers crimes related to the use or possession of drugs or alcohol to be highly relevant to a nurse’s fitness to practice.

(6) Crimes involving violence or threatening behavior. Providers care for the most vulnerable of populations, including individuals who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the provider-patient relationship for their daily care. When a provider has engaged in violent or threatening criminal behavior in the past, the Agency is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, the Agency considers crimes involving violence and threatening behavior to be highly relevant to a provider’s fitness to practice.

Each of the crimes listed in 16.12.12.10 NMAC potentially poses a risk to the public if committed by a provider. The reasonableness of this list is shown by the nature and seriousness of each of these crimes, the relationship of the crime to the purposes for requiring a license or certificate to engage in any profession governed by the Acts, that a license to practice in any profession governed by the Acts might offer an opportunity to engage in further criminal activity, and the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities associated with each provider’s practice. Each crime listed in this section raises concerns about the propensity of the individual to repeat similar misconduct in the workplace, if provided the opportunity. Similar misconduct in the workplace would place vulnerable individuals at risk of exploitation or victimization.

As a result, if an individual has been convicted of a crime listed in 16.12.12.10 NMAC of the proposed rules, the Agency will evaluate the criminal history to determine if a criminal conviction is to be presented to the Board, in accordance with the Acts, the proposed rules, and the New Mexico Criminal Offender Employment Act. The Board may then consider the information to determine what, if any, action should be taken against the provider’s application, license, or certificate.

Lastly, I want to remind the Board that the disqualifying criminal convictions listed in 16.12.12.10 NMAC of the proposed rules may disqualify a provider and are not an automatic disqualification. It is up to the Board to determine if information presented to them by the Agency should be used to take appropriate action.

Sincerely,

[Signature]

William J. Duran, MPA
Director of Operations
New Mexico Board of Nursing

http://nmbon.sks.com/