

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS
PART 1 GENERAL PROVISIONS

16.12.1.1 ISSUING AGENCY: New Mexico Board of Nursing.
[16.12.1.1 NMAC - Rp, 16.12.1.1 NMAC, 10/1/2016]

16.12.1.2 SCOPE: These rules apply to all nurses licensed in New Mexico and all nurses not licensed in this state whose home state is not 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, and programs serving persons with developmental disabilities in programs that are funded by the department of health and related training programs, hemodialysis technicians and training programs, and nursing education programs.
[16.12.1.2 NMAC - Rp, 16.12.1.2 NMAC, 10/1/2016]

16.12.1.3 STATUTORY AUTHORITY: Nursing Practice Act, Sections 61-3-10, 61-3-10.1, 61-3-10.2, and 61-3-10.3 NMSA 1978 Comp.
[16.12.1.3 NMAC - Rp, 16.12.1.3 NMAC, 10/1/2016]

16.12.1.4 DURATION: Permanent.
[16.12.1.4 NMAC - Rp, 16.12.1.4 NMAC, 10/1/2016]

16.12.1.5 EFFECTIVE DATE: October 1, 2016 unless a later date is cited at the end of a section.
[16.12.1.5 NMAC - Rp, 16.12.1.5 NMAC, 10/1/2016]

16.12.1.6 OBJECTIVE: To promote, preserve and protect the public health, safety and welfare by regulating the practice of nursing, certified medication aides, certified hemodialysis technicians, approve schools of nursing and medication aide and hemodialysis technician training programs in the state, as well as the authority to take action against any of the above for failure to meet set minimum standards for licensure, certification or approval as promulgated by the board.
[16.12.1.6 NMAC - Rp, 16.12.1.6 NMAC, 10/1/2016]

16.12.1.7 DEFINITIONS:

A. "Abandonment": occurs when the nurse has accepted the assignment to provide care, service or treatment to the consumer thus establishing relationship and then abruptly severed the relationship/disengaged from the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care by others; Consists of one or more of the following elements, which, as result of departure from assigned care, caused or may have caused harm; failure to provide observation to include but not limited to assessment and intervention; failure to assure competent intervention at any time to include but not limited to delayed treatment, insufficient treatment, or refusal to treat; failure to provide for provision of qualified coverage including but not limited to adequate time to arrange nursing coverage of assigned care. This is to be distinguished from employment abandonment, such as, but not limited to, contract issues, no call, no show; refusal to work mandatory overtime; refusal to float to unfamiliar areas, or resignation from a position; the board has no jurisdiction over employment issues.

B. "Board": the New Mexico board of nursing.

C. "Certificate": a legal document granting permission to an unlicensed person to perform specific functions generally considered the practice of nursing.

D. "Consumer": means any person domiciled, residing or receiving care, service or treatment from a licensed nurse or certified unlicensed assistive person. This includes but is not limited to patients, residents, or clients.

E. "Complaint": means to declare in writing an allegation of a violation of the Nursing Practice Act or rules.

F. "License": legal document granting an individual the privilege and authority to engage in practice of an occupation/profession.

G. "Notice of contemplated action": a written notice indicating the board's intent to take disciplinary action against the license/certificate of an individual within its jurisdiction.

H. “Notice of hearing”: a written notice indicating the date, time and place for an appearance before the board.

I. “Nursing Practice Act”: NM statute which governs the regulations and licensing of nurses or certification of hemodialysis technicians/medication aides and training programs thereof.

J. “Probation”: subjecting a licensee/certificate holder to specific conditions for a stated period of time to determine fitness.

K. “Reasonable notice”: the process of notifying a supervisor or manager of leaving the work site. The process allows for the supervisor or manager to locate a replacement therefore not jeopardizing the consumer’s nursing care.

L. “Reinstatement”: the process whereby a license/certificate, which has been subject to disciplinary action by the board, is returned to its former status.

M. “Reprimand”: a written censure.

N. “Revocation”: to prohibit the conduct authorized by a license or certificate.

O. “Stipulation and agreement”: an agreement made by the attorneys on opposite sides of a cause or the prosecuting attorney and licensee, concerning disposition of relevant issues to eliminate the need for a formal hearing.

P. “Suspension”: to prohibit, for a stated period of time, the conduct authorized by a license or certificate.

Q. “Uniform Licensing Act”: NM statute which provides procedures to be utilized in disciplinary proceedings.

[16.12.1.7 NMAC - Rp, 16.12.1.7 NMAC, 10/1/2016]

16.12.1.8 ADMINISTRATION:

A. Members of the board are appointed by the governor and are accountable to the governor for the enforcement of the Nursing Practice Act, Section 61-3-1 *et seq.*, NMSA 1978.

(1) Rules are adopted by the board to further define the Nursing Practice Act and the functions of the board.

(2) A code of conduct shall be adopted by the board, and shall be reviewed annually at a regularly scheduled meeting of the board.

(3) The board shall meet at least once every three months.

(a) A meeting notice resolution, consistent with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA, 1978 shall be adopted by the board and shall be reviewed annually at a regularly scheduled board meeting.

(b) A schedule of regular meeting dates shall be approved by the board at a regular meeting prior to the beginning of the next calendar year, and shall be published in the board’s newsletter, and on the board’s website.

(4) The board may appoint advisory committees consisting of at least one member who is a board member and at least two members expert in the pertinent field of health care to assist it in the performance of its duties, Subsection M of Section 61-3-10 NMSA 1978.

(a) Exception: no current board members shall be appointed to an advisory committee for the diversion program, Subsection B of Section 61-3-29 NMSA 1978.

(b) Members of advisory committees who fail to attend three consecutive committee meetings shall automatically be removed as a member of the committee.

(c) Advisory committee members may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-8 NMSA 1978 for travel to a committee meeting or function.

(i) Mileage may be paid when there is a total of 60 miles or more traveled.

(ii) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

(5) The board shall elect a chairman, vice-chairman and secretary annually. The term of office begins with the meeting subsequent to the election. Any member of the board may serve as an officer of the board.

(6) Board may appoint site visitors who have expertise in the pertinent field of education/health care to accompany board staff on visits to educational programs, health care institutions/facilities, etc., to assist it in the performance of its duties and responsibilities. Site visitors may be reimbursed as provided in the Per Diem and Mileage Act, Section 10-8-1 to 10-8-8 NMSA 1978 for travel to a committee meeting or function.

(a) Mileage may be paid when there is a total of 60 miles or more traveled.

(b) Per diem may be paid for overnight stays only upon prior approval of the executive director or assistant director.

B. The board shall hire an executive director who is accountable to the board for the administration and management of the board office, including but not limited to the fiscal operation, records, hiring and firing of personnel. The operation of the board office shall be in accordance with the state of New Mexico statutes and rules.

(1) The executive director shall not have 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 (NPA).

(2) The executive director, or designee, shall represent the board to the public.

C. Honorarium: members of the board and board staff, when speaking on behalf of the board of nursing, may accept an honorarium. The honorarium shall be made in the name of the New Mexico board of nursing and deposited in the nursing fund with the state of New Mexico.

D. Verification of license/certificate.

(1) Employers and other interested persons may request verification of the status of a license/certificate.

(2) Verification of relicensure/recertification status is available immediately by phone and 24 hours on board website.

(3) Requests for verification of licensure/certification to other boards of nursing should be submitted through the national council of state boards of nursing (NCSBN) web based system.

E. Reimbursement for disciplinary witnesses and experts on behalf of the state.

(1) Individuals subpoenaed as a disciplinary witness for the state may be reimbursed for mileage as provided for in the Per Diem and Mileage Act, when 60 miles or more are traveled to a disciplinary hearing.

(2) Individuals who serve as an expert witness for the state in a disciplinary matter may be reimbursed by the board in an amount not to exceed: two hundred dollars (\$200) for reviewing the file, research and advisement in the matter, and three hundred dollars (\$300) for testifying at a disciplinary hearing.

(3) The executive director may approve additional reimbursement for the review of files and testimony of expert witnesses when such reimbursement is essential to the prosecution of the case.

F. Telephonic attendance at board meetings by board members.

(1) Pursuant to the provisions of the Open Meetings Act, Subsection C of Section 10-15-1 NMSA 1978, as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment.

(2) Board members participation in meeting telephonically shall constitute presence in person at the meeting. Telephonic participation may only occur when it is difficult or impossible for the person to be physically present. That is, there are circumstances beyond the member's control which make attendance in person extremely burdensome.

(3) Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

(4) Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

G. Use of fax: The board of nursing may accept and send facsimile of documents. Faxes of communications related to participants of the diversion program are accepted to the confidential fax number only. [16.12.1.8 NMAC - Rp, 16.12.1.8 NMAC, 10/1/2016]

16.12.1.9 DISCIPLINARY ACTION:

A. Authority of board of nursing: The board may deny, revoke, or suspend any license or certificate held or applied for under the Nursing Practice Act (NPA), or reprimand or place a license or certificate on probation on the grounds stated in Section 61-3-28 NMSA 1978.

B. Disciplinary philosophy: the board of nursing accepts its mandate to regulate nursing, medication aides and hemodialysis technicians for the protection of the citizens of New Mexico. In its role as a regulatory body, the board recognizes that it is responsible for conducting hearings upon charges related to violations of the Nursing Practice Act, Section 61-3-1 through 61-3-30 NMSA 1978 or its rules, and to take disciplinary actions against licensees or certificate holders who violate the statute or rules. The board considers all alleged violations based on the merits of each case and the potential danger to the public. The board will consider remedial measures of corrective action rather than denial, suspension or revocation of a license or certificate except in cases where there is a real or potential danger to the public. The board will deny, suspend or revoke a license or certificate when it has evidence that the public's health, safety and welfare may be in danger. The board is responsible for promoting,

preserving and protecting the public health, safety and welfare through the adoption of rules that allow licensees and certificate holders to function safely and competently within the parameters of their license/certificate. The board is also responsible for ensuring that licensees and certificate holders have access to the laws and rules governing nursing in order that they may function within the legal boundaries of the nursing practice act and its rules.

C. Grounds for action.

(1) For purposes of Paragraph (3) of Subsection A of Section 61-3-28 NMSA 1978, supra, “incompetence” is defined as follows: In performing nursing functions, whether direct patient care or the administration/management of that care, a nurse is under a legal duty to possess and to apply 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 including those standards set forth in 16.12.2.12 NMAC of these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. 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.

(2) For the purpose of Paragraph (6) of Subsection A of Section 61-3-28 NMSA 1978 supra, “unprofessional conduct” includes, but is not limited to, the following:

- (a) dissemination of a patient/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/agency policy from disclosure;
- (b) falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information;
- (c) misappropriation of money, drugs or property;
- (d) obtaining or attempting to obtain any fee for patient/client services for one’s self or for another through fraud, misrepresentation, or deceit;
- (e) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;
- (f) obtaining, or 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;
- (g) failure to follow established procedure and documentation regarding controlled substances;
- (h) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing;
- (i) 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 relicensure process;
- (j) 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;
- (k) failure to report a nurse(s) who is suspected of violating the New Mexico Nursing Practice Act or rules;
- (l) intentionally engaging in sexual contact with or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual nurse’s practice;
- (m) abandonment;
- (n) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (o) committing acts which constitute grounds for disciplinary action pursuant to Paragraph (1) and (2) of Subsection A of Section 61-3-28 NMSA 1978 where the conviction arises from employment as a nurse, Paragraph (3) and (4) of Subsection A of Section 61-3-28 NMSA 1978 where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provision of good health care, Paragraph (5) of Subsection A of Section 61-3-28 NMSA 1978 where the mental incompetence has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provisions of good health care, and Paragraph (7) of Subsection A of Section 61-3-28 NMSA 1978;

(p) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;
(q) practice which is beyond the scope of licensure;
(r) inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;
(s) verbally or physically abusing a patient/client or colleague;
(t) failure to maintain appropriate professional boundaries which may cause harm to the patient.

D. Grounds for disciplinary action against hemodialysis technicians and medication aides listed under 16.12.4.11 NMAC and 16.12.5.11 NMAC.

E. Parental Responsibility Act compliance: This subsection is adopted pursuant to the Parental Responsibility Act, Section 40-5A-1 through 40-5A-13 NMSA 1978.

(1) All terms defined in the Parental Responsibility Act shall have the same meanings in this subsection.

(a) "HSD" means the New Mexico human services department.
(b) "Statement of compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

(c) "Statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee/certificate holder is not in compliance with a judgment and order for support.

(2) If an applicant or licensee/certificate holder is not in compliance with a judgment and order for support, the board:

- (a) shall deny an application for a license/certificate;
- (b) shall deny the renewal of a license/certificate; and
- (c) has grounds for suspension or revocation of the license/certificate.

(3) 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.

(a) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

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

(4) Upon determination that an applicant or licensee/certificate holder appears on the certified list, the board shall issue a notice of contemplated action (NCA) in accordance with the Uniform Licensing Act (UCLA), Section 61-1-1, et seq., NMSA 1978, to take the appropriate action.

(a) The (NCA) shall state that the board has grounds to take such action unless the licensee/certificate holder or applicant:

(i) mails a letter (certified mail return receipt requested) within 20 days of receipt of the notice of contemplated action requesting a hearing; and

(ii) provides the board, prior to the scheduled hearing date, with a statement of compliance from (HSD).

(b) If the applicant or licensee/certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee/certificate holder should contact the (HSD) child support enforcement division.

(5) In any hearing under this subsection, relevant evidence is limited to the following:

(a) a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under Paragraph (2) of Subsection E of 16.12.1.9 NMAC, unless;

(b) the applicant or licensee/certificate holder provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this section.

(6) When disciplinary action is taken under this subsection solely because the applicant or licensee/certificate holder is not compliance with a judgment and order for support, the order shall state that the applicant or licensee/certificate holder shall be reinstated upon presentation of a subsequent statement of compliance. Reinstatement following board action under this subsection shall require the licensee or certificate holder to meet the requirements for reinstatement and payment of the appropriate reinstatement fee.

F. Disciplinary proceedings: are conducted in accordance with the Uniform Licensing Act, Section 61-1-1 *et seq.*, NMSA 1978 and Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978.

- (1) Filing of a complaint.
- (a) A written complaint must be filed with the board of nursing before a disciplinary proceeding can be initiated.
- (i) A complaint is an allegation of a wrongful act(s) or an omission(s).
- (ii) A complaint may include knowledge of a judgment or settlement against a licensee.
- (b) A written complaint may be filed by any person, including a member of the board.
- (c) A nurse who suspects that a 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 of nursing; except when the nurse or certificate holder suspected of violating the Nursing Practice Act or rules of the board is a patient and patient confidentiality is involved.
- (2) Investigation of a complaint.
- (a) complaints alleging a violation of the Nursing Practice Act or rules adopted by the board may be investigated to determine whether a violation of applicable law or rule has occurred;
- (b) the investigation may result in one following inter alia:
- (i) a board motion to issue a notice of contemplated action (NCA) if a violation exists; or
- (ii) a board motion to dismiss the complaint because no violations exists.
- (3) Notice of contemplated action (NCA).
- (a) the NCA shall be drafted by the administrative prosecuting attorney;
- (b) the executive director of the board, or an assistant director in the director's absence, shall sign all NCAs on behalf of the board;
- (c) NCAs are served on the licensee or certificate holder in accordance with the (ULA).
- (4) Request for a hearing, notice of hearing, and request for continuance.
- (a) notice of hearing, designating the date, time and place of the hearing, shall be mailed to the licensee or certificate holder via certified mail upon receipt of a written request for a hearing;
- (b) the licensee or certificate holder may request to explore a settlement by negotiating a stipulation and agreement with the administrative prosecuting attorney at any time prior to the hearing.
- (i) if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the board for final approval;
- (ii) the proposed stipulation and agreement does not divest the board of its authority to require a formal hearing or final approval, amendment, or rejection;
- (iii) if a settlement is not reached, a hearing shall be held.
- (c) once a hearing has been scheduled, a request for a continuance must be presented, along with evidence to support the request to the board, in writing, at least 10 days prior to the scheduled hearing. The board may approve or deny the request;
- (i) a motion to continue the hearing must contain an affirmative statement that the licensee or applicant waives his or her right to a hearing held not more than 60 days from the date of service of the notice of hearing;
- (ii) one continuance may be granted in each case if proof is submitted to verify good cause such as illness, availability of new evidence or unavailability of the licensee or licensee's attorney. The board may approve or deny the request.
- (d) if a person fails to appear before the board after requesting a hearing, the board may proceed to consider the matter as a default and make a decision;
- (e) if no request for a hearing is made within the time and manner required by the (ULA), the board may take the action contemplated in the NCA at its next regularly scheduled meeting. Such action shall be final and is not subject to judicial review.
- (5) Administrative hearing.
- (a) all hearings shall be conducted by the board or, at the direction of the board by a hearing officer. The hearing officer shall have authority to rule on all motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case;

(b) all hearings before the board shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the board hearing;

(i) hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs;

(ii) disciplinary action against a nursing license or certificate holder must not be based solely on hearsay evidence.

(c) the board may take testimony, examine witnesses and direct a continuance of any case;

(d) the board may hold closed, or open, deliberations before or during a hearing for the settlement or simplification of issues with the consent of the person whose license or certificate is involved;

(e) the executive director, or in the director's absence, an assistant director or designee 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.

G. Decision of the board.

(1) the decision must be rendered by the board at a public meeting where a quorum of the members are present and participating in the decision;

(2) a copy of the written decision shall be mailed via certified mail to the applicant/licensee or certificate holder in accordance with the Uniform Licensing Act, Section 61-1-14 NMSA 1978.

H. Request/motion to reopen disciplinary proceedings: 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 must submit a written request/motion to reopen their case prior to filing a petition for review with the district court.

(1) the board shall be polled to consider whether to grant or refuse the applicant/licensee or certificate holder request/motion to reopen the case, Uniform Licensing Act 61-1-21 and Open Meetings Act 10-15-1 NMSA 1978. (1990 supplement) Uniform Licensing Act 61-1-21 NMSA 1978 and Open Meetings Act Subsection E of Section 10-15-1 NMSA 1978;

(2) the board's decision to grant or refuse the request/motion to reopen the case shall be made, signed by the executive director or an assistant director in the director's absence, and sent to the applicant/licensee or certificate holder within 15 days after receipt of the request/motion. The administrative prosecuting attorney shall be apprised of any decision of the board to reopen a case and shall be given an opportunity to respond to the motion;

(3) the formal hearing of the case shall be scheduled for the board's next regularly scheduled meeting. A notice of hearing shall be mailed, by certified mail, to the applicant/licensee or certificate holder within 15 days after service of the decision to grant the request/motion to reopen;

(4) the decision to grant or refuse the reopening of a case shall be in the discretion of the board, and the decision shall not be reviewable except for an abuse of discretion.

I. Public notification of disciplinary action: The disciplinary action of the board shall be made public in accordance with the Open Meetings Act, Section 10-15-1 *et seq.*, NMSA 1978 by the following means:

(1) information regarding disciplinary action shall be coded in computer, license or certificate file;

(2) submission of disciplinary action to the *national council of state board's disciplinary data bank/national practitioner data bank* (NPDB);

(3) publication of the disciplinary action in the board's newsletter and on the board's website.

J. Reinstatement of license or certificate.

(1) individuals who request reinstatement of their license or certificate or who request that their probation be lifted must be prepared to provide the board with evidence to support their request. This evidence may be in the form of written reports or verbal testimony from individuals who have knowledge of the licensee's or certificate holder's activities and progress during the period of probation, suspension or revocation;

(2) requests for reinstatement of a revoked license or certificate shall not be considered by the board prior to the expiration of one year from the date of the order of revocation, unless provided for in the order of revocation. The date at which time the board chairman's signature is affixed to the order of revocation or suspension is the controlling date, unless otherwise specified in the order;

(3) requests for reinstatement of a suspended license or certificate shall be considered at such time as provided by the board in the order of suspension;

(4) reinstatement of a revoked or suspended license requires proof of meeting the renewal requirements as set forth in these rules adopted by the board, and payment of the reinstatement of current or lapsed license fee.

K. Complaints regarding firms, associations, institutions and corporations violating the nursing practice act.

(1) the board of nursing 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;

(2) the agency shall be given the opportunity to respond in writing to the allegations in the complaint;

(3) if the board of nursing determines a violation of the nursing practice act has occurred, the board of nursing shall identify and refer the complainant in writing to the appropriate authority for prosecution with a request to be kept apprised of the disposition of the case;

(4) if it is determined by the board of nursing that a violation Subsection A through H of Section 61-3-30 NMSA 1978 of the Nursing Practice Act has occurred, the board of nursing shall inform the agency to whom the complaint is referred of the requirements set out in Section 61-3-30 NMSA 1978 of the Nursing Practice Act.

(5) the board shall keep a record of the number of complaints received and the disposition of said complaints.

[16.12.1.9 NMAC - Rp, 16.12.1.9 NMAC, 10/1/2016]

16.12.1.10 EXCEPTIONS: Nursing Practice Act, Section 61-3-2, NMSA, 1978. The Nursing Practice Act does not apply to or affect caring for the sick provided in accordance with a religious practice so long as the caregiver does not claim to be a licensed practical nurse or a registered nurse or advanced practice nurse, or use of their authorized abbreviations or any title that could lead a person to believe the individual is a licensed nurse.

[16.12.1.10 NMAC - Rp, 16.12.1.10 NMAC, 10/1/2016]

16.12.1.11 SEVERABILITY: If any part or application of the board's rules is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[16.12.1.11 NMAC - Rp, 16.12.1.11 NMAC, 10/1/2016]

HISTORY of 16.12.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center & archives under: BON 70-2, Administrative Policy, filed 7-17-1970;

BON 73-1, Rules and Regulations of the Nursing Practice Act, filed 3-13-1973;

BON 78-1, Administrative Rules and Regulations of the New Mexico Board of Nursing, filed 11-02-1978;

BON MANUAL #83-1, Administrative Rules and Regulations of the Board of Nursing, filed 6-13-1983;

BON MANUAL #85-1, Administrative Rules and Regulation of the Board of Nursing, filed 8-13-1985;

BON MANUAL 91-2, Administrative Rules and Regulations of the New Mexico board of nursing, filed 10-09-1991.

History of Repealed Material:

16.12.1 NMAC, Nurse Licensure, filed 6/12/2001 - Repealed effective 10/1/2016.

Other History: 16 NMAC 12.1, Nursing and Health Care Related Providers - General Provisions, filed 12/10/1997, renumbered, reformatted and amended to 16.12.1 NMAC, General Provisions effective 7/30/2001.