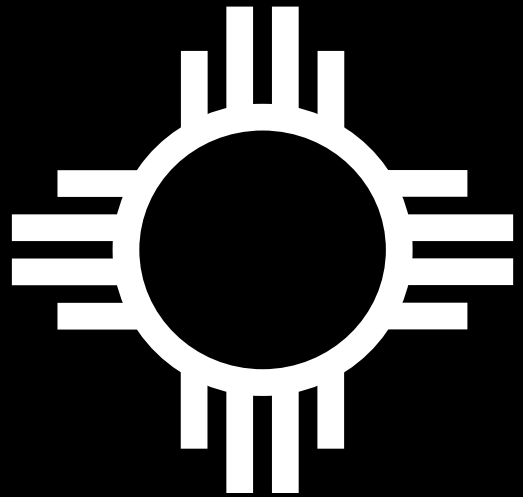


**NEW  
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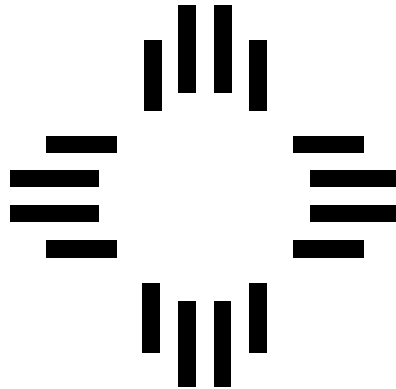


Volume XV  
Issue Number 4  
February 27, 2004



# **New Mexico Register**

**Volume XV, Issue Number 4**  
**February 27, 2004**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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Administrative Law Division  
Santa Fe, New Mexico  
2004

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# New Mexico Register

Volume XV, Number 4

February 27, 2004

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#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ATHLETIC COMMISSION

#### New Mexico Athletic Commission Rule Hearing and Meeting Notice

Notice is hereby given that the New Mexico Athletic Commission will convene a public rule hearing at 5:00 p.m. April 13, 2004 at the State Fair Grounds, Public Safety Building. A regularly scheduled meeting will follow the rule hearing.

The purpose of the rule hearing is to consider adoption of the following new proposed regulation: 15.6.19 NMAC.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Commission office at 2055 S. Pacheco, Suite 400, Santa Fe, New Mexico 87505, or call (505) 476-7124. All written comments must be submitted to the Commission office no later than April 6, 2004 in order for the Commission members to receive and review the comments prior to the hearing. Persons wishing to present their comments at the hearing will need nine (9) copies for distribution to the Commission, Legal Counsel and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-7124 at least one week prior to the hearing/meeting or as soon as possible.

### NEW MEXICO DEPARTMENT OF HEALTH

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing to receive public comment on proposed amendments to 7.7.2 NMAC "Requirements For General and Special Hospitals". The Hearing will be held on March 30, 2004 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The proposed amendments provide new licensure standards for limited service hospitals, amend the standards for acute care hospitals and special hospitals and incorporate the requirements of the Sexual Assault Survivors Emergency Care Act. They also

specify hospital financial and other reporting requirements, amend existing definitions, add new definitions and require disclosure of ownership. Because of the new amendments the regulation will be titled "Requirements For Acute-Care, Limited Services And Special Hospitals.

A copy of the proposed regulation can be obtained from:

Anna Mayo  
Health Facility Licensing and Certification Bureau  
New Mexico Department of Health  
2040 S. Pacheco, 2nd Floor, Room 413  
Santa Fe, New Mexico 87505  
505-476-9025

Please submit any written comments regarding the proposed regulation to the attention of Anna Mayo at the above address prior to the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Ana Mayo by telephone at 505-476-9025. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on March 30, 2004, at the State Library (Room 2022) at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be Working Disabled Individuals Program, SSI Methodology.

The Medical Assistance Division proposes to clarify WDI deeming methodology when there is an ineligible spouse living in the household. WDI deeming methodology does not follow SSI deeming methodology. Language pertaining to parent-to-child deeming will also be clarified. In addition, the Medical Assistance Division proposes to raise co-payment amounts and base co-payment maximums and amounts on both earned and unearned income.

Interested persons may submit written comments no later than 5:00 p.m., March 30, 2004, to Pamela S. Hyde, J.D., Secretary,

Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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 any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583 (Santa Fe at 827-3156), or through the department TDD system, 1-800-609-4833, (Santa Fe call 827-3184). The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/register](http://www.state.nm.us/hsd/register). or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:30 a.m., on March 29, 2004, in the Medical Assistance Division, small conference room, Room 105j, at 2025 South Pacheco (Ark Plaza building), Santa Fe, New Mexico. The subject of the hearing will be Pregnancy-Related & Family Planning Services.

Effective July 1, 1998, women of child-bearing age who meet specific eligibility standards can become eligible for Medicaid coverage of family planning services for a two-year period regardless of changes in income. Effective October 1, 2003, the Centers for Medicaid Medicare Services (CMS) renewed New Mexico's family planning program. One of the conditions for renewal was to change the eligibility period to 12 months. New Mexico proposes to change the certification period for Category 35 - Family Planning services from 24 months to 12 months.

In addition, the Department is adding language in PSO-500 to include a description of the methodology used to treat earned income deductions and disregards in computing income to determine eligibility.

Language is also being added in PSO-600 to clarify benefits continuing throughout the pregnancy and two months post-partum and to provide specifics about retroactive eligibility for Pregnancy-Related Services. The proposed 12-month certification period language will replace the 2-year certification period for Family Planning.

Interested persons may submit written comments no later than 5:00 p.m., March 29, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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 any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad](http://www.state.nm.us/hsd/mad) or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO PHYSICAL THERAPY BOARD

### RULE HEARING NOTICE

Notice is hereby given that the New Mexico Physical Therapy Board will convene a Rule Hearing to consider revisions to:

Title 16, Chapter 20, Part 3 Issuance of Licenses

Title 16, Chapter 20, Part 5 Schedule of Fees

Title 16, Chapter 20, Part 8 Continuing Education

This Hearing will be held in Classroom A & B of the Presbyterian Healthplex located on 6301 Forest Hill Drive, NE, in Albuquerque, New Mexico on Friday, April 23, 2004 beginning at 1:00 p.m.

Notice is further given that the Board will convene a Regular Board Meeting immediately following the Rule Hearing. Final action on the proposed rules will be taken during this meeting. In addition to the open

meeting, the Board may be going into closed session to consider matters pertaining to licensing and/or discipline.

If you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please contact Rosemarie Ortiz at (505) 476-7085 at least two weeks prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

Persons desiring to present their views on the proposed rules may appear in person at said time and place or send their written comments to the Physical Therapy Board, P.O. Box 25101, Santa Fe, New Mexico 87504. Copies of the proposed rules may be obtained at the Board office, 2055 S. Pacheco St., Suite 400, Santa Fe, New Mexico or by written request to the Board at P.O. Box 25101, Santa Fe, NM 87504. Written comments are requested no later than April 9, 2004.

If you have any questions regarding this meeting, please call (505) 476-7085.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that it will conduct a public hearing at Mabry Hall in the Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on Monday, March 29, 2004, from 1 to 2 p.m. regarding the following proposed rulemaking action:

Rule Number	Rule Name	Proposed Action
6.31.2 NMAC	Special Education - Children with Disabilities/Gifted Children	Amend Section 1 and paragraph 4 of subsection B of Section 9

The proposed amendments will reflect the Public Education Department as the issuing agency and amend the state special education rules regarding public schools' use of public or private insurance to pay for education-related therapies or other services that are required by a student's individualized education program (IEP) under the federal Individuals with Disabilities Education Act (IDEA).

The amendments will incorporate additional details from the IDEA regulations at 34 CFR Sec. 300.142 regarding the conditions under which educational agencies may access a child's available benefits under public or private insurance programs (including Medicaid) to cover services that are required by the child's IEP. No substantive change in the existing requirements is intended. The proposed amendments will merely incorporate more of the federal regulatory language into the state rules. The United States Department of Education is requiring these amendments to maintain the state's continued eligibility for IDEA funding.

Copies of the proposed amendments may be obtained on the Special Education Office page of the Department's website at <http://sde.state.nm.us> (click on Programs, PED Programs H-Z, Special Education), by e-mail from [spedfeedback@sde.state.nm.us](mailto:spedfeedback@sde.state.nm.us) or from the Special Education Office, Public Education Department, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, phone 505-827-6541, fax 505-827-6791.

Interested individuals may testify at the public hearing or submit written comments by mail, fax or e-mail to the Special Education Office at any of the addresses above. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact the Special Education Office as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.



**NEW MEXICO  
RESPIRATORY CARE  
ADVISORY BOARD**

**PUBLIC RULE HEARING AND  
REGULAR BOARD MEETING**

Notice is hereby given that the New Mexico Respiratory Care Advisory Board will convene a public rule hearing at 1:00 p.m. on Friday, April 23, 2004. The hearing will be held at the Presbyterian Healthplex located at 6301 Forest Hills N.E. in Albuquerque, New Mexico.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Regulations in 16.23 NMAC: PART 2, "*Fees*"; PART 3, "*Qualifications for Practitioner License*"; PART 4, "*Application Procedures For Practitioner License*"; PART 9, "*Inactive Status For Practitioner License*"; PART 11, "*License Reactivation; License Lapse*"; PART 12, "*Continuing Education*"; and PART 13, "*Expanded Practice*"; and PART 14, "*Scope of Practice Guidelines For Non-Licensed, Non-Exempted Persons*". The Board will also be considering a new rule for adoption, "PART 19, *Unlicensed Activity; Disciplinary Proceedings; Civil Penalty*".

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2055 S. Pacheco, Suite 400, Santa Fe, New Mexico 87505; or call (505) 476-7121 or 476-7122; or access them in the "News" link on the Board's Website at [www.rld.state.nm.us/b&c/rcb](http://www.rld.state.nm.us/b&c/rcb). All written comments, mailed to the Board office or e-mailed to [RespiratoryCareBd@state.nm.us](mailto:RespiratoryCareBd@state.nm.us) or [Carmen.payne@state.nm.us](mailto:Carmen.payne@state.nm.us), must be submitted no later than Monday, April 12, 2004, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular business meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-7121 at least two weeks prior to the meeting or as soon as possible.

**NEW MEXICO RETIREE  
HEALTHCARE  
AUTHORITY**

**NEW MEXICO RETIREE  
HEALTHCARE AUTHORITY**

**NOTICE OF PUBLIC MEETING AND  
HEARING  
TO CONSIDER PROPOSED  
AMENDMENTS  
TO 2.81.6 NMAC AND 2.81.8 NMAC**

The purpose of this hearing is to obtain input on a proposed amendment to 2.81.6 NMAC, Retiree Spouse and Dependent Benefit Coverage Enrollment and proposed amendments to 2.81.8 NMAC, Independent Public Employer Option.

**I. SOLICITATION OF COM-  
MENTS**

The New Mexico Retiree Health Care Authority ("NMRHCA") is soliciting comments from the public on proposed amendments to 2.81.6 NMAC and 2.81.8 NMAC. On Tuesday, March 30, 2004, at 9:00 a.m., the NMRHCA will hold a public meeting to discuss proposed amendments to its spouse and dependent benefit coverage enrollment rule and its public employer option rule. The meeting will be held at the offices of the NMRHCA at 810 West San Mateo, Suite D in Santa Fe. The meeting will offer interested parties an opportunity to comment on the proposed amendment to the rule. In addition, interested persons can submit written comments before March 20, 2004, to Milton Sanchez, Executive Director, 810 West San Mateo, Suite D, Santa Fe, New Mexico 87505 regarding the proposed amendments to 2.81.6 NMAC and 2.81.8 NMAC.

If an individual with a disability is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the NMRCHA at 1-800-233-2576 as soon as possible. The text of the proposed rules can also be obtained from Milton Sanchez, Executive Director NMRHCA.

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

#### TITLE 21      AGRICULTURE AND RANCHING CHAPTER 17   PEST,    DISEASE, AND WEED CONTROL PART 42        COTTON    BOLL WEEVIL QUARANTINE

**21.17.42.1      ISSUING AGENCY:**  
New Mexico State University, New Mexico  
Department of Agriculture.  
[21.17.42.1 NMAC - N, 3/1/2004]

**21.17.42.2      SCOPE:** This rule  
establishes the restrictions to all persons  
transporting regulated articles into, through,  
or intrastate from quarantined areas of New  
Mexico and interstate into New Mexico  
from quarantined areas.  
[21.17.42.2 NMAC - N, 3/1/2004]

**21.17.42.3      S T A T U T O R Y  
AUTHORITY:** Granted to the board of  
regents of New Mexico state university  
under the Pest Control Act, Chapter 76,  
Article 6, Sections 1 through 9, NMSA  
1978 Compilation.  
[21.17.42.3 NMAC - N, 3/1/2004]

**21.17.42.4      D U R A T I O N :**  
Permanent.  
[21.17.42.4 NMAC - N, 3/1/2004]

**21.17.42.5      EFFECTIVE DATE:**  
March 1, 2004, unless a later date is cited in  
the history note at the end of a section.  
[21.17.42.5 NMAC - N, 3/1/2004]

**21.17.42.6      OBJECTIVE:** The  
objective of Part 42 of Chapter 17 is to  
establish a permanent cotton boll weevil  
quarantine to protect those cotton producing  
areas of New Mexico that have achieved  
eradication of the cotton boll weevil.  
[21.17.42.6 NMAC - N, 3/1/2004]

**21.17.42.7      DEFINITIONS:**

**A.      "Board"** means the  
board of regents of New Mexico state uni-  
versity or any officer or employee to whom  
authority to act in their stead has been or  
hereafter may be delegated.

**B.      "Certificate"** is a doc-  
ument issued or authorized by the board  
indicating that a regulated article is not con-  
taminated with a pest, a phytosanitary cer-  
tificate issued by an authorized representa-  
tive of the department allowing the move-  
ment of plants or plant products, or a docu-  
ment issued by an authorized representative

of the department allowing the movement  
of equipment or vehicles.

**C.      "Compliance agree-  
ment"** is a written agreement between the  
department and any person engaged in  
growing, distributing, handling, or moving  
regulated articles where the latter agrees to  
comply with conditions specified in the  
agreement to prevent the dissemination of  
the cotton boll weevil.

**D.      "Control district"** is a  
cotton boll weevil control district - any area  
duly established under the Cotton Boll  
Weevil Control Act wherein a program to  
suppress or eradicate the cotton boll weevil  
is administered.

**E.      "Cotton"** means all  
parts of cotton and wild cotton plants of the  
genera *Gossypium* and *Thurberia* grown for  
commercial or non-commercial use.

**F.      "Cotton lint"** means all  
forms of raw ginned cotton except linters  
and gin waste.

**G.      "Cotton products"**  
means seed cotton, cotton lint, linters, oil  
mill waste, gin waste, gin trash, cotton seed,  
cottonseed hulls and all other forms of  
unmanufactured cotton fiber.

**H.      "Cotton seed"** means  
the seed of the cotton plant, separated from  
lint.

**I.      "Department"** means  
the New Mexico department of agriculture.

**J.      "Director"** is the direc-  
tor of the New Mexico department of agri-  
culture.

**K.      "Eradicated area"** is  
an area apparently free of cotton boll weevil  
for which scientific documentation accept-  
able to the department has been provided  
that indicates that no cotton boll weevils  
were captured for a period of at least one  
cotton growing season by cotton boll weevil  
pheromone traps operated by an authorized  
control district, the department, an  
approved governmental agency, or other  
entity approved by the department.

**L.      "Functionally eradi-  
cated area"** is an area meeting the trapping  
criteria for a suppressed area with no con-  
firmed evidence of cotton boll weevil repro-  
duction occurring in the area and no ovipo-  
sition on the squares, and in which the  
movement of regulated articles presents a  
threat to the success of the cotton boll wee-  
vil eradication program. The cotton boll  
weevil population must be less than or equal  
to average of 0.001 cotton boll weevils per  
trap per week for the cotton growing season  
as measured by cotton boll weevil  
pheromone traps operated by an authorized  
control district, the department, an  
approved governmental agency, or other  
entity approved by the department.

**M.      "Gin notes"** are short  
fragments of unmanufactured cotton fiber  
removed from lint cleaners after ginning  
cotton.

**N.      "Gin trash"** is all  
material produced during the cleaning and  
ginning of seed cotton, bollies, or snapped  
cotton, includes burrs, does not include lint,  
linters, cotton seed, or gin waste.

**O.      "Gin waste"** is all  
forms of un-manufactured waste cotton  
fiber, including gin notes, resulting from  
the ginning of seed cotton.

**P.      "Infested"** means actu-  
ally infested with a cotton boll weevil or so  
exposed to infestation that it would be rea-  
sonable to believe that an infestation exists.

**Q.      "Limited permit"** is a  
document issued or authorized by a federal  
or state regulatory official to provide for the  
movement of regulated articles to a restrict-  
ed destination for limited handling, utiliza-  
tion, processing or treatment.

**R.      "Linters"** are residual  
un-manufactured cotton fibers separated  
from cotton seed after the lint has been  
removed.

**S.      "Oil mill waste"** is  
waste products, including linters, derived  
from the milling of cotton seed.

**T.      "Restricted area"** is an  
area designated as suppressed, functionally  
eradicated, or eradicated of cotton boll wee-  
vils as those terms are defined in this sec-  
tion.

**U.      "Seed cotton"** includes  
all forms of un-ginned cotton from which  
the seed has not been separated.

**V.      "Suppressed area"** is  
an area in which some cotton boll weevil  
reproduction may be present in the area or a  
portion thereof, and in which the movement  
of regulated articles presents a threat to the  
success of the cotton boll weevil eradication  
program. The cotton boll weevil population  
must be less than or equal to 0.025 cotton  
boll weevils per trap per week for the cot-  
ton-growing season as measured by cotton  
boll weevil pheromone traps operated by an  
authorized control district, the department,  
an approved governmental agency, or other  
entity approved by the department.

**W.      "Trap"** is a type of  
adult cotton boll weevil pheromone trap  
approved by New Mexico cotton boll wee-  
vil technical advisory committee or the  
department.

**X.      "Treatment"** is the act  
of eliminating possible cotton boll weevil  
infestation(s) or contamination by cleaning  
or by fumigation, in instances in which nor-  
mal cleaning will not eliminate the infesta-  
tion or contamination.

[21.17.42.7 NMAC - N, 3/1/2004]

**21.17.42.8 PEST:** Cotton boll weevil, *Anthonomus grandis* Boheman, in any living stage of development.  
[21.17.42.8 NMAC - N, 3/1/2004]

**21.17.42.9 AREAS UNDER QUARANTINE:**

**A. New Mexico:** Those areas of New Mexico not declared suppressed, functionally eradicated, or eradicated for cotton boll weevil.

**B. All other states:** All states or any portion of such states not declared suppressed, functionally eradicated, or eradicated for cotton boll weevil by a duly authorized agency.  
[21.17.42.9 NMAC - N, 3/1/2004]

**21.17.42.10 PROTECTED AREAS:**

**A. Suppressed areas:** The director may grant a request for declaration of an area as "suppressed" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.

**B. Functionally eradicated areas:** The director may grant a request for declaration of an area as "functionally eradicated" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.

**C. Eradicated areas:** The director may grant a request for declaration of an area as "eradicated" after a written recommendation is submitted to the department from an authorized control district or approved governmental agency, supported by scientific documentation acceptable to the department, indicating that movement of regulated articles into the area presents a threat to the success of cotton boll weevil eradication.  
[21.17.42.10 NMAC - N, 3/1/2004]

**21.17.42.11 REGULATED ARTICLES:**

**A.** Cotton boll weevil, in any living stage of development.

**B.** Cotton and cotton products.

**C.** Cotton harvesting equipment and other equipment associated with the production and transport of cotton, including, but not limited to, the following:

(1) Harvest equipment:  
(a) cotton pickers;  
(b) cotton strippers; or  
(c) other mechanical harvesting equipment.

(2) Handling and transport equipment:

(a) module builders;  
(b) module hauling equipment; and

(c) boll buggies and any other equipment or vehicles associated with cotton harvest.

(3) Miscellaneous associated equipment:

(a) trucks such as service trucks, parts trucks, harvesting equipment trucks;

(b) flatbed trailers, portable living quarters, fuel and all other support vehicles; and

(c) tractors, shredders, plows, discs, and other equipment associated with cotton production activities which have regulated articles present; and

(d) vehicles used to remove and/or transport cotton products.

**D.** Gin equipment previously used for the ginning of cotton.

**E.** All other products, articles, or means of conveyance not covered above when an inspector determines that they present a risk of a cotton boll weevil outbreak and the person in possession has been notified.  
[21.17.42.11 NMAC - N, 3/1/2004]

**21.17.42.12 RESTRICTIONS:**

**A. General:** Movement of regulated articles is prohibited in the following cases:

(1) from or through a quarantined area to an eradicated area, a functionally eradicated area, or a suppressed area;

(2) from or through a suppressed area to an eradicated area or a functionally eradicated area;

(3) from or through a functionally eradicated area to an eradicated area; or

(4) when the department determines the movement may cause an increase in infestation of cotton boll weevil.

**B. Exemptions:** The following are exempt from the requirements of Subsection A:

(1) cotton seed and vehicles transporting the seed;

(2) baled cotton, baled gin notes and linters and vehicles transporting baled cotton and baled gin notes and linter; and

(3) manufactured cotton products.

**C. Exceptions:** The following are exceptions to the restrictions in Subsection A of this section:

(1) Cotton harvesting equipment and other equipment associated with the production and transport of cotton as well as

used gin equipment, otherwise prohibited from movement by this regulation, may be moved to or through a restricted area provided the equipment is free of cotton products and cotton boll weevils in any stage of development or treated in one of the following manners:

(a) physical removal of hostable material including, but not limited to; removal by hand, high-pressure air cleaning; or high pressure washing; or

(b) fumigation of regulated articles as prescribed by the department.

(2) Cotton products and other regulated articles, otherwise prohibited from movement by these rules, may be transported to or through a restricted area provided that the producer, transporter, ginner, or other responsible party entered into a compliance agreement with the department and operates under its conditions.

(3) A USDA certificate of inspection (PPQ Form 540, used to certify equipment free of pink bollworm) showing that cotton harvesting equipment or other equipment associated with the production and transport of cotton, as well as used gin equipment, has been cleaned or fumigated is acceptable to the department as an exception to the restrictions set forth in Subsection A of this section.  
[21.17.42.12 NMAC - N, 3/1/2004]

**21.17.42.13 INSPECTIONS AND CERTIFICATES:**

**A.** Inspections:

(1) Within New Mexico: An inspection for movement of regulated articles is not required, but may be obtained upon request to the department and payment of fee.

(2) Outside New Mexico from a quarantine area: An inspection certificate issued by the state of origin, a USDA certificate of inspection (PPQ Form 540) or a limited permit shall be filed with the department prior to the movement of regulated articles into the state.

**B.** Certificates: An inspection certificate may be issued certifying the movement of regulated articles in compliance with these rules, for the current growing season, if an authorized representative of the department determines:

(1) adequate measures have been taken to ensure that there will be little or no danger of increased infestation of the quarantined pest or expansion of a regulated area by such movement; or

(2) the articles have been treated to eliminate infestation of the quarantined pest, for a specific location; or

(3) such movement will not result in the spread or increased infestation of the quarantined pest. Any certificate may be withdrawn or canceled if an authorized rep-

representative of the department determines that the use of the issued certificate may result in the spread of the quarantined pest. [21.17.42.13 NMAC - N, 3/1/2004]

**21.17.42.14 DISPOSITION OF VIOLATIONS:** Any regulated article arriving in New Mexico in violation of this rule shall be subject to immediate quarantine, and treated or otherwise disposed of as necessary to prevent spread or establishment of the pest in the state. Such treatment or disposal shall be at the expense of the owners or agents and under the direction of the New Mexico department of agriculture after proper notification to the owner or agent. Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978. In addition, the department may revoke or suspend any compliance agreements or certificates issued. [21.17.42.14 NMAC - N, 3/1/2004]

**21.17.42.15 LIABILITY DISCLAIMER:** The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.

**A.** All regulated articles are further subject to the provisions of any other law, regulation, or regulatory order of the state of New Mexico or the United States department of agriculture now in effect or which may hereafter be promulgated.

**B.** Regulated articles covered by this rule may be imported by an authorized governmental or private organization under special permit from the New Mexico department of agriculture. [21.17.42.15 NMAC - N, 3/1/2004]

**HISTORY OF 21.17.42 NMAC:**  
[RESERVED]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.2 NMAC, Sections 9 through 20 that will be effective on March 1, 2004. The Medical Assistance Division amended the above sections by including Clinical Nurse Specialists as Medicaid service providers. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.711 to comply with the NMAC requirements.

**8.310.2.9 MEDICAL SERVICE PROVIDERS:** Recipients who receive health care services under the New Mexico medicaid program (medicaid) Title XIX of the Social Security Act, are dependent on

the participation and cooperation of New Mexico medical providers to secure access to health care. To allow recipients a choice of medical service providers, the New Mexico medical assistance division (MAD) reimburses a variety of eligible providers for furnishing care. Physicians who participate in medical training programs as students, interns, residents, ~~[fellow]~~ fellows or any other training capacities ~~[can]~~ may furnish medical services. These providers ~~[cannot]~~ may not bill directly for services, unless they are licensed as physicians and are furnishing services ~~[outside]~~ within the scope of their medical education. Physicians, ~~[and certified nurse practitioners can]~~ certified nurse practitioners (CNP), and clinical nurse specialists (CNS) licensed in New Mexico, see 8.310.2.10 NMAC and 8.310.2.13 NMAC for specific details, may furnish services independently and [are] may be reimbursed directly for these services. Certified physician ~~[assistant can]~~ assistants (PAs) may furnish services to recipients, but ~~[cannot]~~ may not bill directly for services. Pharmacist clinicians ~~[can]~~ may furnish services to recipients under the direct supervision of a physician, but ~~[cannot]~~ may not bill directly for services. Physicians or professional component providers who supervise physician assistants and pharmacist clinicians are allowed to bill for the services performed by [physician assistants] PAs and pharmacist clinicians. This part describes eligible providers, covered services, service limitations, and general reimbursement methodologies.

[2/1/95; 4/30/97; 8.310.2.9 NMAC - Rn, 8 NMAC 4.MAD.711 & A, 3/1/04]

### 8.310.2.10 ELIGIBLE PROVIDERS:

**A.** Upon approval of the New Mexico medical assistance provider program ~~[agreements]~~ agreement by MAD, the following providers are eligible to ~~[be reimbursed]~~ bill and receive reimbursement for furnishing medical services:

(1) individuals licensed to practice medicine or osteopathy [42 CFR Section 440.50(a)(1)(2)]; practices or groups formed by these individuals ~~[can also be directly reimbursed]~~ may also receive direct reimbursement for medical services;

(2) facilities licensed as diagnostic and treatment centers by the licensing and certification bureau of the New Mexico department of health (DOH); the medical services performed in these facilities must be furnished by individual practitioners who are enrolled as medicaid providers;

(3) individuals licensed as certified nurse practitioners by the New Mexico board of nursing ~~[can]~~ may provide servic-

es in collaboration with a physician or as independent providers within the scope of their practice. See Section 61-3-23.2(B)(2) NMSA 1978 (Cum. Supp. 1992); ~~[and]~~

(4) physician assistants certified by the national commission on certification of ~~[Physician's Assistance]~~ physician assistants, inc. and licensed by the New Mexico board of medical examiners ~~[can]~~ may furnish services within the scope of their practice, as defined by state law; direction and supervision of physician assistants must be performed by the licensed physicians who are enrolled medicaid providers and are approved by the New Mexico board of medical ~~[examiner]~~ examiners as supervisory physicians.

(5) pharmacist clinicians certified by the New Mexico board of pharmacy ~~[can]~~ may furnish services within the scope of their practice, as defined by state law; direction and supervision of pharmacist clinicians must be performed by licensed physicians who are enrolled as medicaid providers and are approved by the New Mexico board of medical examiners as supervisory physicians[-]; and

(6) individuals licensed as clinical nurse specialists by the New Mexico board of nursing may provide services in collaboration with a physician or as independent providers within the scope of their practice; see NMSA 1978, 61-3-1 to 61-3-30.

**B.** Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received and understand these materials and for updating ~~[them]~~ their knowledge as new materials are ~~[received from]~~ provided by MAD. [2/1/95; 4/30/97; 8.310.2.10 NMAC - Rn, 8 NMAC 4.MAD.711.1 & A, 3/1/04]

**8.310.2.11 PROVIDER RESPONSIBILITIES:** Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*. Providers must verify that ~~[individuals are]~~ an individual is eligible for medicaid at the time services are [furnished and determine if medicaid recipients have other health insurance] rendered and determine if the medicaid recipient has other health care insurance. If the recipient has other insurance coverage in addition to medicaid, the provider must bill the other insurance, and receive payment or denial, prior to billing medicaid. Providers must maintain records ~~[which]~~ that are sufficient to fully disclose the extent and nature of the services furnished to recipients. See 8.302.1 NMAC, *General Provider Policies*.

[2/1/95; 8.310.2.11 NMAC - Rn, 8 NMAC 4.MAD.711.2 & A, 3/1/04]

**8.310.2.12 COVERED SERVICES:** Medicaid covers services and procedures ~~[which] that~~ are medically necessary for the diagnosis and treatment of an illness or injury as indicated by the recipient's condition. All services must be furnished within the limits of Medicaid policy and within the scope and practice of the provider's professional standards.

A. **Combined services:** Some services are considered Medicaid benefits but the reimbursement for the service is considered made or encompassed within another procedure or service. Medicaid does not ~~[pay] provide~~ an additional payment for these services. For ~~[instances]~~ example, an additional payment is not made for an incidental appendectomy performed during a laparotomy, ~~[though] although~~ an appendectomy is a covered service.

B. **Foot care:** ~~[Medicaid does not cover routine foot care procedures; however,]~~ Medicaid covers routine foot care if certain conditions of the foot, such as corns, warts, calluses and conditions of the nails, pose a hazard to recipients with a medical condition. Medicaid covers the treatment of warts on the soles of the feet (plantar warts). Medical justification for the performance of routine care must be documented in the recipient's medical record.

C. **Laboratory and diagnostic imaging services:** Medicaid covers medically necessary laboratory and diagnostic imaging services ordered by physicians ~~[or nurse practitioners]~~ CNPs, or CNSs and performed ~~[either in the office by providers or under their supervision in the office,]~~ by clinical laboratories or radiology laboratories, or by hospital-based clinical laboratories or radiology laboratories ~~[which] that~~ meet the requirements for Medicaid participation. See 42 CFR Section 440.30.

(1) Medicaid covers interpretation of diagnostic imaging with payment as follows.

(a) When diagnostic radiology procedures, diagnostic imaging, diagnostic ultrasound, or non-invasive peripheral vascular studies are performed in a hospital inpatient or outpatient setting, performing providers or the associations they form are paid only for the professional component of the service. Neither providers nor associations are paid for the global services when the procedures are performed in hospital settings.

(b) If both the following conditions are met, this limitation does not apply:

(i) recipients are not served in inpatient or outpatient ~~[of]~~ hospi-

tal facilities; and

(ii) hospitals did not bill for any component of the radiology procedures and did not include the cost associated with furnishing these services in their cost reports.

(2) Providers ~~[can] may~~ bill for the professional components of imaging services performed at a hospital or independent radiology laboratory if the provider does not request an interpretation by the hospital radiologist. In this case, neither the hospital nor hospital radiology laboratory can bill for the professional component.

(3) Only one professional component is paid per radiological procedure.

(4) Radiology professional components are not paid in the following instances when the same provider or provider group bills for professional components or interpretations and for the performance of the complete procedure. ~~[Claims for "supervision and interpretation only" are not paid when the same provider or provider group bills for the performance of the complete procedures.]~~

(5) Professional components associated with clinical laboratory services are payable only when the work is actually performed by pathologists who are not billing for global procedures and the work is for anatomic and surgical pathology only, including cytopathology, histopathology, and bone marrow biopsies.

(6) Specimen collection fees are payable when ~~[drawn] obtained~~ by venipuncture, arterial stick, or urethral catheterization, unless recipients are inpatients of nursing facilities or hospitals. See 8.324.2 NMAC [MAD-751], *Laboratory Services* and 8.324.3 NMAC [MAD-752], *Diagnostic Imaging and Therapeutic Radiology Services*.

D. **Pharmacy services:** Medicaid ~~[coverage of medication to] covers~~ injectable medications administered by physicians ~~[or under their direction] or other health care providers furnishing services within their scope of practice~~. See 8.324.4 NMAC [MAD-753], *Pharmacy Services*. Medicaid covers flu and pneumococcal vaccines when one of the following conditions ~~[exist] exists~~:

(1) acquired or congenital heart disease, such as valve disease, congestive heart failure or pulmonary overload;

(2) conditions ~~[which] that~~ compromise pulmonary function, renal function or immune mechanisms;

(3) metabolic disorders;

(4) severe anemia, including sickle cell diseases;

(5) ~~[individual is] age~~ sixty-five (65) years ~~[of age] or older~~; or

(6) conditions ~~[exist which are included] covered~~ in the seasonal recom-

mendations of the public health division.

E. **Procedures requiring consents or certifications:** Prior to performing medically necessary surgical procedures ~~[which] that~~ result in sterility, providers must complete a "consent to sterilization" or a "hysterectomy acknowledgement" form. See 8.325.3 NMAC [MAD-762], *Reproductive Health Services*.

F. **Reproductive health services:** See 8.325.3 NMAC [MAD-762], *Reproductive Health Services*.

G. **Second surgical opinions:** Medicaid covers second opinions when surgery is considered.

H. **Services performed in an outpatient setting:** Medicaid covers certain procedures performed in the office, clinic or as outpatient institutional services as alternatives to hospitalization. These procedures are those for which an overnight stay in a hospital is seldom necessary.

(1) Recipients ~~[can] may~~ be hospitalized if they have existing medical conditions ~~[which] that~~ predispose them to complications even with minor procedures.

(2) All these claims ~~[can] may~~ be subject to pre-payment or post-payment review.

(3) Medical justification for performance of these procedures in a hospital must be documented in the recipient's medical record.

[2/1/95; 8.310.2.12 NMAC - Rn, 8 NMAC 4.MAD.711.3 & A, 3/1/04]

### 8.310.2.13 SERVICE LIMITATIONS AND RESTRICTIONS:

Medicaid covers the following services with the frequency limits indicated. For purpose of these provisions, providers are considered part of the same provider group if they practice in the same office or clinic or have direct access to the recipient's medical records.

A. Office visits in a professional's office are limited to one per day from the same provider or provider group, unless the claim documents change in the recipient's condition ~~[which] that~~ could not have been anticipated at the first visit.

B. Hospital inpatient and nursing home visits are limited to two (2) per day from the same provider or provider group.

C. Physical medicine modalities are limited to three (3) per month. The limit is met when the same modality is performed three (3) times during a month, when three (3) different modalities are ~~[performed] performed~~ during a month, or when three (3) different modalities are performed during one visit.

D. Office visits for orthotic, prosthetic, activities of daily living assessment, or extremity or muscle testing

are limited to one per month per recipient. The time allowed for each visit cannot exceed forty-five (45) minutes.

E. Physical medicine procedures and kinetic activities are limited to three (3) per month from the same provider or provider group. The limit is met when the same procedure is performed three (3) times during a month, when three (3) different procedures are performed during a month, or when three (3) procedures are performed during one visit. The time allowed for each procedure cannot exceed forty-five (45) minutes.

F. Manipulation, osteo-manipulative therapy, or myofascial release is limited to three (3) manipulations per month, regardless of the area or areas manipulated. The limit is met when a manipulation of three (3) different areas or of the same area at three (3) different visits is performed during a month. Medicaid does not cover manipulations ~~done~~ performed on recipients under fourteen (14) years of age ~~or~~ including manipulations to the ~~foot~~ feet.

G. Clinical nurse specialists are reimbursed directly for services rendered in federally qualified health centers (FOHCs), rural health centers (RHCs), and certain other free-standing clinical settings where a CNS is authorized to practice independently. A CNS will not be reimbursed directly by Medicaid when providing services in a hospital setting, as these services are reimbursed under the diagnosis related group (DRG) methodology. The exception is CNSs certified in psychiatric nursing who provide psychiatric nursing services as mid-level providers in free-standing psychiatric hospitals or psychiatric units in acute care hospitals. These CNSs will be reimbursed directly.  
[2/1/95; 8.310.2.13 NMAC - Rn, 8 NMAC 4.MAD.711.4 & A, 3/1/04]

**8.310.2.14 NON COVERED SERVICES:** Medical service providers are subject to the limitations and coverage restrictions ~~which~~ that exist for other Medicaid services. See 8.301.3 NMAC [MAD-602], *General Noncovered Services*.  
[2/1/95; 8.310.2.14 NMAC - Rn, 8 NMAC 4.MAD.711.5 & A, 3/1/04]

**8.310.2.15 PRIOR [APPROVAL] AUTHORIZATION AND UTILIZATION REVIEW:** All Medicaid services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished ~~and~~, before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior [Approval] Authorization and Utilization Review*. Once enrolled, providers receive

instructions and documentation forms necessary for prior ~~approval~~ authorization and claims processing.

A. **Prior [approval] authorization:** Certain procedures or services may require prior ~~approval~~ authorization from MAD or its designee. Services ~~for which prior approval was obtained~~ requiring prior authorization remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** Prior ~~approval~~ authorization of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for Medicaid at the time services are furnished and determine if a Medicaid ~~recipients have~~ recipient has other health care insurance.

C. **Reconsideration:** Providers who disagree with ~~prior approval request denials~~ denials of prior authorization requests or other review decisions ~~can~~ may request a re-review and a reconsideration. See 8.350.2 NMAC [MAD-953], *Reconsideration or Utilization Review Decisions*.  
[2/1/95; 8.310.2.15 NMAC - Rn, 8 NMAC 4.MAD.711.6 & A, 3/1/04]

**8.310.2.16 GENERAL REIMBURSEMENT:** Medical service providers must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2 NMAC [MAD-702], *Billing for Medicaid Services*. Once enrolled, ~~provider~~ providers receive instructions on documentation, billing and claims processing.

A. Reimbursement to providers is made at the lesser of the following:

- (1) the provider's billed charge;  
or  
(2) the MAD fee schedule for the specific service or procedure.

B. The ~~provider's~~ billed charge must be ~~their~~ the provider's usual and customary charge for the service or procedure.

C. "Usual and customary" charge refers to the amount ~~which~~ that the provider charges the general public in the majority of cases for a specific procedure or service.

D. **Maximum allowed reimbursement amounts:** MAD establishes a maximum allowed reimbursement level for services ~~which are~~ not assigned relative value units. Established payment levels for new or infrequently billed procedures and services, such as tangible items, are contained in individualized billing sections of this manual.

~~E. Administrative fee for primary care network providers: MAD~~

~~pays each primary care network (PCN) provider a monthly administrative fee for each PCN member who is enrolled with that provider.]~~  
[2/1/95; 8.310.2.16 NMAC - Rn, 8 NMAC 4.MAD.711.7 & A, 3/1/04]

**8.310.2.17 REIMBURSEMENT FOR HOSPITAL-BASED SERVICES:** Reimbursement for office visits, diagnostic procedures, or surgical services furnished in hospital settings that are ordinarily furnished in a provider's office is paid at sixty percent (60%) of the fee schedule allowed amount for each professional service. Medicaid follows Medicare principles in determining which procedures are subject to this payment reduction. Providers must notify MAD when they intend to bill facility and professional components for services ~~occurring~~ performed in a hospital setting. Non-professional components for laboratory services performed ~~within~~ in a hospital setting must be billed by the institutional provider.  
[2/1/95; 8.310.2.17 NMAC - Rn, 8 NMAC 4.MAD.711.8 & A, 3/1/04]

**8.310.2.18 REIMBURSEMENT FOR CERTIFIED NURSE PRACTITIONERS AND CERTIFIED CLINICAL SPECIALISTS:** Reimbursement for ~~certified nurse practitioners who bill through physicians~~ CNPs and CNSs who bill under a physician's provider number is the same as the allowed amount if similar services are furnished by physicians. If ~~certified nurse practitioners bill~~ a CNP or CNS bills independently, the paid amount is ninety percent (90%) of the amount allowed when similar services are furnished by physicians.  
[2/1/95; 8.310.2.18 NMAC - Rn, 8 NMAC 4.MAD.711.9 & A, 3/1/04]

**8.310.2.19 REIMBURSEMENT FOR SERVICES FURNISHED BY INTERNS OR RESIDENTS:**

A. **Reimbursement in approved teaching programs:** Reimbursement for services furnished by interns or residents in hospitals with approved teaching programs or services furnished in other hospitals ~~which~~ that participate in teaching programs is made through institutional reimbursement. Medicaid cannot be billed directly ~~by interns or residents~~ for these services.

B. **Services performed in outpatient and emergency room settings:** Medical or surgical services performed by interns or residents in hospital outpatient departments or emergency rooms, ~~which~~ that are unrelated to educational services, are reimbursed according to the fee schedule for physician services when all of the

following provisions are met:

(1) services are identifiable physician services [~~which must be performed by physicians~~] that are performed by the physician in person;

(2) services must contribute to the diagnosis or treatment of the recipient's medical conditions;

(3) interns or residents are fully licensed as physicians;

(4) services are performed under the terms of a written contract or agreement and can be separately identified from services required as part of the training program; and

(5) services are excluded from outpatient hospital costs.

(6) when these criteria are met, the services are considered to have been furnished by the individuals in their capacity as physicians and not as interns or residents.

**C. Services of assistant surgeons in approved teaching programs:**

(1) Medicaid does not pay for the services of assistant surgeons in facilities with approved teaching programs since residents are available to perform services, unless the following exceptional medical circumstances exist:

~~[(1) Failure to schedule a resident's time adequately is not an exception.~~

(2) Reimbursement can be made for an assistant surgeon's services when one of the following applies:]

(a) an assistant surgeon is needed due to unusual medical circumstances;

(b) the surgery is performed by a team of physicians during a complex procedure; or

(c) the presence of, and active care by, a physician of another specialty is necessary during surgery due to the recipient's medical condition.

(2) This reimbursement policy cannot be circumvented by private contractors or agreements entered into by hospitals with physicians or [~~physician~~] physician groups.

[2/1/95; 8.310.2.19 NMAC - Rn, 8 NMAC 4.MAD.711.10 & A, 3/1/04]

**8.310.2.20 REIMBURSEMENT LIMITATIONS:**

**A. Assistants in surgery:** [~~Services of~~] Physicians who assist during surgery are reimbursed at twenty percent (20%) of the allowed primary surgeon amount. Physician assistants [~~and certified nurse practitioners~~] CNPs, midwives, and CNSs are not eligible to [~~be reimbursed~~] receive reimbursement for assisting [~~in~~] during surgery.

**B. [~~Hospital visits and~~ Critical care services:** [~~Providers are not reimbursed for more than two (2) hospital~~

~~visits per recipient per day.]~~ Reimbursement for extensive physician care [~~by physician~~] of a critically ill recipient is based on the fee schedule.

**C. Laboratory and diagnostic imaging:** Reimbursement for laboratory services is not made directly to providers unless the tests are performed in their offices. Laboratory services [~~are subject to~~] must be consistent with the provisions of the Clinical Laboratory Improvement Act (CLIA). Reimbursement for the professional component of diagnostic imaging services in inpatient, outpatient, or office settings [~~does~~] may not exceed forty percent (40%) of the allowed amount payable for the global procedure in office settings. Nuclear medicine, radiation oncology, computer tomography (CT) scans, and arteriograms are excluded from this limitation. See 8.324.2 NMAC [MAD-751], *Laboratory Services* and 8.324.3 [MAD-752], *Diagnostic Imaging and Therapeutic Radiology Services*.

**D. Maternity services:** Reimbursement for maternity care is based on one global fee. Routine prenatal, delivery and post-natal care are included in the global fee. Services related to false labor and induced labor are also included in the global fee.

(1) If partial services are furnished by multiple providers, such as prenatal care only, one or two trimesters of care only, or delivery only, the procedure codes billed must reflect the actual services performed. The date of services must be the last day services were furnished for that specific procedure code. Total payments made to all providers involved in furnishing services cannot exceed the total single global fee.

(2) Medicaid pays a modifier for high-risk pregnancies or for complicated pregnancies. The determination of high risk is based on a claims review.

(3) Based on the eligibility category, medicaid pays only for pregnancy-related services. The determination of whether services are related or non-related to pregnancy is based on the diagnosis.

**E. Physician assistant services:** Reimbursement for services furnished by [~~certified physician assistants~~] PAs is made to the billing supervisory physician or group.

**F. Surgical procedures:** Reimbursement for surgical procedures is subject to certain restrictions and limitations.

(1) When multiple procedures, [~~which~~] that add significant time or complexity to care, are furnished during the same operative session, the major procedure is reimbursed at one hundred percent (100%) of the allowable amount, the sec-

ondary procedure is reimbursed at fifty percent (50%) of the allowable amount and any remaining procedures are reimbursed at twenty-five percent (25%) of the allowable amount. Multiple procedures occurring in one incision are reimbursed similarly.

(a) "Multiple surgery" is defined as multiple surgical procedures billed by the same physician for the same patient on the same date of service.

(b) Without specific indications from providers, the procedure for which providers bill the highest amount is considered the major procedure, the procedure for which providers bill the next highest amount is considered the secondary procedure. Any additional procedures are considered remaining procedures.

(2) Bilateral procedures [~~which~~] that are furnished in the same operative session are billed as one service with a modifier of [~~fifty (50)~~] 50. Reimbursement for bilateral procedures is 150 percent (150%) of the amount allowed for a unilateral procedure.

(3) Surgeons are not reimbursed for the performance of incidental procedures, such as incidental appendectomies, incidental scar excisions, puncture of ovarian cysts, simple lysis of adhesions, simple repair of hiatal hernias, or tubal ligations done in conjunction with cesarean sections.

(4) Providers are not reimbursed for performing complete physical examinations or histories during follow-up treatment after a surgical procedure.

(5) Hospital visits are included in the payment for [~~surgery~~] surgical procedures and are not reimbursed separately.

(6) Other health care related to a surgery is considered to be reimbursed in the payment for the surgery and is not paid as a separate cost. Surgical trays and local anesthesia are included in the reimbursement for the surgical procedure.

(7) Under certain circumstances, the skills of two surgeons, usually with different surgical [~~sub specialties, can~~] specialties may be required in the management of a specific surgical problem. The total allowed value of the procedure is increased by twenty-five percent (25%) and each surgeon is paid fifty percent (50%) of that amount.

**G. Pharmacist clinicians:** Reimbursement for services furnished by certified pharmacist clinicians is made to the billing supervisory physician or group. [2/1/95; 4/30/97; 8.310.2.20 NMAC - Rn, 8 NMAC 4.MAD.711.11 & A, 3/1/04]



## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.1 NMAC, Sections 12, 13 and 14, effective March 17, 2004.

**16.44.1.12 YELLOW PAGE ADVERTISEMENT:** In accordance with the Professional Licensing Act of Architects, Surveyor, Engineers and Landscape Architects the following procedure shall apply to advertising:

**A.** Individuals representing other disciplines, professions, or skills are listed they must be identified by the particular skill area.

**B.** When advertising in a discipline area there must be a New Mexico registrant in that field who can legally bind the company, corporation or business.

**C.** If only registrants within the profession or discipline are being listed, no special identification is required.  
[16.44.1.12 NMAC - N, 10-05-02; N, 3-17-04]

**16.44.1.13 DESIGN COMPETITION:** A landscape architect licensed in another jurisdiction must be licensed in New Mexico before participating partaking or bidding in any design competition in New Mexico.  
[16.44.1.13 NMAC - N, 3-17-04]

~~[16.44.1.12]~~ **16.44.1.14 BOARD REGULATION:** Adoption, amendment, or repeal of regulation. Board regulations may be adopted, amended, repealed, or superseded by rule making proceedings pursuant to applicable provisions of the Act, the Uniform Licensing Act, and the State Rules Act.  
[16.44.1.14 NMAC - Rn, 16.44.1.12 NMAC, 3-17-04]

## NEW MEXICO LIVESTOCK BOARD

This is an amendment to the part name of 21.30.4 NMAC, and Sections 7 and 11 effective 2-27-2004.

**TITLE 21 AGRICULTURE  
AND RANCHING  
CHAPTER 30 ANIMALS AND ANIMAL  
INDUSTRY GENERAL PROVISIONS  
PART 4 EXOTIC PESTS  
AND FOREIGN ANIMAL DISEASES**

**21.30.4.7 DEFINITIONS:**

**A.** "Board" means the New Mexico livestock board.

**B.** "Director" means the executive director of the New Mexico livestock board.

**C.** "Inspector" means any duly authorized or commissioned officer of the livestock board.

**D.** "Livestock" means cattle, sheep, swine, bison, goats, horses, mules, asses, poultry, ratites, camelids, and farmed cervidae.

**E.** "Hold order" means a directive by the New Mexico livestock board by or through the state veterinarian to stop movement of certain livestock because of the possibility those livestock are diseased or exposed to a contagious disease, but the disease has not been confirmed in those livestock.

**F.** "Premises" means a place where livestock is held for personal or commercial purposes.

**G.** "Restricted zone" a defined geographic portion of the state.  
[3-1-99; 21.30.4.7 NMAC - Rn & A, 21 NMAC 30.4.7, 5-15-2001; A, 2-27-2004]

### **21.30.4.11 TUBERCULOSIS ERADICATION**

**A.** The New Mexico livestock board will adhere to the Code of Federal Regulations and the Uniform Methods and Rules for Bovine Tuberculosis Eradication.

**B. Restricted zone livestock movement protocol.**

**(1)** All livestock movement must be approved by the New Mexico livestock board (NMLB) state veterinarian or by a NMLB approved agent. All livestock movement requires an official certificate of livestock inspection.

**(2)** Livestock check points are deliberate obstructions of traffic by physical means on a roadway for the specific purpose of livestock movement control.

**(3)** Livestock check points will be established by executive order based on location, authorization and safety.

**(4)** Livestock check points will be operated by a NMLB livestock inspector or by a NMLB approved agent.

**(5)** All livestock, in transition, upon approaching a livestock check point, will be stopped for transportation validation.

**(6)** All livestock, in transition near the geographical location of the restricted zone, will be stopped for transportation validation, at the discretion of the livestock inspector.

**(7)** All road stops will be initiated by a livestock inspector that has been certified as law enforcement peace officer or by any certified peace officer of the state.  
[21.30.4.11 NMAC - N, 2-27-2004]

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 16 OPTOMETRIC  
PRACTITIONERS  
PART 9 INACTIVE STATUS**

**16.16.9.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry.  
[16.16.9.1 NMAC - N, 03-15-2004]

**16.16.9.2 SCOPE:** Part 9 of Chapter 16 applies to all New Mexico optometry licensees who are not practicing in New Mexico, but are actively practicing in another state and would like to place their New Mexico licenses on inactive status rather than allow those licenses to expire, and possibly lapse.  
[16.16.9.2 NMAC - N, 03-15-2004]

**16.16.9.3 STATUTORY AUTHORITY:** The authority for Part 9 of Chapter 16 is Section 61-2-12 and 61-2-6.D, NMSA 1978, (2003 Repl. Pam.).  
[16.16.9.3 NMAC - N, 03-15-2004]

**16.16.9.4 DURATION:** Permanent.  
[16.16.9.4 NMAC - N, 03-15-2004]

**16.16.9.5 EFFECTIVE DATE:** March 15, 2004, unless a later date is cited at the end of a section.  
[16.16.9.5 NMAC - N, 03-15-2004]

**16.16.9.6 OBJECTIVE:** The objective of Part 9 of Chapter 16 is to set forth the requirements and procedures for placing a New Mexico license on inactive status. Through the inactive status process, licensees who live and practice outside of New Mexico can keep their New Mexico licenses valid instead of allowing them to expire and perhaps subsequently become null and void and lapse. Furthermore, the board can still ensure that these licensees are continuing the educational process and keeping up with advancements in the profession in the event they ever take up residence in New Mexico and/or choose to practice optometry in New Mexico.  
[16.16.9.6 NMAC - N, 03-15-2004]

**16.16.9.7 DEFINITIONS:**

**A.** "Valid license" means a license that is subject to regulation by, and statutory authority of, the board.

**B.** "Active status" means the license is valid and current and that the licensee is authorized by the board to prac-

tice optometry in New Mexico.

**C. "Expired status"** means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

**D. "Inactive status"** means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, because the licensee is in active and current practice in another state.

**E. "Null and void status"** means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

**F. "Lapsed license"** means a license that is null and void. [16.16.9.7 NMAC - N, 03-15-2004]

**16.16.9.8 REQUIREMENTS FOR INACTIVE STATUS:** A licensee whose license is in good standing with the board, and who is practicing in another state, may request his/her license be placed on inactive status by meeting the following requirements:

**A.** Complete, sign, and return the renewal application form, specifying the intent to be placed on inactive status.

**B.** Submit verifications for the required number of continuing education hours.

**C.** Remit the required inactive status fee (see 16.16.2.18 NMAC).

**D.** Return the application postmarked on or before the license expiration date. [16.16.9.8 NMAC - N, 03-15-2004]

**16.16.9.9 INACTIVE STATUS NOTIFICATION:** Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status. [16.16.9.9 NMAC - N, 03-15-2004]

**16.16.9.10 PRACTICE PROHIBITED:** During the period of inactive status, the optometrist is prohibited from practicing optometry in the State of New Mexico. [16.16.9.10 NMAC - N, 03-15-2004]

**16.16.9.11 NOTIFICATION OF INTENT TO REACTIVATE LICENSE:** Any optometrist who has placed his/her license on inactive status as provided in 16.16.9.8 NMAC may, within five years from the official date his/her license was

placed on inactive status, notify the board in writing of his/her desire to practice in New Mexico. The applicant shall provide the following information.

**A.** The New Mexico license number.

**B.** The applicant's full name.

**C.** The applicant's home address and phone number.

**D.** The date the applicant's license was originally issued.

**E.** The date the applicant's license was placed on inactive status.

**F.** Proof that the licensee was in active practice in another licensing jurisdiction during the period of inactive status in New Mexico.

**G.** Licensure status verification(s) sent directly to the board by the licensee's other licensing jurisdiction(s). [16.16.9.11 NMAC - N, 03-15-2004]

**16.16.9.12 REACTIVATION PROCESS:** Upon receipt of the written request required in 16.16.9.12 NMAC, the board shall provide the applicant with a reactivation from inactive status form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license.

**A.** The reactivation fee shall be the total of the renewal fees for each year the license was in inactive status.

**B.** Continuing education shall be at the current requirement of board-approved continuing education taken for each year during the inactive status period, and the provisions set forth in Subsection A of 16.16.13.8 NMAC related to optometrists holding certification in ocular therapeutics will apply for each year in retired status.

**C.** One year's continuing education requirement shall be taken during the year immediately preceding reactivation of the license.

**D.** No late renewal penalty fees will be assessed for the years the license was on inactive status. [16.16.9.12 NMAC - N, 03-15-2004]

**16.16.9.13 REACTIVATION APPLICATION REVIEW:** The optometrist shall return the completed, signed, and notarized reactivation from inactive status form, the required fee(s), and copies of the continuing education proofs of attendance certificates to the board office. [16.16.9.13 NMAC - N, 03-15-2004]

**16.16.9.14 REACTIVATION APPROVED:**

**A.** If the board finds the request for reactivation and reactivation

application in order and is satisfied that the applicant has fulfilled the requirements as specified; the board shall reactivate the applicant's license.

**B.** The optometrist may not practice optometry in New Mexico until the reactivated license has been received from the board. [16.16.9.14 NMAC - N, 03-15-2004]

**16.16.9.15 INELIGIBILITY FOR REACTIVATION:**

**A.** The optometrist whose license was on inactive status in New Mexico will be ineligible for license reactivation if he or she is under investigation, is facing disciplinary proceedings, or has had a disciplinary action taken against his or her license in any jurisdiction while on inactive status in New Mexico.

**B.** An optometrist whose application for reactivation from inactive status has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act. [16.16.9.15 NMAC - N, 03-15-2004]

**16.16.9.16 TIME LIMITATION ON INACTIVE STATUS LICENSE:**

**A.** Licenses on inactive status that are not reactivated within five (5) years from the date the inactive status was approved, shall become null and void (lapsed). Null and void (lapsed) licenses may not be reactivated.

**B.** In order to practice optometry in New Mexico, the optometrist whose New Mexico license has become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board. [16.16.9.16 NMAC - N, 03-15-2004]

**History of 16.16.9 NMAC:** [RESERVED]

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 16 OPTOMETRIC PRACTITIONERS PART 20 OPTHALMIC LENSES**

**16.16.20.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry. [16.16.20.1 NMAC - N, 03-15-2004]

**16.16.20.2 SCOPE:** Part 20 of

Chapter is written to provide information about the prescribing of ophthalmic lenses for eyeglasses.

[16.16.20.2 NMAC - N, 03-15-2004]

**16.16.20.3 STATUTORY**

**AUTHORITY:** The authority for Part 20 of Chapter 16 is NMSA 1978, Sections 61-2-1 to 61-2-18 (2003 Repl. Pamp.).

[16.16.20.3 NMAC - N, 03-15-2004]

**16.16.20.4 DURATION:** Permanent.

[16.16.20.4 NMAC - N, 03-15-2004]

**16.16.20.5 EFFECTIVE DATE:**

March 15, 2004, unless a later date is cited at the end of a section.

[16.16.20.5 NMAC - N, 03-15-2004]

**16.16.20.6 OBJECTIVE:** The objective of Part 20 of Chapter 16 is to set forth rules related to the prescribing and dispensing of ophthalmic lenses and eyeglasses.

[16.16.20.6 NMAC - N, 03-15-2004]

**16.16.20.7 DEFINITIONS:**

**A. "Ophthalmic lens"** means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses.

**B. "Eyeglasses"** means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in the anomalies of human vision.

[16.16.20.7 NMAC - N, 03-15-2004]

**16.16.20.8 OPTHALMIC PRESCRIPTION:**

**A.** A prescription written for ophthalmic lenses shall include the following:

- (1) the dioptric power of spheres, cylinders and prisms;
- (2) the axes of cylinders;
- (3) the position of the prism base;
- (4) the designation of the pupillary distance;

- (5) the name of the patient;
- (6) the date of the prescription;
- (7) the expiration date of the prescription; and

(8) the name and address of the prescriber

**B.** If so desired by the prescriber, the light transmission properties and the lens curve values may be included as well.

[16.16.20.8 NMAC - N, 03-15-2004]

**16.16.20.9 AUTHORITY OF PERSON WHO SELLS AND DISPENSES EYEGLASSES:** A person who sells and dispenses eyeglasses upon the written

prescription of an optometrist, physician, or surgeon may determine the following:

**A.** the type, form, size, and shape of the ophthalmic lens;

**B.** the placement of optical centers for distance-seeing and near-work;

**C.** the designation of type and placement of reading segments in multivision lenses;

**D.** the type and quality of frame or mounting;

**E.** the type of bridge and distance between lenses;

**F.** the type, length and angling of temples; and

**G.** the designation of pupillary distance.

[16.16.20.9 NMAC - N, 03-15-2004]

**16.16.20.10 UNPROFESSIONAL CONDUCT RELATED TO OPTHALMIC LENSES:**

**A.** Refusing to provide the patient with his/her eyeglass prescription if the prescription is under a year old; or

**B.** Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

[16.16.20.10 NMAC - N, 03-15-2004]

**History of 16.16.20 NMAC:** [RESERVED]

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 5, 14 and 18 of 16.16.2 NMAC effective 03-15-2004.

**16.16.2.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section ~~for Paragraph~~.

**16.16.2.14 LATE PENALTY FEE:** ~~[\$100.00]~~ \$300.00

**16.16.2.18 INACTIVE STATUS FEE:** \$225.00

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 5, 9, and 12 of 16.16.3 NMAC effective 03-15-2004.

**16.16.3.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section ~~for Paragraph~~.

**16.16.3.9 APPLICATION**

**REQUIREMENTS:** In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least ~~[forty five (45)]~~ sixty-five (65) days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than ~~[thirty]~~ forty (40) days prior to the requested examination[?].

**A.** A copy of the applicant's birth certificate certified by a notary public to be a true and correct copy of the original[?].

**B.** Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery[?].

**C.** Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant[?].

**D.** A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education[?].

(1) An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

(2) The letter must be postmarked before the ~~[30 day]~~ forty-day documentation deadline[~~and~~].

(3) The completed, official transcript must be received by the board before the scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

**E.** A statement and copy of other state license(s) held by the applicant[?].

**F.** A recent, passport-type photograph of the applicant. The applicant must sign the back of the photograph in the presence of the notary who is also witnessing the applicant's signature on the board-approved exam application form[?].

**G.** An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pamp.)[?].

**H.** A complete professional resume or curriculum vitae' [;].

**I.** A verification from an accredited optometry school of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of twenty (20) post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC [;].

**J.** Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed Part I, Part II, Part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC [;].

**(1)** If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

**(2)** Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

**K.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

**L.** Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

**16.16.3.12 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and [~~a hard copy file was created by Board staff~~] board staff created a file.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 5, 9, and 12 of 16.16.4 NMAC effective 03-15-2004.

**16.16.4.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.4.9 APPLICATION REQUIREMENTS:** At least [~~forty five (45)~~] sixty-five (65) days prior to the next scheduled examination every applicant for licensure by endorsement must submit to the board office the required application-processing fee with a letter of intent stating the date of examination for which he/she wishes to be scheduled. The following items must be received by the board office at least [~~thirty (30)~~] forty (40) days prior to the regularly scheduled board examination for which the applicant wishes to be scheduled.

**A.** A copy of the applicant's birth certificate certified by a notary public to be a true and correct copy of the original [;].

**B.** An affidavit that the applicant has not at any time preceding application been engaged in any optometric practice of an illegal or unethical nature as defined in the Optometry Act [;].

**C.** Copy(ies) of any other state license(s) held by the applicant [;].

**D.** Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant [;].

**E.** A complete, official optometry transcript showing the applicant's graduation sent directly to the board office by a college of optometry as approved by the American optometric association's council on optometric education [;].

**F.** Letters of reference from two currently licensed optometrists in the endorsing state of licensure.

**G.** Verification of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology from an accredited institution [;].

**H.** A complete professional resume or curriculum vitae' to date [;].

**I.** A completed, signed, and notarized board-approved exam application form [;].

**J.** The required application and examination [~~fee~~] fees (16.16.2.8 NMAC and 16.16.2.9 NMAC) [;].

**K.** A recent, passport-type photograph of the applicant which the applicant has signed on the back in the presence

of the notary public who is also witnessing the applicant's signature on the application form [~~and~~].

**L.** Verifications of licensure status sent directly to the board from all state licensing boards where the applicant is or has ever been licensed. Endorsement candidates will require the following information:

**(1)** verification that the applicant has been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made to the board office;

**(2)** verification that the applicant has completed fourteen (14) days, or one hundred twelve (112) hours of continuing education during the immediate seven years prior to the application, providing that at least sixteen (16) of those hours were completed within the immediate prior year; and

**(3)** verification of examination requirements which the applicant met to be licensed to practice in that state (See 16.16.4.8 NMAC).

**M.** Verification must be provided for pre-1994-1995 academic year optometry school graduates of successful completion of a minimum twenty (20) hour course in clinical pharmacology as set forth in Subsection B of 16.16.7.11 NMAC.

**N.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a Board member or a clinical examiner for the board. Failure to provide this information prior to the examination may disqualify the candidate from the exam.

**O.** Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

**16.16.4.12 INCOMPLETE APPLICATIONS PURGED:** Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and [~~a hard copy file was created by Board staff~~] board staff created a file.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 5 and 8 of 16.16.5 NMAC effective 03-15-2004.

**16.16.5.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

### 16.16.5.8 NATIONAL STANDARDS EXAMINATION:

**A.** As of January 15, 1995, all candidates, except those who have met the qualification requirements set forth in Subsections A and B of 16.16.4.8 NMAC and have been approved by the board as candidates for licensure by endorsement, shall be required to pass Part I, Part II, Part III, and the TMOD of the NBEO national standards examination as a prerequisite to sitting for the board's licensing examination.

**B.** [RESERVED]

**C.** Official notice of examination scores for all required parts of the NBEO examination must be received directly from the NBEO.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 3 and 5 of 16.16.7 NMAC; and adds a new Section, 14, to 16.16.7 NMAC effective 03-17-2004.

**16.16.7.3 STATUTORY AUTHORITY:** The authority for Part 7 of Chapter 16 is NMSA 1978 Section 61-2-6.D. (10); Section 61-2-10; Section 61-2-10.2; Section 61-2-10.3.A. and Section 61-2-6.D. (1) and (2) (1995 Repl. Pamp.)

**16.16.7.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.7.14 PRESCRIPTION FOR PHARMACEUTICAL AGENTS:** A prescription written for a topical ocular pharmaceutical agent or for an oral pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, that bears the following items:

**A.** the name and address of the prescriber;

**B.** the prescriber's professional designation;

**C.** the name and address of

the patient;

**D.** the name and quantity of the agent being prescribed;

**E.** directions for the use of the agent;

**F.** the prescription issue date; and

**G.** the number of refills allowed.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to 1, 5, and 7 of 16.16.10 NMAC effective 03-15-2004.

**16.16.10.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry [~~725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170~~].

**16.16.10.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.10.7 DEFINITIONS:** [~~"expired license" means a license no longer current due to non-renewal, but still within the 90 day grace period. The licensee may still practice optometry in New Mexico.~~]

"Expired license" means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC. Practice under an expired license is not allowed after the thirty-day grace period following the expiration date.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

Part name amended: License Expiration [~~Revocation~~] Due To Non-Renewal; Reactivation

This is an amendment to Sections 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of 16.16.11 NMAC, effective 03-15-2004.

**16.16.11.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry [~~2055 South Pacheco Suite 400 Santa Fe, New Mexico 87505 (505) 476-7124~~].

**16.16.11.2 SCOPE:** Part 11 of Chapter 16 applies to licensees whose licenses have expired [~~or have been revoked~~] due to non-renewal and who wish

to reactivate their license.

**16.16.11.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.11.6 OBJECTIVE:** The objective of Part 11 of Chapter 16 is to set forth regulations on expiration [~~and/or revocation~~] of an optometry license due to non-renewal and the requirements for reactivation of the license. When a licensee fails to renew or reactivate an expired license after a certain time period and the license becomes null and void and lapses, the board requires a reapplication process to re-test the applicant for competence to practice the profession in New Mexico, ensuring continued competence and thereby protecting the health, safety, and welfare of the public.

**16.16.11.7 DEFINITIONS:** [~~RESERVED~~]

**A.** "Valid license" means a license that is subject to regulation by, and statutory authority of, the board.

**B.** "Active status" means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

**C.** "Expired status" means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC. Practice under an expired status license is not allowed after the thirty-day grace period following the expiration date

**D.** "Inactive status" means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, because the licensee is in active and current practice in another state.

**E.** "Null and void status" means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

**F.** "Lapsed status" means a license that is null and void.

**G.** "Retired status" means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for period after the license was placed on retired status as specified in 16.16.12.15 NMAC.

**16.16.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL:**

Licenses not renewed with a postmark date on or before ~~[July 1]~~ the expiration date, as set forth in 16.16.10.8 NMAC, shall be expired on the basis that the renewal application was not duly and properly made as required by board regulations.

**16.16.11.9 LATE PENALTY FEE:** Expired licenses not renewed with a postmark date on or before ~~[September 1]~~ the license expiration date, as set forth in 16.16.10.8 NMAC, shall be subject to the required late penalty fee, as provided in 16.16.2.14 NMAC, in addition to the renewal fee, as provided in 16.16.2.13 NMAC.

**16.16.11.10 ~~LICENSE REVOCATION DUE TO NOT RENEWAL:~~** ~~Expired licenses not renewed with a postmark date on or before October 1 shall be revoked on the basis that the renewal application was not duly and properly made as required by Board regulations.]~~ [RESERVED]

**16.16.11.11 LICENSE STATUS REPORTED:** Licenses ~~[not renewed within the 90 day grace period, or revoked or suspended for any other reason,] that expire and are not renewed during the grace period, or that are inactive, retired, revoked or suspended for any other reason,~~ shall be reported by the board to the New Mexico board of pharmacy, as required by the Optometry Act; to other state or federal agencies as required; and to any other inquirer as requested.

**16.16.11.12 PRACTICE PROHIBITED:**

A. The optometrist may not practice optometry in the state of New Mexico while his or her license is expired following the grace period; or while it is inactive, retired, revoked, suspended, or is otherwise invalid as provided in Section [61-2-14(A)(4)] 61-2-14 (A), NMSA 1978.

B. Any person who practices optometry in New Mexico without an active, current, and valid license is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions in Section 61-31-18-15.A (6), which states, "If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows: for a fourth degree felony, eighteen months imprisonment."

C. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed five thousand dollars (\$5,000).

**16.16.11.13 APPLICATION FOR ~~[REINSTATEMENT]~~ REACTIVATION OF LICENSE:** The licensee whose license

~~[has been revoked]~~ is expired due to non-renewal, and who wishes to ~~[reinstate]~~ reactivate the license to active and current status, must apply for, and receive, approval by the board for ~~[reinstatement]~~ reactivation of the license. The application for ~~[reinstatement]~~ reactivation must be made on a ~~[Reinstatement]~~ reactivation form received from the board office, and must be accompanied by the following items:

A. proof of completion of a minimum of sixteen (16) hours of board-approved continuing education (See 16.16.13.9 NMAC) taken for each year the license was ~~[in revoked status]~~ expired due to non-renewal, sixteen (16) of which must have been taken in the immediate preceding year;

B. verification directly from at least one of the applicant's other licensing jurisdiction(s) certifying that the licensee has been in active practice there during the time the license was in revoked status due to non-renewal in New Mexico[?], unless the New Mexico license has only been in expired status for less than a year, in which case verification of licensure from another licensing jurisdiction is not necessary;

C. verification directly from the applicant's other licensing jurisdiction(s), as to the status of the license with respect to disciplinary actions[?] if the New Mexico license is in expired status for more than a year, and provided that the licensee is licensed in other jurisdiction(s);

D. a reactivation fee in an amount totaling the renewal fees for each year the license was in ~~[revoked]~~ expired status due to non-renewal; and

E. a penalty fee in an amount totaling the penalty fees for each year the license was in ~~[revoked]~~ expired status due to non-renewal[?].

**16.16.11.14 ~~[REINSTATEMENT]~~ REACTIVATION APPROVED:** Upon receiving approval for license ~~[reinstatement]~~ reactivation by the board, the applicant will receive a reactivated license to practice optometry in the state of New Mexico.

**16.16.11.15 ~~[REINSTATEMENT]~~ REACTIVATION DENIED:** An applicant whose application for ~~[reinstatement]~~ reactivation has been denied shall be afforded an opportunity for a hearing under? Section 61-1-4 of the Uniform Licensing Act.

**16.16.11.16 TIME LIMITATION FOR REACTIVATION:** The time limitation for reactivating a license ~~[which has been revoked]~~ that has been expired due to non-renewal is five (5) years.

A. Licenses not reactivat-

ed within the time limitation specified shall become null and void (lapsed).

B. ~~[Lapsed]~~ Null and void (lapsed) licenses may not be reactivated.

**16.16.11.17 APPLICATION FOR LICENSURE REQUIRED:** In order to practice optometry in New Mexico, the optometrist whose New Mexico license has ~~[Lapsed]~~ become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 1, 5, 7, and 8 of 16.16.12 NMAC effective 03-15-2004.

**16.16.12.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry [725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170].

**16.16.12.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section ~~[or Paragraph]~~.

**16.16.12.7 DEFINITIONS:** "Retired status" means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for period after the license was placed on retired status as specified in 16.16.12.15 NMAC.

**16.16.12.8 RETIREMENT OF LICENSE:** Any optometrist who wishes to retire from practice shall notify the board, in writing, prior to the [July 1] expiration date of his or her license, and provide proof of [having met the continuing education requirement for the past year's licensing cycle] completion of continuing education renewal requirement as provided in 16.16.13 NMAC.

A. If the licensee meets the time frame and continuing education requirements set forth in 16.16.12.8 NMAC, the license will be retired. The licensee's date of retirement will be recorded as ~~[June 30]~~ the expiration date of that year in the minutes of the next regularly scheduled board meeting.

B. The optometrist shall be exempt from payment of the yearly renewal fees during the period of retirement.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 1, 5, 8, and 9 of 16.16.13 NMAC effective 03-15-2004.

**16.16.13.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry [~~2055 South Pacheco Suite 400 Santa Fe, New Mexico 87505 (505) 476-7424~~].

**16.16.13.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.13.8 CONTINUING EDUCATION REQUIREMENTS:** A minimum of sixteen (16) clock hours of optometry related, board approved continuing education or postgraduate programs are required for license renewal each year.

**A. Ocular therapeutics requirement.** Optometrists holding certificates in ocular therapeutics must attend a minimum of six (6) hours per year of a board approved program in ocular therapeutic pharmacology. These six hours are not in addition to the sixteen (16) hour requirement stated above.

**B. Time requirements within renewal period.** The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

**C. Certificates of attendance.** Licensees are required to submit copies of certificates of attendance for the required continuing education.

**D. Certificate submission with renewal.** The copies of the certificates of attendance must accompany the completed and signed renewal application form and renewal fee.

**E. License [~~Revocation~~] expiration due to non-renewal for failure to meet the continuing education requirement.** Failure of the licensee to meet the continuing education requirements for renewal [~~after September 30~~] the expiration date shall be grounds for [~~revocation~~] expiration of the license on the grounds that the renewal application was not duly and properly made as required by board regulations.

**F. [~~Reinstatement~~] Reactivation of license [~~Revoked~~] expired due to non-renewal for failure to meet the continuing education requirement.** The licensee may apply for license [~~reinstatement~~] reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the

license was [~~revoked~~] expired due to non-renewal for failure to meet the continuing education requirement.

**G. Newly licensed optometrists** who graduated from optometry school [~~in~~] within the same year of licensure may submit the completed curriculum of their last year of optometry school to meet their continuing education requirement the first year of renewal.

**16.16.13.9 APPROVED CONTINUING EDUCATION:** All subjects of education must be directly related to optometry. [~~The following programs are approved for continuing education credit by the New Mexico Board of Examiners in Optometry.~~] The New Mexico board of examiners in optometry approves the following programs for continuing education credit:[-]

**A.** any convention of the American optometric association (AOA)[-];

**B.** any meeting of an American optometric association affiliated state or regional association meeting, or meeting of the armed forces optometric society (AFOS)[-];

**C.** any session of the optometric extension program congress (OEPC)[-];

**D.** any state seminar of the graduate clinic foundation of the optometric extension program[-];

**E.** courses sponsored by or given by accredited optometry schools[-];

**F.** courses sponsored by the following organizations:

(1) optometric councils: mid-west, mountain west, southern, New England, southwest (SWCO);

(2) optometric contact lens societies: southwest, southern, heart of America;

(3) optometric congresses: southern, mountain states;

(4) courses sponsored by the American academy of optometry; and

(5) courses approved by the council on optometric practice education (COPE) or courses approved by the New Mexico optometric association (NMOA).

**G.** The certificates of attendance required by Subsection C of 16.16.13.8 NMAC shall be signed by the presiding officer or designee of the organization conducting or sponsoring the program and shall identify the therapeutic pharmaceutical agent (TPA) courses.

**H.** Certificates of attendance for courses approved by COPE must have the COPE trademark and approval number.

**I.** [~~Only one (1) hour~~] A maximum of two (2) hours of internet-type course offerings, approved by COPE or any other board-approved sponsor, will be

allowed for each annual renewal.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 5 and 8 of 16.16.16 NMAC effective 03-15-2004.

**16.16.16.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

### 16.16.16.8 LOCATION OF PRACTICE

**A.** In accordance with the provisions of Section 61-2-14.B of the Optometry Act, an optometrist is prohibited from selling prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

**B.** For purposes of this rule, an optometrist may engage in the sale of contact lenses or prescription eyeglasses from a leased or owned space located adjacent to an establishment which does not derive the majority of its income from the sale of prescription eyeglasses or contact lenses if the space is separated from the commercial establishment by solid, opaque partitions or walls from floor to ceiling. Railings, curtains, windows and doors are not sufficient to comply with this requirement.

**C.** The leased or owned space referred to in this rule shall also have a separate patients' entrance which provides for access to the optometrist's practice from a public street, hall, lobby, corridor or shopping mall, or other public thoroughfare.

**D.** Repealed.

**E.** This rule supersedes all previous rules regarding the location of an optometric practice. Existing facilities operating on June 24, 1994, the [~~03-15-2004~~] effective date of this rule shall be exempted from the provisions of Subsection B of 16.16.16.8 NMAC.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of 16.16.19 NMAC; and adds a new Section, 19, to 16.16.19 NMAC effective 03-15-2004.

**16.16.19.6 OBJECTIVE:** The objective of Part 19 of Chapter 16 is to set forth regulations on contact [~~or contact~~]

lenses] lens prescription release.

#### 16.16.19.7 DEFINITIONS:

**A.** “Replacement contact lens prescription” means a prescription prepared by a licensed optometrist containing the information specified in Section 11 of this rule and written expressly for the purpose of providing contact lenses that have already been properly fitted.

**B.** “Appropriate follow-up care” is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient.

**16.16.19.8 RELEASE OF CONTACT [OR CORNEAL] LENS PRESCRIPTION:** ~~[Upon request by a patient who has paid for all professional services rendered in connection with care, the optometrist who has completed the fitting shall release to the patient a copy of the prescription for contact or corneal lenses. The acceptance of insurance, Medicaid, or Medicare cards, or any required co-payments are considered the payment of professional fees.]~~ [RESERVED]

#### 16.16.19.9 CONTACT LENS EXAMINATION AND FOLLOW-UP FITTING REQUIRED:

**A.** No optometrist will prescribe contact [or corneal] lenses for a patient unless he/she has personally examined and fitted the contact lenses to the eyes of the patient at the optometrist's place of practice.

**B.** A replacement contact [or corneal] lens prescription is deemed to be determined after ~~the~~ a refraction, eye health examination, ~~corneal assessment, and~~ diagnostic contact lens fitting, instruction on care/maintenance procedures, and appropriate follow-up care have been performed (see 16.16.19.7.B NMAC).

**C.** ~~[A diagnostic lens fitting shall include a detailed case history, contact lens training, and disinfection procedures and maintenance, to determine suitability for lens wear and existence of any contraindications as well as a minimum of one evaluation after a minimum of seven days of wear, or as needed, to determine a final prescription.]~~ [RESERVED]

**D.** No optometrist may write a replacement contact [or corneal] lens prescription until the procedures in Subsections ~~[A, B, and C]~~ A and B of this rule (16.16.19.9 NMAC) have been performed.

**E.** No optometrist may write a contact [or corneal] lens prescription for a patient whose eye health would be compromised through wearing contact [or corneal] lenses.

**F.** If, in the professional opinion of the optometrist, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the optometrist may terminate his/her care of that patient. The optometrist shall notify the patient in writing that the optometrist is terminating care and shall state his/her reason for doing so.

#### 16.16.19.10 CONTACT LENS POLICIES AND PROCEDURES:

**A.** All contact [or corneal] lenses used in the determination of a contact [or corneal] lens prescription are considered to be diagnostic lenses, and the use of such lenses by anyone other than a licensed optometrist or physician, or person under the direct supervision of a licensed optometrist or physician, shall constitute the practice of optometry.

**B.** Any New Mexico licensed optometrist who dispenses contact [or corneal] lenses will observe the following provisions:

(1) maintain regular office hours and be physically accessible to the patient;

(2) be actively interacting with the patient's professional care designed to detect disease, prevent infection due to patient and/or product variability;

(3) provide eye examinations and/or contact lens related office visits; and

(4) require a valid replacement contact lens prescription signed by the prescribing doctor.

#### 16.16.19.11 REPLACEMENT CONTACT [OR CORNEAL] LENS PRESCRIPTION:

**A.** ~~A contact or corneal lens prescription may only be released as provided in this rule after a trial fitting period of successful wear. A contact or corneal lens prescription release, upon patient request, shall contain the following:]~~ The licensed optometrist shall ensure that each replacement contact lens prescription that he/she prescribes contains all the ordering and fabrication specifications necessary for the proper duplication of the patient's current prescription; and shall include the following:

~~[A:]~~ (1) date of issue;

~~[B:]~~ (2) name and address of the patient;

~~[C:]~~ (3) name, professional designation, address, and signature of the prescribing optometrist;

~~[D:]~~ (4) all parameters including, but not limited to, lens size and type, base curve, power, diameter, brand name, materials type, required to properly duplicate or replace the contact lens supply;

~~[E:]~~ (5) a specific date of expiration, ~~[not to exceed twelve (12) months] of~~

not more than twenty-four months from the time the patient was first examined, unless, in the professional opinion of the optometrist, a shorter expiration date is in the best interest of the patient;

~~[F:]~~ (6) any limitation on refills and notification of scheduled follow-up visits and recommended lens replacement interval; and

~~[G:]~~ (7) an explicit statement that the prescription is a replacement contact ~~[or corneal]~~ lens prescription;

**B.** The replacement contact lens prescription may contain the following items:

~~[H:]~~ (1) a specific statement noting that any person, firm, or corporation that dispenses or sells contact [or corneal] lenses from the prescription should inform the patient in writing of the following:

~~(1)(a)~~ that the patient should return to the prescribing optometrist to ascertain the accuracy and suitability of the contact [or corneal] lenses; and

~~(2)(b)~~ that the prescribing optometrist or physician shall not be responsible for any damage or injury resulting from negligence of third parties to include, but not be limited to, negligence in packaging, manufacturing, substitution, improper care regimen or recommendations (i.e. cleaning, disinfection, and wetting) or instructions provided by the seller that lead to over-wear of the contact [or corneal] lenses or improper care of contact [or corneal] lenses that result in damage to the lenses or the visual system, or change of the parameters of the contact lens, or filling the prescription after the expiration date.

~~[I:]~~ (2) notice that the contact [or corneal] lens dispenser shall not adapt, substitute, or change the contact lens prescription, including brand name or specific material types, without prior authorization from the prescribing optometrist or physician, because to do so would constitute the practice of optometry;

~~[J:]~~ (3) the words “OK for contact lens”, “fit with contact [or corneal] lenses”, or similar wording, do not constitute a contact lens prescription[-];

(4) a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented in the patient's records; and [-]

(5) wearing guidelines and/or specific instructions for use of the contact lenses by the patient.

**16.16.19.12 TERM OF PRESCRIPTION:** An optometrist may not issue a contact [or corneal] lens prescription that expires before the ~~[first]~~ second anniversary of the date the patient's prescription parameters ~~[are]~~ were determined, unless a shorter prescription period ~~[is]~~ was



clinically indicated by the patient's ocular health or by potential harm to the patient's ocular health.

**16.16.19.13 SHORT-TERM PRESCRIPTION:** If an optometrist writes a contact [~~or corneal~~] lens prescription for a period of less than [~~one year~~] two years, the optometrist shall complete the following:

A. give the patient a verbal explanation, at the time of the action, of the reason for the action; and

B. maintain a written explanation of the reason in the patient's records.

**16.16.19.14 EXTENSION OF PRESCRIPTION:** An optometrist may extend a patient's contact [~~or corneal~~] lens prescription expiration date without completing another eye examination if the optometrist deems it clinically indicated, and the reason shall be noted in the patient's records.

**16.16.19.15 [PATIENT ACCESS TO PRESCRIPTION] RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:**

A. An optometrist who performs an eye examination and fits a patient for contact [~~or corneal~~] lenses shall, upon request, prepare and provide the patient with a replacement contact lens prescription, as prescribed by this rule. (16.16.19 NMAC).

B. If the patient requests [~~the contact or corneal~~] his/her replacement contact lens prescription during an initial or [annual] subsequent eye examination, providing the prescription has not expired, the optometrist shall prepare and provide the prescription to the patient as prescribed by this rule (16.16.19 NMAC) at the time the optometrist [~~determines the parameters of the prescription~~] completes the patient's contact lens prescription that is appropriate to the documented clinical needs of the patient.

C. Optometrists shall display, in a prominent location in their [~~offices~~] office(s), a sign to inform their patients that they have a right to [~~request~~] a copy of their replacement contact lens prescription.

D. Upon receipt of a prescription request from a patient who did not originally request or receive a replacement contact [~~or corneal~~] lens prescription during an initial or [~~annual~~] subsequent eye examination, the optometrist shall provide to the patient, at any time during which the prescription is valid, the prescription containing the original expiration date.

(1) The optometrist will provide this service for the patient at no additional

cost or required contact lens purchase.

(2) If the patient requests that the optometrist deliver the prescription to the patient or to another person, the optometrist may charge the [~~cost of delivery to the~~] patient for the cost of delivery.

(3) The replacement contact lens prescription request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five (5) years.

E. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

**16.16.19.16 LIMITATIONS ON, OR REFUSAL TO [S] GIVE REPLACEMENT CONTACT LENS PRESCRIPTION:**

A. An optometrist may exclude categories of contact [~~or corneal~~] lenses from a replacement contact [~~or corneal~~] lens prescription if the exclusion is clinically indicated.

B. An optometrist may refuse to provide a replacement contact [~~or corneal~~] lens prescription to a patient if:

(1) the patient's ocular health presents a contraindication for contact [~~or corneal~~] lenses;

(2) the refusal is warranted due to potential harm to the patient's ocular health;

(3) the patient has a medical condition indicating that:

(a) the patient's ocular health would be damaged if the prescription were released to the patient; or

(b) further monitoring of the patient is needed;

(4) the request is made after the [~~first~~] second anniversary of the date of the patient's last contact lens/eye examination.

C. If an optometrist refuses to give a patient his or her replacement contact [~~or corneal~~] lens prescription for any reason permitted under Subsection B of 16.16.19.16 NMAC, the optometrist must do the following:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) record and maintain, in the patient's records, a written explanation of the reasons given for refusal.

D. Subsection B of 16.16.19.16 NMAC does not prohibit an optometrist from giving a patient the patient's replacement contact [~~or corneal~~] lens prescription.

**16.16.19.17 COMPLIANCE**

**REQUIRED; VIOLATION PENALTIES:**

A. Selling of contact [~~or corneal~~] lenses or prescription eyeglasses, frames, or mountings for lenses in an establishment in which the majority of the establishment's income is not derived from being engaged in that endeavor, is prohibited; with the exception that a pharmacist licensed and regulated by the New Mexico Board of Pharmacy is not prohibited by these regulations from selling contact [~~or corneal~~] lenses.

B. Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

C. It is a violation of this rule for any person to dispense contact [~~or corneal~~] lenses to a patient in this state by mail or otherwise without having a valid prescription [~~signed~~] verified by a licensed prescribing optometrist or physician.

D. Violation of Subsection B and C of this rule is a misdemeanor violation punishable by a fine of \$1,000 for each lens dispensed, and the fine is in addition to any other penalty imposed for violations of this rule.

E. Adapting, substituting, or changing the contact [~~or corneal~~] lens prescription, including brand name or specific material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

F. Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

G. The board of optometry may impose a civil fine of no more than one thousand (\$1,000) on a licensed optometrist who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

H. A person or entity who is not a licensed optometrist or a licensed physician, but is a registered New Mexico contact lens dispenser or seller shall not sell or dispense a contact lens to a resident of this state unless the patient has, at the time of sale or dispensing, a copy of a valid replacement contact lens prescription or the contact lens dispenser or seller has obtained verification of valid replacement contact lens prescription in accordance with Subsection I of this section.

I. A contact lens may not be sold, dispensed or distributed to a patient in this state by a registered New Mexico

contact lens dispenser or seller unless one of the following has occurred:

(1) the patient has given or mailed to the seller an original valid written replacement contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile a copy of a valid written replacement contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid replacement contact lens prescription to a seller designated by the patient to act on his/her behalf.

**J.** A verification shall not be provided pursuant to Paragraph (3) of Subsection I of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if the request is received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three (3) working days of receipt;

(3) if the request is not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three (3) working days as of 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescribing optometrist shall promptly contact the patient to determine if a designation is in effect; **under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any replacement contact lens prescription;** and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday, but does not include a holiday.

**K.** A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five (5) years.

**L.** A person who violates the provisions of Subsection H of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

**16.16.19.18 LIABILITY FOR**

**USE OF PRESCRIPTION:** [~~A physician,~~] When a patient's replacement contact lens prescription is dispensed by a person other than that licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser. Furthermore, an optometrist~~[-]~~ or therapeutic optometrist is not liable for a patient's subsequent use of a contact [~~or contact]~~ lens prescription if:

**A.** the contact lenses have been purchased elsewhere and the patient does not return to the [~~physician,~~] optometrist~~[-]~~ or therapeutic optometrist for re-examination or a follow-up examination after the contact [~~or contact]~~ lenses have been purchased; or

**B.** the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact [~~or contact]~~ lenses or other factors result in the patient no longer being a proper candidate for the contact [~~or contact]~~ lenses prescribed.

**16.16.19.19 REGISTRATION REQUIRED FOR NON-LICENSEES TO SELL CONTACT LENSES:**

**A.** A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he/she is registered with the New Mexico board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement.

**B.** The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement.

**C.** The board of pharmacy shall maintain a current list of all registered seller and dispensers of contact lenses.

**D.** A person, company, or entity that is not registered pursuant to this Subsection and knowingly sells or dispenses contact lenses to a New Mexico resident is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

**NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY**

This is an amendment to Sections 3, 6, 9, and 10 of 16.16.21 NMAC; and adds a new Section, 11, to 16.16.21 NMAC effective 03-15-2004.

**16.16.21.3 STATUTORY AUTHORITY:** The authority for Part 21 of Chapter 16 is NMSA 1978, Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).

**16.16.21.6 OBJECTIVE:** The objective of Part 21 of Chapter 16 is to set forth the acts or conduct that constitute violations of the Optometry Act and the Optometry regulations and the Uniform Licensing Act, and which subject the person in violation to disciplinary action by the board.

**16.16.21.9 ACTS OF UNPROFESSIONAL CONDUCT:** The following exemplify the types of conduct or acts of omission that shall subject the licensee or applicant to disciplinary action by the board:

**A.** Any conduct whether an act or the omission of an act, which deceives or defrauds or tends to deceive or defraud the public.

**B.** Obtaining or attempting to obtain any fee by fraud, misrepresentation, deceit or any other deceptive or dishonest course of conduct.

**C.** Charging or attempting to charge any unusual, unreasonable, or exorbitant fee.

**D.** [RESERVED]

**E.** Splitting or dividing of fees with any person, as defined by this rule.

**F.** Advertising professional superiority, or advertising ophthalmic materials or services in violation of the rules of this board.

**G.** Breach of the confidentiality of information or knowledge about a patient obtained by the optometrist while acting in his or her professional capacity.

**H.** Seeing patients while under the influence of alcohol or controlled substances not prescribed for him or her by an individual authorized by law to prescribe controlled substances. For purposes of this regulation, the term "controlled substances" shall be defined as the term is defined by the New Mexico Controlled Substance Act.

**I.** Sexual misconduct with a patient, including but not limited to the making of unsolicited sexual advances to a patient.

**J.** Violation of any order or judgment of the board.

**K.** Impersonating another who is licensed to practice optometry, or permitting or allowing any person to use his/her license.

**L.** Employing or inducing an unlicensed person to perform any procedure [~~which~~] that is considered the practice

of optometry as defined in NMSA Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.).

**M.** Practicing beyond the scope of his/her optometry license as defined by state law and/or regulations.

**N.** Advertising in any manner [~~which~~] that violates board regulations and state statutes on advertising.

**O.** Making false statements in any application for licensure.

**P.** Failing to report to the board the surrender of an optometric license or any formal disciplinary action, in another state or jurisdiction, in which there has been an adverse finding for acts or conduct which would constitute grounds for actions as defined in these rules.

**Q.** Failing to report to the board any criminal conviction of a felony.

**R.** Refusing to provide the patient with his/her eyeglass prescription if the prescription is under a year old.

**S.** Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

**T.** Failing to disclose and release patient information when requested by a patient or a health care provider upon a patient's authorization, or upon request from a health care provider when relating to the treatment of a patient, in accordance with the 1996 Health Insurance Portability and Accountability Act (HIPAA).

**16.16.21.10 UNPROFESSIONAL CONDUCT RELATED TO PHARMACEUTICALS:** The following unprofessional conduct related to pharmaceutical and/or controlled dangerous pharmaceutical agents shall be grounds for disciplinary action by the board. Violations of Subsections of this Section may also constitute fourth degree felony violations and may be subject to conviction, imprisonment, and fines pursuant to the provisions of Section 31-18-15 NMSA 1978 (see Subsections B and C of 16.16.11.12 NMAC).

**A.** Practicing optometry, including the use of pharmaceutical agents without a valid, current license.

**B.** Administering, dispensing and/or prescribing diagnostic, topical, or oral pharmaceutical agents without the proper certification by the board as set forth in Part 7 of 16.16 NMAC.

**C.** Administering, dispensing, and/or prescribing controlled dangerous drugs without proper certification by the board and the required controlled substances registration with the State of New Mexico and proper DEA registration with the drug enforcement administration as set forth in Part 8 of 16.16 NMAC.

**D.** Administering, dis-

persing and/or prescribing dangerous drugs for purposes other than generally accepted treatment for the relief of ocular abnormalities.

**E.** Indiscriminately or excessively administering, dispensing, or prescribing controlled dangerous substances.

**F.** Administering, dispensing and/or prescribing controlled dangerous substances to immediate family members for purposes other than as applied in the treatment and management of ocular disease.

**G.** [RESERVED]

**H.** Administering, dispensing, and/or prescribing controlled dangerous substances in excess of the amount considered good optometric practice.

**I.** Administering, dispensing, and/or prescribing controlled dangerous substances without medical need in accordance with published standards.

**J.** Disbursing or prescribing any controlled dangerous substance for the optometrist's personal use for any other use than as applied in the treatment and management of ocular disease[~~or~~].

**K.** Delegating prescriptive signing authority for either prescriptive medications or controlled dangerous substances to another person.

**16.16.21.11 DISCIPLINARY PROCEEDINGS FOR UNLICENSED ACTIVITY:** In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp), a person who is not licensed to engage in the practice of optometry by the board is subject to disciplinary actions and proceedings by the board if it is determined that he or she has been practicing optometry in New Mexico without a valid New Mexico license.

**A.** The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who engages in the practice of optometry without a valid New Mexico license.

**B.** In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of optometry the administrative costs, including investigative costs and the costs of conducting a hearing.

**C.** Reports of unlicensed practice of optometry may be reported for investigation to the board by phone, fax, mail, or e-mail.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 1, 5, 7,

and 8 of 16.16.22 NMAC effective date 03-15-2004.

**16.16.22.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry [~~725 St. Michael's Drive Santa Fe, New Mexico 87501 (505) 827-7170].~~

**16.16.22.5 EFFECTIVE DATE:** October 14, 1995, unless a later date is cited at the end of a section [~~or Paragraph~~].

**16.16.22.7 DEFINITIONS:** For the purposes of this rule:

**A.** **"Complaint"** means a complaint filed with the board against an applicant for licensure or against a licensee.

**B.** **"Complainant"** means the party who files a complaint against a licensee or against an applicant for licensure.

**C.** **"Respondent"** means the licensure applicant or the licensee who is the subject of the complaint filed with the board.

**D.** **"Hearing"** means the formal process whereby the respondent is afforded the opportunity to be heard by the board or its designated hearing officer before the board takes action which might result in disciplinary action against the respondent's application for licensure or his or her license to practice optometry.

**E.** **"Must"** means required.

**F.** **"Violation of practice"** means a violation of the New Mexico Optometry Act or the rules and regulations duly adopted by the board.

**G.** **"Notice of contemplated action" or "NCA"** means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.

**H.** **"Shall"** means mandatory; a requirement.

**I.** **"Should,"** means a suggestion or recommendation; not a requirement.

**J.** **"License revocation"** means to prohibit the conduct authorized by the license.

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

**L.** **"License restriction"** means to restrict or condition the license as to the scope of practice, place of practice, supervision of practice, duration of the licensed status, or other condition as deemed appropriate by the board as a disciplinary measure in connection with a formal

disciplinary action.

**M. "Redacted"** means the act or process of editing or revising the complaint so that the parties ~~[which]~~ that are the subject of the complaint are unknown to the board.

**N. "Pre-NCA agreement"** means an agreement reached between the board and the respondent as an option to the formal NCA and hearing administrative hearing process.

**O. "Mediation agreement"** means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.

**16.16.22.8 DISCIPLINARY PROCEEDINGS:** An investigation may be instituted by the board upon the receipt of a written complaint filed by any person, including any member of the board.

**A. Written Complaint Required.** A complaint filed with the board will be received by the board administrator who will process the complaint and determine how the complaint will be handled.

(1) In cases where it is clearly evident that the complaint does not fall within the board's statutory authority or jurisdiction, the board administrator will not process the complaint and will inform the complainant of the reasons.

(2) If the complaint appears to contain violations of the board's statute or its rules and regulations, or if the complaint is not a complicated one, the administrator may present the processed complaint to the entire board in a redacted form.

(3) If the complaint is lengthy, or if it is unclear or questionable as to whether there may have been violations of the board's statute or its rules and regulations, the administrator shall refer it to the board's standards of practice committee for review and consideration.

(4) The board may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to reply to the allegations in the complaint.

(5) The foregoing notwithstanding, the board will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it determines that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

**B. Standards of practice committee appointed.** On an annual basis, the board chairperson shall appoint a member or members of the board to a standards of practice committee.

(1) The standards of practice

committee shall review all documentation referred to it by the board administrator regarding a subject complaint.

(2) The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

(a) The standards of practice committee may be authorized by the board to employ such persons without prior approval of the full board.

(b) In such cases, the board administrator will contract for any such required services once budgetary availability is determined.

(3) Upon completion of its investigation the standards of practice committee shall present a summary of the subject complaint to the board with proposed recommendations concerning the proper disposition of the subject complaint.

(4) Upon review, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee's recommendations.

(5) The standards of practice committee with the assistance of board counsel may draw up a pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint and enter into a proposed settlement agreement with the respondent as a means of resolving a complaint without having to go through the NCA and formal hearing process. However, final approval of the settlement or mediation agreement must be made by the full board prior to execution of the agreement.

**C. Standards of practice committee recused from participation in further action.** Members of the standards of practice committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the board against the applicant or the licensee(s) who is the subject of the complaint.

**D. Board action:** In accordance with those provisions contained within the Uniform Licensing Act, the board may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated those provisions as set forth in Section 61-2-13 of the Optometry Act or those provisions found to constitute unprofessional conduct under Part 21 of the board rules and regulations (16.16 NMAC).

(1) If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

(2) If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

(3) The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

(4) [RESERVED]

(5) **Prehearing motions:** The board may appoint a hearing or presiding officer to decide non-dispositive motions filed prior to a hearing.

(6) [RESERVED]

(7) **Settlement agreements:** Following the issuance of a notice of contemplated action, the board may enter into a settlement or mediation agreement with the respondent as a means of resolving a complaint.

(8) **Settlement officer:** To facilitate approval of settlement agreements at times when it is not feasible to convene a full board meeting, the board may designate one of its members as a "settlement officer", and authorize that member to approve settlements in appropriate cases.

**E. Costs of disciplinary proceedings:** Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees, or if they prevail at the hearing and an action specified in Section 61-1-3 of the Uniform Licensing Act is not taken by the board.

**F. Private cause of action:** Neither the action nor inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

**G. License returned to the board:** The wall license, renewal license, and therapeutic certificates issued by the board must be returned to the board subsequent to disciplinary revocation or suspension. The wall license, renewal license, and therapeutic certificates must be returned to the board in person or by registered mail no later than twenty (20) days after the suspension or revocation order by the board.

**H. ULA protection from liability for complainant:** There shall be no liability on the part of, and no action for damages against, a person who provides information to the board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse

action against a person for providing information to the board shall be subject to disciplinary action.

**I. Federal fraud and abuse** ~~[Data-Bank]~~ **databank**. In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act of 1996, also known as the Kassebaum-Kennedy bill, the board shall report any final adverse actions taken against a licensee to the federal fraud and abuse ~~[Data-Bank]~~ **databank** established under that act.

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

**J. National optometric** ~~[Data-Base]~~ **database**. All final adverse actions shall also be reported by the board to the ~~[International Association of Boards of Examiners in Optometry's (IABO)]~~ association of regulatory boards of optometry (ARBO) national optometric ~~[Data-Base]~~ database (NODB).

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

## NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

This is an amendment to Sections 1, 5, 6, 7, 8, 9, 10, 11, 13, and 15 of 16.16.24 NMAC effective date 03-15-2004.

**16.16.24.1 ISSUING AGENCY:** New Mexico Board of Examiners in Optometry ~~[2055 South Pacheco Suite 400 Santa Fe, New Mexico 87501 (505) 476-7121].~~

**16.16.24.5 EFFECTIVE DATE:** February 15, 1999, unless a later date is cited at the end of a section ~~[or Paragraph].~~

**16.16.24.6 OBJECTIVE:** The objective of PART 24 of Chapter 16 is to set forth policies and guidelines for disciplinary action when evidence or allegations of a mental disorder or illness, abuse of intoxicants or drugs by a licensed optometrist

have been presented to the board.

**16.16.24.7 DEFINITIONS:** For the purposes of this rule:

**A. "Impaired Health Care Provider Act"** refers to Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pam.).

**B. "Controlled Substances Act"** refers to Section 30-31-1 through Section 30-31-42 NMSA 1978.

**C. "Impaired practitioner"** means any health care provider unable to practice with reasonable skill or safety to patients by reason of one or more of the following: mental disorder or illness; physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or habitual or excessive use of alcohol or abuse of drugs, as defined in the Controlled Substances Act.

**16.16.24.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS.** In cases where the Board has reasonable cause to believe that a licensed optometrist has a mental disorder or illness or is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the licensee's ability to practice optometry with reasonable skill and safety to patients, the Board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.

**16.16.24.9 EXAMINING COMMITTEE DESIGNATED:** The board shall designate three licensed optometrists as members of an "examining committee" to examine the optometrist believed to be impaired either as a result of a mental disorder or illness or by the excessive or habitual use or abuse of intoxicants or drugs.

**16.16.24.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE:** In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical or psychiatric examination or drug test of the licensee to determine his or her fitness to practice optometry with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

**16.16.24.11 PHYSICAL EXAM OR DRUG TEST ORDERED:** A licensed professional designated by the board shall perform the physical or psychiatric examination and/or drug test ordered by the examination committee. The cost of said exami-

nation or test shall be borne by the optometrist who is the subject of the examination.

**16.16.24.13 RESULTS ADMISSIBLE:** The results of the examining committee's findings and the physical or psychiatric exam and/or drug test shall be admissible in any subsequent review or hearing by the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

**16.16.24.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION:** Failure or refusal by the optometrist to comply with an examining committee order to appear before it for examination, or to submit to a physical or psychiatric examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the license by the board until further order by the board.

## NEW MEXICO REAL ESTATE COMMISSION

This is an amendment to 16.61.19 NMAC, Basic Licensee Duties, Disclosure, Brokerage Relationships and Dual Agency Relationships, Section 8, to be effective on 03-27-2004.

**16.61.19.8 BASIC LICENSEE DUTIES; DISCLOSURE:** Prior to the time a licensee generates or presents any written document that has the potential to become an express written agreement, the licensee shall disclose in writing to a prospective, buyer, seller, landlord or tenant, the following list of basic licensee duties that are owed to all customers and clients by all licensees:

A. honesty and reasonable care as set forth in the provisions of this section;

B. compliance with local, state, and federal fair housing and anti-discrimination laws, the New Mexico real estate license law and the real estate commission rules and regulations, and other applicable local, state, and federal laws and regulations;

C. performance of any and all oral or written agreements made with the licensee's customer or client;

D. assistance to the licensee's customer or client in completing the transaction, unless otherwise agreed to in writing by the customer or client, including:

(1) presentation of all offers or counter-offers in a timely manner;

(2) assistance in complying with the terms and conditions of the contract and

with the closing of the transaction; if the licensee in the transaction is not providing the service, advice or assistance described in Paragraphs (1) and (2) of Subsection D of 16.61.19.8 NMAC, the customer or client must agree in writing that the licensee is not expected to provide such service, advice or assistance, and the licensee shall disclose such agreement in writing to the other licensees involved in the transaction;

E. acknowledgement by the licensee that there may be matters related to the transaction that are outside the licensee's knowledge or expertise and that the licensee will suggest that the customer or client seek expert advice on these matters;

F. prompt accounting for all monies or property received by the licensee;

G. prior to the time the licensee generates or presents any written document that has the potential to become an express written agreement, written disclosure of:

(1) any written brokerage relationship the licensee has with any other parties to the transaction and/or;

(2) any material interest or relationship of a business, personal, or family nature that the licensee has in the transaction;

H. disclosure of any adverse material facts actually known by the licensee about the property or the transaction, or about the financial ability of the parties to the transaction to complete the transaction; adverse material facts do not include data from a sex offender registry or the existence of group homes;

I. maintenance of any confidential information learned in the course of any prior agency relationship unless the disclosure is with the former client's consent or is required by law;

J. unless otherwise authorized in writing, a licensee shall not disclose to their customer or client during the transaction that their seller client or customer has previously indicated they will accept a sales price less than the asking or listed price of a property; that their buyer client or customer has previously indicated they will pay a price greater than the price submitted in a written offer; the motivation of ~~any party~~ their client or customer for selling or buying property; that their seller client or customer or their buyer client or customer will agree to financing terms other than those offered; or any other information requested in writing by the licensee's customer or client to remain confidential, unless disclosure is required by law.

[16.61.19.8 NMAC - Rp 16.61.19.8 NMAC, 1-1-2004; A, 1-30-2004; A, 3-27-2004]

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### End of Adopted Rules Section

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**NMAC Chapter Name Change**

By request of the Construction Industries Division of the Regulation and Licensing Department, the Commission of Public Records considered and approved the change of the name of Chapter 8 of Title 14 NMAC from "Fire Codes" to "Plumbing Codes." This name change will take effect upon the next official filing of a new rule, amendment or repeal in Chapter 8 of Title 14 NMAC.

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**End of Other Related  
Material Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.