

This is an amendment to 16.22.2 NMAC, Section 2, and Section 20 effective 02/10/2022.

16.22.2.2 SCOPE: The psychologist shall be governed by this code of conduct while providing psychological services in any context or whenever he is functioning in a professional capacity as a psychologist. This code shall not supersede state, federal, or provincial statutes. This code shall apply to the conduct of all licensees and applicants, including the applicant's conduct during the period of education, supervision, training, and employment, which is required for licensure. This conduct includes, but is not limited to the list of disqualifying criminal convictions referenced in 16.22.2.20 NMAC. The term "psychologist," as used within this code, shall apply to both licensee and applicant.

[16.22.2.2 NMAC - Rp, 16.22.2.2 NMAC, 11/15/2006; A, 02/10/2022]

16.22.2.20 DISQUALIFYING FELONY CRIMINAL CONVICTIONS:

A. Felony convictions for any of the following offenses, or their equivalents in any other jurisdiction, are disqualifying criminal convictions that may disqualify an applicant from receiving or a licensee from retaining a license issued by the board.

(1) homicide, voluntary manslaughter, involuntary manslaughter, vehicular homicide;

(2) trafficking in controlled substances, manufacturing of controlled substances or distribution of controlled substances, possession of controlled substances;

(3) human trafficking, kidnapping, false imprisonment, assault or battery;

(4) rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses, failure to register or report as a sex offender;

(5) crimes involving abuse, neglect; or exploitation of an incapacitated adult, abuse or neglect of a care facility resident;

(6) crimes involving child abuse or neglect, child endangerment, child solicitation; sexual exploitation of children, delivering of drug paraphernalia to minors, selling or giving alcohol to minors, contributing to the delinquency of a minor;

(7) crimes involving robbery, larceny, extortion, burglary, unlawful or dangerous use of explosives, arson, making a bomb scare, tampering with evidence or receiving stolen property.

(8) financial crimes involving fraud, forgery, embezzlement, or credit card fraud. Fraud involving governmental or private insurance;

(9) aggravated driving while under the influence of intoxicating liquor or drugs, 2nd or subsequent DWI offense;

(10) crimes involving perjury, fraudulent misrepresentation, deceit or collusion.

(a) This includes a felony conviction of an offense which if committed in this state, would be deemed a felony under either state or federal law, without regard to its designation elsewhere.

(b) The term "felony conviction" shall include a finding or verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding, regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon, or an appeal of the conviction has been sought.

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

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

D. Nothing in this rule prevents the board from denying an application or disciplining a licensee on the basis of an individual's conduct to the extent that such conduct violated the Professional Psychologist Act or the rules of the board, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying felony criminal convictions listed in subsection A of this rule.

E. In connection with an application for licensure for licensure renewal, the board shall not use, distribute, disseminate, or admit into evidence at an adjudicatory proceeding criminal record of any of the following;

(1) an arrest not followed by a valid conviction;

(2) a conviction that has been sealed, dismissed, expunged or pardoned;

(3) a juvenile adjudication; or
(4) a felony conviction for any crime other than the disqualifying criminal convictions listed
in subsection a of this rule

F. If the board defers a decision regarding a specific applicant based on a disqualifying felony
criminal conviction, that applicant is entitled to notice of the board's decision and an opportunity for a hearing.
[16.22.2.20 NMAC – N, 02/10/2022]