

This is an amendment to 16.36.4 NMAC, Sections 1, 8 and 9, effective 2/3/2022.

16.36.4.1 ISSUING AGENCY: [~~Regulation and Licensing Department,~~] Board of Body Art Practitioners.
[16.36.4.1 NMAC - Rp, 16.36.4.1 NMAC, 2/4/2016, A, 2/3/2022]

16.36.4.8 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION:

A. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Body Art Safe Practices Act.

B. It shall be unlawful for any artist to perform body piercing or tattoo procedures outside of a licensed body piercing or tattooing establishment.

C. It shall constitute a violation of the Body Art Safe Practices Act when a licensee:

- (1) attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;
- (2) willfully resists, delays or obstructs an inspector or board designee in the performance of his/her official duty;
- (3) fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty; or

(4) fails to cooperate in investigations, proceedings, and requirements of this code.

D. The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed [~~and notarized~~] under penalty of perjury.

E. When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within 15 days of receipt of such request.

F. The response will be reviewed by a committee designated by the board chairman.

G. If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The board shall:

- (1) take no further action; or
- (2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act; or
- (3) assess an administrative penalty subject to appropriate procedural requirements and safeguards.

H. Any hearing held pursuant to the complaint shall conform with the provisions of the Uniform Licensing Act and the Body Art Safe Practices Act.

I. The board may fine, deny, revoke, suspend, stipulate, or otherwise limit a license if the board determines the licensee is guilty of violating any of the provisions of the act, the Uniform Licensing Act, or these rules.

J. Subject to legally required procedural safeguards, any person who violates any provisions of the act or any rule adopted by the board may incur, in addition to any other penalty provided by law, a civil penalty in an amount of less than one hundred fifty dollars (\$150) for each violation. The board will serve on the licensee official notice of any such fine that the board proposes to assess. Failure to pay a fine, once properly assessed, may result in an additional fine and revocation of license or other disciplinary action. The penalties to be assessed are as follows:

- (1) Failure to comply with operator requirements:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

- (2) Failure to comply with sanitation and safety requirements:

- (a) first offense: one hundred dollars (\$100);
- (b) second offense: one hundred fifty dollars (\$150);
- (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

- (3) Failure to post required licenses:
 - (a) first offense: fifty dollars (\$50);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

- (4) Working on an expired or invalid license:
 - (a) first offense: fifty dollars (\$50);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act

- (5) Performing services for compensation in an unlicensed establishment:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

- (6) Any violation of the Body Art Safe Practices Act or rules:
 - (a) first offense: one hundred dollars (\$100);
 - (b) second offense: one hundred fifty dollars (\$150);
 - (c) third and subsequent offenses: the board shall take steps to impose a further fine

up to the limit of one hundred fifty dollars (\$150) or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

K. The board may suspend a license immediately without prior notice to the holder of the license if it determines, after inspection, that conditions within a body art establishment present a substantial danger of illness, serious physical harm or death to customers who might patronize a body art establishment. A suspension action taken pursuant to this section is effective when communicated to the operator or body artist. Suspension action taken pursuant to this section shall not continue beyond the time that the conditions causing the suspension cease to exist, as determined by a board inspection at the request of the operator or body artist. A license holder may request an administrative hearing, as provided by Section 61-17B-5 NMSA 1978 of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within 10 days.

[16.36.4.8 NMAC - Rp, 16.36.4.8 NMAC, 2/4/2016, A, 2/3/2022]

16.36.4.9 DISQUALIFYING CRIMINAL CONVICTIONS:

A. 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 retaining a license issued by the board:

- (1) murder;
- (2) aggravated assault;
- (3) assault with intent to commit a violent felony;
- (4) aggravated battery inflicting great bodily harm or with a deadly weapon;
- (5) kidnapping;
- (6) abandonment of a child resulting in death or great bodily harm;
- (7) abuse of child;
- (8) negligent abuse of a child resulting in death;
- (9) intentional abuse of a child 12 to 18 years old resulting in death;
- (10) sexual exploitation of children;
- (11) sexual exploitation of children by prostitution;
- (12) criminal sexual penetration;
- (13) criminal sexual contact;
- (14) criminal sexual contact of a minor;
- (15) aggravated indecent exposure;
- (16) criminal sexual communication with a child;
- (17) human trafficking;

(18) willfully or knowingly failing to comply with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(19) willfully or knowingly providing false information when complying with the registration or verification requirements of the Sex Offender Registration and Notification Act;

(20) sex offender who fails to comply with SORNA re moving to another state;

(21) failure to comply with proclamation of the governor;

(22) practicing medicine without a license;

(23) forgery;

(24) fraud;

(25) aggravated escape from the custody of the children, youth and families department;

(26) bringing contraband into a juvenile detention facility or juvenile correctional facility;

(27) tampering with public records;

(28) delivering drug paraphernalia to a person under eighteen years of age and who is at least three years the person's junior;

(29) intentionally selling an imitation controlled substance to a person under the age of eighteen years; and

(30) selling or giving alcoholic beverages to minors, and possession of alcoholic beverages by minors.

B. The board shall not consider the fact of a criminal conviction as part of an application for licensure 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 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 Body Art Safe Practice Act, regardless of whether the individual was convicted of a crime for such conduct or whether the crime for which the individual was convicted is listed as one of the disqualifying criminal convictions listed in Subsection A of this rule.

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

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

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

(3) a juvenile adjudication; or

(4) a conviction for any crime other than the disqualifying criminal convictions listed in Subsection A of this rule.

[16.36.4.9 NMAC – N, 2/3/2022]