

This is an amendment to 16.19.6 NMAC, Section 17, 23, and 24 effective 10/10/2023

**Explanatory paragraph: Subsection B of 16.19.6.17 NMAC was not published, as there are no changes to this Subsection. Subsections A through C and E through I of 16.19.6.23 NMAC were not published, as there are no changes. Subsections A, B, and D through F of 16.19.6.24 NMAC were not published, as there are no changes.**

**16.19.6.17 SIGNS TO BE REMOVED WHEN PHARMACY DISCONTINUES OPERATION:** When a pharmacy discontinues operation, the permit issued by the board shall be immediately surrendered to the board office, all drug signs and symbols, either within or without the premises, shall be immediately removed; all drugs, devises, poisons shall be removed or destroyed:

**A.** Signs: Any store, shop, laboratory or place of business which has upon it or in it a sign or words "pharmacist", "pharmaceutical chemist", [~~"apothecary";~~] "druggist", "pharmacy", "drug store", "drugs", "drug sundries", "prescriptions", or any of these words, or words of similar import either in English or any other language, or which is advertised by any sign containing any of these words, is defined by law to be a drug store or pharmacy and must obtain a license from the board of pharmacy. Any such place of business not licensed by the board shall remove any such sign or words which it may have upon or in it.

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**C.** Use of pharmacy, pharmacist and other names: Any advertiser, as defined by Paragraph (2) of Subsection A of 16.19.6.21 NMAC, using the names "pharmacist", "pharmacy", [~~"apothecary"; "apothecary shop";~~] "drug store", "druggist", " drug sundries", "prescriptions", or any other combination of these words or any other words of similar import that indicate to the public that the advertiser is a pharmacy, is prohibited unless the following occurs:

- (1) the advertiser is or has a licensed pharmacy in New Mexico; or
- (2) the advertiser is or has a non-resident pharmacy licensed in New Mexico; or
- (3) the advertiser has a clear statement, included with such advertisement, stating to the effect, "the advertiser is not a licensed pharmacy and does not fill prescriptions or practice pharmacy"; and
- (4) the advertiser must disclose the name of the licensed pharmacy where prescriptions are filled for New Mexico residents and such disclosure would be clear and concise; and
- (5) any "confidential information", as defined by Subsection D of Section 61-11-2 NMSA 1978, is obtained by persons authorized by law to receive such information.
- (6) pharmacists registered in this state may advertise their professional services except such advertisement shall not solicit prescription drug (dangerous drug) sales unless in conjunction with a licensed pharmacy.

[16.19.6.17 NMAC - Rp, 16 NMAC 19.6.17, 3/30/2002; A, 9/30/2003; A, 12/15/2020; A 10/10/2023]

**16.19.6.23 PRESCRIPTIONS:**

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**D.** Exchange of prescription information between pharmacies for the purpose of filling or refilling is authorized under the following conditions only.

- (1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.
- (2) The prescription shall indicate that it has been transferred and pharmacy location and file number of the original prescription.
- (3) In addition to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.
- (4) An original unfilled non-controlled substance prescription that is transferred shall be subject to the same record keeping requirements as filled prescriptions.
- (5) Transfer or forwarding of controlled substance prescriptions shall not be allowed electronically except as permitted by federal law. [~~Any transfer of controlled substances listed in Schedules III, IV, and V must be within any rule adopted by the federal DEA under Title 21 CFR 1306.25, for refill purposes.~~]

(6) A pharmacy may not refuse to transfer original prescription information to another pharmacy who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner.

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[16.19.6.23 NMAC - Rp 16 NMAC 19.6.23, 3/30/2002; A, 6/30/2006; A, 03/22/2015; A, 12/15/2020; A 10/10/2023]

#### 16.19.6.24 NONRESIDENT PHARMACIES:

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##### C. Requirements for obtaining licensure.

(1) Application. Each nonresident pharmacy applying for licensure [~~or renewal of licensure~~] shall submit an application to the board which includes the following minimum information:

(a) The address of the principle office of the nonresident pharmacy and the name and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs to persons in New Mexico. A report containing this information shall be made on an annual basis and within [~~40~~] 30 days after any change of office location, corporate officer or pharmacist in charge;

(b) Proof that the nonresident pharmacy maintains a valid license, permit or registration to operate the pharmacy in compliance with the laws of the resident state;

(c) A copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the resident state;

(d) If compounded sterile preparations (CSP) are to be shipped into New Mexico, a copy of the most recent CSP operations inspection report conducted by the regulatory or licensing agency of the resident state (or party recognized by that agency to perform such inspection, or party recognized by the board) which demonstrates the pharmacy operates in conformance with the requirements of applicable USP/NF General Chapters numbered below 1000. The inspection must have occurred within the 12 months immediately preceding receipt of the license application by the board. The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in the inspection report have been corrected. For entities also acting as outsourcing facilities, the required standard of operation shall be current good manufacturing practices (cGMP).

(e) The policy and procedure manual required by Paragraph (2) of Subsection D of 16.19.6.24 NMAC;

(f) Proof that the nonresident pharmacy has a toll-free telephone service available to New Mexico patients;

(g) The name and address of a resident in New Mexico for service of process;

(h) If the nonresident pharmacy wants to ship, mail or deliver controlled substances to New Mexico patients, then the pharmacy must submit an application for controlled substances under 16.19.20 NMAC; and

(i) All fees required by 16.19.12 NMAC.

(j) An application that is not successfully completed within 12 months of the date of initial receipt by the board will be considered withdrawn. For consideration of license issuance, a new application and fee are required.

(2) Agent of record. Each nonresident pharmacy that ships, mails or delivers prescription drugs to a patient in New Mexico shall designate a resident agent in New Mexico for service of process. If a nonresident pharmacy does not designate a registered agent, the shipping, mailing, or delivering of prescription drugs in the state of New Mexico shall be deemed an appointment by such nonresident pharmacy of the secretary of state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against such pharmacy growing out of or arising from such delivery.

(3) A nonresident pharmacy may apply for license renewal by submitting a renewal application on a form provided by the board.

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[16.19.6.24 NMAC - Rp, 16 NMAC 19.6.24, 3/30/2002; A, 06/09/2017; A, 11/28/2017. A. 12/15/2020; A 10/10/2023]