

NOTICE OF REGULAR BOARD MEETING AND RULE HEARING

The New Mexico Board of Pharmacy will convene on April 18th and 19th, 2024 at 9:00 a.m. and continue until finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting and rule hearing.

The agenda is posted 72 hours prior to the scheduled meeting. You may view and download a copy of the agenda through the board's website: <https://www.rld.nm.gov/boards-and-commissions/individual-boards-and-commissions/pharmacy/pharmacy-board-information/pharmacy-board-meetings/>. All proposed language regarding rule hearings is linked to the *Agenda*, the *Notice to the Public* on our website and the *New Mexico Sunshine Portal*.

Individuals petitioning the board regarding requests/waivers must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov at least one week in advance of the scheduled meeting.

Interested persons wishing to comment on proposed language regarding rule hearings may submit documentation for presentation prior to the hearing; via fax (505) 222-9845, mail or email to the Board Administrator, at the general e-mail pharmacy.board@rld.nm.gov in advance of the scheduled meeting. Public comment is also allowed during the rule 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 aid or service, or if you are in need of a translator to attend or participate in the hearing or meeting, please contact Board Administrator at 505-222-9830 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact Board Administrator at 505-222-9830 or e-mail pharmacy.board@rld.nm.gov if a summary or other type of accessible format is needed.

Short explanation of the Purpose of Proposed Rule Amendments: see below.

The full text of Proposed Rule Amendments for Rule Hearing for April 18th, 2024, at 9:10 a.m. is available for each rule via the hyperlinks below.

16.19.1 NMAC – GENERAL PROVISIONS – Sections 1, 3, and 9, administrative updates. Section 6, remove reference to surety bonds. Section 8, update meeting location to include virtual, and remove requirement that majority of board request waiver for alternate meeting location. Remove obsolete reference to board-specified location for examinations. Section 11, update registry requirement for pharmacists and pharmacist interns, the online license look up satisfies the requirement. Remove obsolete registry language.

STATUTORY AUTHORITY: The board of pharmacy is authorized under Paragraph (1) of Subsection A of Section 61-11-6 NMSA 1978 to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Paragraph (3) of Subsection A of Section 61-11-6 directs the board to provide for the issuance and renewal of licenses for pharmacists. Paragraphs (12), (13) and (14) of Subsection A of Section 61-11-6 NMSA 1978 authorize the board to employ and define the duties of an executive officer, inspectors, and qualified employees. Subsection B of Section 61-11-5 NMSA 1978 directs the board to meet at least once every three months.

16.19.2 NMAC – EXAMINATIONS – Sections 1, 3, and 6, administrative updates. Section 7, define abbreviations. Section 8, incorporate defined abbreviations, and specify that passing score for licensure examinations is that set by National Association of Boards of Pharmacy (NABP). Section 9, a candidate may not take either the NAPLEX or MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (respectively). This is a decrease from five consecutive times, and the time limit is new. Section 10, remove agreement of licensure requirement. Section 13, require current photograph (decreased from two), and remove requirement that back of photograph be signed and dated. Section 14, remove obsolete examination and

extraneous language. Increase from one to two years the period of inactivity after which a pharmacist must take the jurisprudence examination and meet additional requirements.

STATUTORY AUTHORITY: Section 61-11-9 NMSA 1978 establishes qualifications for licensure as a pharmacist by examination. Paragraph (2) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of pharmacy provide for at least two examinations a year of applicants for licensure as pharmacists.

16.19.3 - RECIPROCITY – Sections 1 and 8, administrative updates. Sections 9 and 10, language regarding ineligibility is moved to applicant ineligible (from eligibility) section, redundant subsection is removed, and the period of inactivity after which a pharmacist must take the jurisprudence examination (MPJE) and meet additional requirements is increased from one to two years. Section 11, replace specified passing score with language that applicant must pass the MPJE prior to license issuance. Subsection B, administrative update. Subsection C, a candidate may not take the MPJE more than four consecutive times without passing, and the time limit is three years from the first exam attempt (decrease from five times and time limit is new). Section 12, require current photograph (decreased from two) and remove requirement that back be signed and dated. Section 13, update evidence of qualifications, remove language regarding ineligibility for licensure if the board does not find the applicant to be competent and qualified to function as a pharmacist (the board requires education, experience, qualifications, and license examinations, rather than individualized competence assessments, per se). Language regarding good moral character is removed, and reference to 16.19.4.8 (gross immorality) replaces pharmacy, liquor, narcotic or drug laws. Section 14, pending indictment or alleged violations is updated with reference to 16.19.4.8 replacing pharmacy, liquor, narcotic or drug laws. Section 15, temporary license is replaced with expedited license provisions, to allow up to one year to pass the MPJE and waive license fee for military service members. Requirement that the licensing agency in each state submit a statement of good standing is removed (the board receives a report from NABP for each reciprocity applicant which includes all pharmacist licenses, by state and standing). New Section 16, military service members and their spouses who relocate to New Mexico because of military service orders may be issued an expedited license without taking the MPJE for duration of such orders.

STATUTORY AUTHORITY: Section 61-11-10 NMSA 1978 authorizes the board of pharmacy to issue a certificate of licensure as a pharmacist, with or without examination, by reciprocity.

16.19.4 NMAC - PHARMACIST: Section 7, definitions - approved (continuing education, CE) provider is redesignated as accredited provider, with corresponding subsequent updates. Dangerous Drug definition is updated to include additional statements from statute, obsolete definition is removed, and additional administrative updates are made. Sections 9 and 10, administrative updates. Also in Section 10, remove open book test and reference to providing law programs in each pharmacy district (the law updates are now provided virtually, and all sessions are open to licensees). Section 11, administrative updates. Section 12, impaired pharmacist is changed to impaired licensee or registrant, and applies to applicants for licensure or registration. The procedures are updated, and reference to intervention and treatment removed. Disciplinary sanctions paragraph is updated and clarified. Confidentiality and civil immunity citations are updated. Section 15, inactive status, the time period after which a pharmacist license becomes inactive is increased from one to two years, with corresponding update to requirements when applying for active status. Section 16, administrative updates. Section 17, pharmacist clinician continuing education requirement changed from 20 live (hours) to 20 total of which 10 are live, and administrative updates are made.

STATUTORY AUTHORITY: Paragraph (1) of Subsection A of Section 61-11-6 NMSA, 1978 authorizes the board of pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978. Those provisions include the authority to:

- A. deny or take disciplinary action with respect to any certificate of registration or license held or applied for under the Pharmacy Act, Section 61-11-20 NMSA 1978;
- B. require and establish criteria for continuing education as a condition of renewal of a pharmacist license, Paragraph (4) of Subsection A of Section 61-11-6 NMSA 1978;
- C. issue permits or licenses, as defined and limited by board regulation, to nursing homes, industrial and public health clinics and home care services, Paragraph (6) of Subsection A of Section 61-11-6 and 61-11-14 NMSA 1978;
- D. provide for the issuance and renewal of licenses for pharmacists, Paragraph (3) of Subsection A of Section 61-11-6, and 61-11-13 NMSA 1978;

E. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision, and discipline, Paragraph (5) of Subsection A of Section 61-11-6 NMSA 1978; and
F. adopt rules and regulations that establish patient counseling requirements, Paragraph (18) of Subsection A of 61-11-6 NMSA 1978. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the board is required to establish regulations governing certification as a pharmacist clinician. The Impaired Pharmacists Act, Sections 61-11A-1 to 61-11A-8 NMSA 1978, requires the establishment by the board of a plan for treatment and rehabilitation of impaired pharmacists. Subsection B of Section 61-1-36 NMSA 1978 authorizes the board of pharmacy to promulgate rules relating to listing specific criminal convictions that could disqualify an applicant from receiving a license on the basis of a previous felony conviction. Subsection B of Section 28-2-3 NMSA 1978 prohibits the board of pharmacy from considering certain criminal records to be used, distributed or disseminated in connection with an application for a license. Section 28-2-4 NMSA 1978 authorizes the board of pharmacy the power to refuse to grant or renew, or suspend or revoke a license where the applicant or licensee has been convicted of a felony and the criminal conviction directly relates to the particular profession and other convictions specified.

16.19.6 NMAC – PHARMACIES – Section 30, repackaging and distribution, is amended to allow a contracted pharmacy to provide appropriately labeled and packaged medication to a correctional facility to provide to an inmate upon release to avoid interruption in prescribed treatment.

STATUTORY AUTHORITY: Paragraph (6) of Subsection A of Section 61-11-6 NMSA 1978 requires that the board of Pharmacy provide for the licensing of retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.

16.19.11 – NURSING HOME DRUG CONTROL – Section 7, definition of licensed custodial care facility is updated.

STATUTORY AUTHORITY: Section 61-11-6.A(6) NMSA 1978 authorizes the Board of Pharmacy to license nursing home drug facilities and all places where dangerous drugs are dispensed or administered and to provide for the inspection of their facilities and activities. Section 61-11-14.B(9) NMSA 1978 directs the Board to issue drug custodial licenses for licensed nursing homes and to adopt regulations that define and limit those licenses.

16.19.12 - FEES – Section 9 is reworded to make it clearer that the waiver of registration fee is for change of duty location to New Mexico. Section 13, roster of board of pharmacy facility license fee is removed.

STATUTORY AUTHORITY: Section 30-31-11 NMSA 1978 authorizes the board of pharmacy (“board”) to charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances. Section 30-31B-6 NMSA 1978 authorizes the board to charge reasonable fees for the registration and control of the manufacture, possession, transfer and transportation of drug precursors. Sections 61-11-12, 61-11-13, and 61-11-14 NMSA 1978 authorize the board to charge, and limit the maximum charges for:

A. applications for registration and renewal of registration as a pharmacist, pharmacist intern, or pharmacy technician; and

B. applications for the registration of retail pharmacies, wholesale drug distributors, nonresident pharmacies, drug manufacturers, hospital pharmacies, drug rooms, nursing homes, industrial or public health clinics, the department of health clinics and health facilities, home care services, wholesalers, retailers and distributors of legend-bearing veterinary drugs, medicinal gas repackagers, medicinal gas sellers, outsourcing facilities, repackagers, and third party logistics providers. Section 61-1-34 NMSA 1978 authorizes the board to waive license fees for the first three years for military service members, spouses, dependents, and veterans where the license is issued by reciprocity.

Disciplinary Hearing(s): Sarah Higgins, DVM, CS00227604 order to show cause, 2023-037 at 1:30 p.m. on Thursday April 18th. If additional scheduling occurs, the final hearing date and time for each case will be included in the agenda posted to the board’s website at least 72 hours before the meeting.

Executive Director’s Report:

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