

New Mexico Board Of Barbers and Cosmetologist



Body Art Safe Practices Act NMSA 61-17 B
Body Art Rules and Regulations

Barbers and Cosmetologist Act NMSA 61-17 A
Barber and Cosmetology Rules and Regulations

61-17B-1. Short title.

Sections 1 through 14 of this act may be cited as the "Body Art Safe Practices Act".

61-17B-2. Purpose.

The purpose of the Body Art Safe Practices Act [61-17B-1 NMSA 1978] is to provide a safe and healthy environment for the administration of body art.

61-17B-3. Definitions.

As used in the Body Art Safe Practices Act [61-17B-1 NMSA 1978]:

- A. "board" means the board of barbers and cosmetologists;
- B. "body art" means tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico medical board;
- C. "body art establishment" means a fixed or mobile place where body art is
- D. "body artist" means a person who administers body piercing, tattooing or scarification;
- E. "body piercing" means to cut, stab or penetrate the skin to create a permanent hole or opening;
- F. "equipment" means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances;
- G. "instruments used for body art" means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art;
- H. "operator" means the owner in charge of a body art establishment;
- I. "scarification" means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin;
- J. "sharps" means any sterilized object that is used for the purpose of penetrating the
- K. "single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves;
- L. "sterilization" means destruction of all forms of microbiotic life, including spores; and
- M. "tattooing" means the practice of depositing pigment, which is either permanent, semipermanent or temporary, into the epidermis using needles by someone other than a state-licensed physician or a person under the supervision of a state-licensed physician and includes permanent cosmetics, dermography, micropigmentation, permanent color technology and micropigment implantation.

61-17B-4. Issuance of a body art license.

The board has authority to issue a body art license to a body artist who has demonstrated the ability to perform body art and who conforms with the board's rules with respect to safety, sterilization and sanitation and a body art operator license to an operator who conforms with the board's rules.

61-17B-5. License; application; revocation; suspension.

A. A body artist shall obtain a body art license, requirements for which shall be defined by the board that demonstrate that the body artist has the training and experience necessary to perform body piercing, tattooing or scarification and to establish and maintain a sanitary and sterile body art establishment.

B. An operator or body artist shall possess and post in a conspicuous place a valid and unsuspended license issued by the board in accordance with the Body Art Safe Practices Act [61-17B-1 NMSA 1978] and the rules promulgated pursuant to that act. An operator or a body artist shall not display a license unless it has been issued to the operator or body artist by the board and has not been suspended or revoked.

C. An operator or body artist shall apply to the board for the issuance of a license annually and pay license fees established by the board. The operator or body artist shall renew the license annually. The board shall set license fees and license renewal fees in amounts necessary to administer the provisions of the Body Art Safe Practices Act.

D. The board shall promulgate rules for the revocation or suspension of a license for an operator or body artist who fails to comply with a provision of the Body Art Safe Practices Act. A license shall not be suspended or revoked pursuant to the Body Art Safe Practices Act without providing the operator or the body artist an opportunity for an administrative hearing unless conditions in the body art establishment warrant immediate suspension pursuant to Section 9 [61-17B-9 NMSA 1978] of the Body Art Safe Practices Act. The hearing officer shall not be a person previously involved in the suspension or revocation action. An inspection made more than twenty-four months prior to the most recent inspection shall not be used as a basis for suspension or revocation.

E. The board shall charge a fee not to exceed three hundred dollars (\$300) for the application or annual renewal of a license. The operator or body artist shall provide proof of current immunization as required by the board, attendance at a blood-borne pathogen training program and other training as required and approved by the board before a license is issued or renewed.

F. A current body art or body art operator license shall not be transferable from one person to another.

G. Operators and body artists engaged in the body art business before the effective date of the Body Art Safe Practices Act shall have one hundred eighty days from the issuance of rules promulgated by the board to comply with license requirements.

H. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

- (1) the full names of all employees in the establishment and their exact duties;
- (2) the board-issued license with identification photograph;
- (3) the body art establishment name and hours of operation;
- (4) the name and address of the body art establishment owner;
- (5) a complete description of all body art performed;
- (6) a list of all instruments, body jewelry, sharps and inks used, including names of manufacturers and serial or lot numbers or invoices or other documentation sufficient to identify and locate the manufacturer; and
- (7) a copy of the Body Art Safe Practices Act.

I. An operator shall notify the board in writing not less than thirty days before changing the location of a body art establishment. The notice shall include the street address of the new location.

61-17B-6. Inspection by board

A. The board shall annually inspect body art establishments to determine compliance with the Body Art Safe Practices Act [61-17B-1 NMSA 1978]. An operator or body artist shall allow a board official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy records of the body art establishment. The operator or body artist shall be given an opportunity to accompany the board official on the inspection and to receive a report of the inspection within fourteen days after the inspection.

B. Refusal to allow an inspection is grounds for suspension or revocation of the license of the operator or body artist, provided that the board official tendered proper identification prior to the refusal.

61-17B-7. Exemptions.

A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act [61-17B-1 NMSA 1978].

B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.

61-17B-8. Sterile procedures and sanitation.

The board shall establish by rule requirements for:

- A. the use and disposal of equipment and instruments; provided that:
 - (1) all sharps shall be sterilized prior to use;
 - (2) single use items shall not be used on more than one client for any reason; and
 - (3) all body art stencils shall be single use and disposable;
- B. the sterilization or sanitation of non-disposable items;
- C. the prohibition of off-site sterilization; and
- D. procedures to control disease borne by contact with customer or body artist skin mucosa.

61-17B-9. Immediate suspension.

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 5 [61-17B-5 NMSA 1978] of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

61-17B-10. Judicial review.

An applicant denied a license or an operator or body artist whose license is suspended or revoked by the board may appeal pursuant to Section 39-3-1.1 NMSA 1978. 61-17B-11. Enforcement.

- A. The board may seek relief in district court to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the Body Art Safe Practices Act [61-17B-1 NMSA 1978].
- B. The district court may impose a civil penalty not exceeding five hundred dollars (\$500) for a violation of the Body Art Safe Practices Act. Each violation of the provisions of the Body Art Safe Practices Act constitutes a separate offense.
- C. The board may promulgate rules imposing a schedule of penalties for violations of the Body Art Safe Practices Act, provided that no penalty exceeds one hundred fifty dollars (\$150).

61-17B-11. Enforcement.

A. The board may seek relief in district court to enjoin the operation of a body art establishment or the practice of a body artist not in compliance with the Body Art Safe Practices Act [61-17B-1 NMSA 1978].

B. The district court may impose a civil penalty not exceeding five hundred dollars (\$500) for a violation of the Body Art Safe Practices Act. Each violation of the provisions of the Body Art Safe Practices Act constitutes a separate offense.

C. The board may promulgate rules imposing a schedule of penalties for violations of the Body Art Safe Practices Act, provided that no penalty exceeds one hundred fifty dollars (\$150).

61-17B-12. Use of barbers and cosmetologists fund.

All license fees and penalties imposed by the board pursuant to the Body Art Safe Practices Act [61-17B-1 NMSA 1978] shall be deposited in the barbers and cosmetologists fund [61-17A-14 NMSA 1978]. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

61-17B-13. Municipalities.

The Body Art Safe Practices Act [61-17B-1 NMSA 1978] provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.

61-17B-14. Rules.

The board shall, in conjunction with the department of health, promulgate rules necessary to implement the provisions of the Body Art Safe Practices Act [61-17B-1 NMSA 1978] by December 31, 2007.

61-17A-1. Short title. (Repealed effective July 1, 2014.)

Sections 1 through 24 [61-17A-1 to 61-17A-24 NMSA 1978] of this act may be cited as the "Barbers and Cosmetologists Act".

61-17A-2. Definitions. (Repealed effective July 1, 2014.)

As used in the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978]:

- A. "barber" means a person, other than a student, who for compensation engages in barbering;
- B. "board" means the board of barbers and cosmetologists;
- C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;
- D. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;
- E. "enterprise" means a business venture, firm or organization;
- F. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;
- G. "esthetician" means a person, other than a student, who for compensation:
 - (1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams for the purpose of preserving the health and beauty of the skin and body;
 - (2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or
 - (3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;
- H. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;
- I. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;
- J. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering; and
- K. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis.

61-17A-3. Barbering defined. (Repealed effective July 1, 2014.)

Barbering includes any one or any combination of the following practices when done upon the upper part of the human body for cosmetic purposes for the public generally, upon male or female:

- A. shaving or trimming the beard or cutting the hair;
- B. curling and waving, including permanent waving, the hair;
- C. giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances;
- D. shampooing, bleaching or dyeing the hair or applying tonics; or
- E. applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body.

61-17A-4. Cosmetology defined. (Repealed effective July 1, 2014.)

Cosmetology means the practice of those services that include:

- A. arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances;
- B. using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person;
- C. manicuring and pedicuring the nails of a person;
- D. caring for and servicing wigs and hair pieces; or
- E. removing of unwanted hair except by means of electrology.

61-17A-5. License required. (Repealed effective July 1, 2014.)

A. Unless licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or exempted from the provisions of that act, no person shall practice barbering or cosmetology for compensation either directly or indirectly.

B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, cosmetology or electrology for compensation.

D. Unless licensed by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation.

61-17A-6. Board created; membership.

A. The "board of barbers and cosmetologists" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of nine members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the nine members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] and shall have at least five years' practical experience in their respective occupations. Of those five, two members shall be licensed barbers, two members shall be licensed cosmetologists and one member shall represent school owners. Two members shall be licensed body artists pursuant to the Body Art Safe Practices Act [61-17B-1 NMSA 1978] and shall have at least five years in practice in their occupation. The remaining two members shall be public members. Neither the public members nor their spouses shall have ever been licensed pursuant to the provisions of the Barbers and Cosmetologists Act, the Body Art Safe Practices Act or similar prior legislation or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board regulation.

61-17A-7. Board powers and duties.

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act [14-4-1 NMSA 1978], rules necessary to carry out the provisions of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] and the Body Art Safe Practices Act [61-17B-1 NMSA 1978];

(2) establish fees;

(3) provide for the examination, licensure and license renewal of applicants for licensure;

(4) establish standards for and provide for the examination, licensure and license renewal of manicurists-pedicurists, estheticians, electrologists and body artists and operators pursuant to the Body Art Safe Practices Act;

(5) adopt a seal;

- (6) furnish copies of rules and sanitary requirements adopted by the board to each owner or manager of an establishment, enterprise or school;
- (7) keep a record of its proceedings and a register of applicants for licensure;
- (8) provide for the licensure of barbers, cosmetologists, manicurists-pedicurists, estheticians, body artists and operators pursuant to the Body Art Safe Practices Act, electrologists, instructors, schools, enterprises and establishments;
- (9) establish administrative penalties and fines;
- (10) create and establish standards and fees for special licenses;
- (11) establish guidelines for schools to calculate tuition refunds for withdrawing student; and
- (12) hire an administrator and other such staff as necessary to carry out the provisions of the Body Art Safe Practices Act.

B. The board may establish continuing education requirements as requirements for licensure.

C. 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 Barbers and Cosmetologists Act and the Body Art Safe Practices Act.

61-17A-8. Licensure requirements; barbers. (Repealed effective July 1, 2014.)

A. A barber license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) has an education equivalent to the completion of the second year of high school;
- (2) is at least seventeen years of age;
- (3) has completed a course in barbering of at least one thousand two hundred hours in a school approved by the board; and
- (4) has passed an examination approved by the board.

B. The holder of a barber license has the right and privilege to use the title "barber", the initials "R.B." following the holder's surname and to use a barber pole, the traditional striped, vertical emblem of the barbering trade.

61-17A-9. Licensure requirements; cosmetologists. (Repealed effective July 1, 2014.)

A. A cosmetologist license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is at least seventeen years of age;
- (2) has an education equivalent to the completion of the second year of high school;
- (3) has completed a course in cosmetology of at least one thousand six hundred hours at a school approved by the board; and

(4) has passed an examination approved by the board.

B. The name of a licensed cosmetologist may be immediately followed by the initials "R.C.", as a right and privilege of licensure.

61-17A-10. Licensure requirements of manicurists-pedicurists, estheticians and electrologists. (Repealed effective July 1, 2014.)

A. The board shall provide for the licensure of manicurists-pedicurists. The board shall issue a manicurist-pedicurist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed manicurist-pedicurist may be immediately followed by the initials "R.M.", as a right and privilege of licensure.

B. The board shall provide for the licensure of estheticians. The board shall issue an esthetician license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed esthetician may be immediately followed by the initials "R.F.", as a right and privilege of licensure.

C. The board shall provide for the licensure of electrologists. The board shall issue an electrologist license to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed electrologist may be immediately followed by the initials "R.E.", as a right and privilege of licensure.

61-17A-11. Licensure of instructors. (Repealed effective July 1, 2014.)

A. A cosmetologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is a licensed cosmetologist;
- (2) has completed at least a four-year high school course of study or its equivalent as approved by the board;
- (3) has met all requirements established by the board; and
- (4) has passed an examination approved by the board.

B. a barber instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who:

- (1) is a licensed Barber;
- (2) has completed at least a four-year high school course of study or its equivalent as approved by the board;
- (3) has met all requirements established by the board; and
- (4) has passed an examination approved by the board.

C. An electrologist instructor license shall be issued to any person who files a completed application, accompanied by the required fees and documentation, and who submits satisfactory evidence of compliance with all requirements established by the board. The name of a licensed instructor may be immediately followed by the initials "R.I.", as a right and privilege of licensure.

61-17A-12. Licensure of schools. (Repealed effective July 1, 2014.)

A. The board shall provide for the licensure of barber schools. The board shall issue a barber school license to any barber school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

B. The board shall provide for the licensure of cosmetology schools. The board shall issue a cosmetology school license to any cosmetology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

C. The board shall provide for the licensure of electrology schools. The board shall issue an electrology school license to any electrology school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

D. The board shall provide for the licensure of specialty schools. The board shall issue a specialty school license to any specialty school that submits a completed application, accompanied by the required fees and documentation, and that submits satisfactory evidence that it complies with all enrollment, curriculum, instructional and graduation requirements and record-keeping procedures established by the board.

E. The board shall establish crossover credit standards for training available at either barber schools or cosmetology schools that may be used in meeting licensure requirements in either profession.

F. The board shall establish a corporate surety bond requirement for schools to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school.

61-17A-13. Repealed.

61-17A-14. Barbers and cosmetologists fund created. (Repealed effective July 1, 2014.)

The "barbers and cosmetologists fund" is created in the state treasury. All license fees, charges and fines imposed by the board shall be deposited in the fund. Money in the fund is appropriated to the board for the purpose of carrying out the provisions of the Barbers

and Cosmetologists Act [61-17A-1 NMSA 1978]. Any balance remaining in the fund at the end of each fiscal year shall not revert to the general fund.

61-17A-15. Licensure of all establishments and enterprises. (Repealed effective July 1, 2014.)

The board shall provide for the licensure of all establishments and enterprises. The board shall issue a license to establishments, enterprises and clinics that submit a completed application, accompanied by the required fees and documentation, and that submit satisfactory evidence of compliance with all requirements established by the board.

61-17A-16. Fees. (Repealed effective July 1, 2014.)

The board may, by regulation, establish initial license and renewal fees not to exceed the following:

Establishment license	\$200.00
School license	\$600.00
Relocation of a school	\$300.00
Cosmetologist license	\$50.00
Barber license	\$50.00
Specialty license	\$50.00
Instructor license	\$50.00
Duplicate license.....	\$50.00
Temporary license	\$25.00
Administrative fee	\$100.00
Limited license fee	\$100.00
Licensure through reciprocity	\$200.00
Transcript	\$50.00
Examinations.....	\$100.00

61-17A-17. Licensure under prior law; endorsement. (Repealed effective July 1, 2014.)

A. Any person licensed as a barber, a cosmetologist, an esthetician, an electrologist, an instructor of cosmetology or barbering or an instructor of electrology, a manicurist-pedicurist or any person holding an establishment license, clinic license or school owner's license under any prior laws of this state, which license is valid on the effective date of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978], shall be held to be licensed under the provisions of that act and shall be entitled to the renewal of his license as provided in that act.

B. The board may grant a license pursuant to the provisions of the Barbers and Cosmetologists Act without an examination, upon payment of the required fee, provided that the applicant:

- (1) Holds a current license from another state, territory or possession of the United States, or the District of Columbia, that has training hours and qualifications similar to or exceeding those required for licensure in New Mexico; and
- (2) Meets all other requirements for reciprocity as determined by regulation of the board.

61-17A-18. License to be displayed; notice of change of place of business. (Repealed effective July 1, 2014.)

Every holder of a license shall notify the executive director of any change in place of business. Upon receipt of the notification, the executive director shall make the necessary change in the books. A license shall be displayed conspicuously at the holder's place of business.

61-17A-19. License nontransferable. (Repealed effective July 1, 2014.)

Each license shall be issued under the authority of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] by the board in the name of the licensee. The license may not be the subject of a sale, transfer, assignment, conveyance, lease, bequest, gift or other means of transfer.

61-17A-20. Duration, restoration and renewal of licenses.

A. The original issuance and renewal of licenses to practice as a barber, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee fails to renew the license for the next year, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the licensee may request restoration of the license pursuant to rules promulgated by the board.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars (\$100) as established by board rules is required.

C. The board may establish a staggered system of license expiration.

61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license. (Repealed effective July 1, 2014.)

A. The board shall, in accordance with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978], issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

- (1) The commission of any offense described in the Barbers and Cosmetologists Act [61-17A-1 to 61-17A-24 NMSA 1978];
- (2) The violation of any sanitary regulation promulgated by the board;
- (3) Malpractice or incompetency;
- (4) Advertising by means of knowingly false or deceptive statements;
- (5) Habitual drunkenness or habitual addiction to the use of habit-forming drugs;
- (6) Continuing to practice in or be employed by an establishment, an enterprise, a school or an electrology clinic in which the sanitary regulations of the board, of the department of health or of any other lawfully constituted board, promulgated for the regulation of establishments, enterprises, schools or electrology clinics, are known by the licensee to be violated;

- (7) Default of a licensee on a student loan;
 - (8) Gross continued negligence in observing the rules and regulations;
 - (9) Renting, loaning or allowing the use of the license to any person not licensed under the provisions of the Barbers and Cosmetologists Act;
 - (10) Dishonesty or unfair or deceptive practices;
 - (11) Sexual, racial or religious harassment;
 - (12) Conduct of illegal activities in an establishment, enterprise, school or electrology clinic or by a licensee;
 - (13) Conviction of a crime involving moral turpitude; or
 - (14) Aiding, abetting or conspiring to evade or violate the provisions of the Barbers and Cosmetologists Act.
- B. Any license suspended or revoked shall be delivered to the board or any agent of the board upon demand.

61-17A-22. Exemptions. (Repealed effective July 1, 2014.)

The following persons are exempt from the provisions of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] while in the discharge of their professional duties:

- A. Persons licensed by the law of this state to practice medicine and surgery or chiropractic;
- B. Commissioned medical or surgical officers of the United States army, navy or marine hospital service;
- C. Registered nurses; and
- D. Funeral service practitioners.

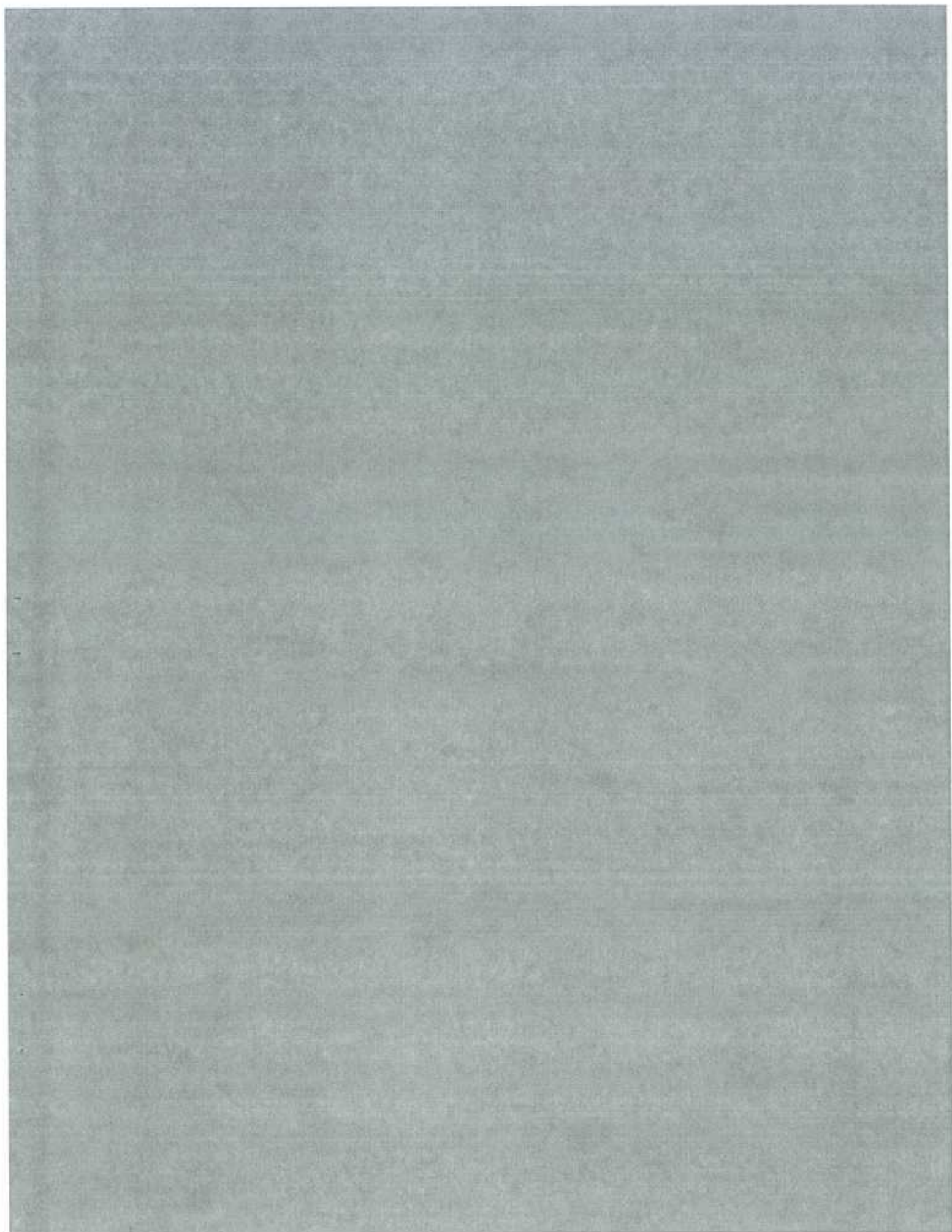
61-17A-23. Penalties. (Repealed effective July 1, 2014.)

Each of the following constitutes a misdemeanor punishable upon conviction by a fine of less than one thousand dollars (\$1,000) or by imprisonment in the county jail for less than one year, or both, in the discretion of the court:

- A. the violation of any of the provisions of the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978] or a violation of any regulation promulgated pursuant to that act;
- B. obtaining or attempting to obtain a license for money other than the required fee or for any other thing of value or by fraudulent misrepresentations; or
- C. practicing or attempting to practice by fraudulent misrepresentations.

61-17A-24. Criminal offender's character evaluation. (Repealed effective July 1, 2014.)

The provisions of the Criminal Offender Employment Act [28-2-1 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Barbers and Cosmetologists Act [61-17A-1 NMSA 1978].



TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 1 GENERAL PROVISIONS

16.36.1.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.1.1 NMAC - N, 05/16/2008]

16.36.1.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.1.2 NMAC - N, 05/16/2008]

16.36.1.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-3, 61-17B-5, 61-17B-7 and 61-17B-13.
[16.36.1.3 NMAC - N, 05/16/2008]

16.36.1.4 DURATION: Permanent
[16.36.1.4 NMAC - N, 05/16/2008]

16.36.1.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.1.5 NMAC - N, 05/16/2008]

16.36.1.6 OBJECTIVE: To define terms relevant to body art, custody and alteration of licenses, license posted, exemptions and municipalities
[16.36.1.6 NMAC - N, 05/16/2008]

16.36.1.7 DEFINITIONS: As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning.

A. "Aftercare" means written instructions given to the client, specific to the body piercing or tattooing procedure(s) rendered, on caring for the body piercing or tattoo and surrounding area.

B. "Antiseptic" means an agent that destroys disease-causing microorganisms on human skin or mucosa.

C. "Autoclave" means a piece of medical equipment that employs the steam under pressure method of sterilization.

D. "Board" means the board of barbers and cosmetologists.

E. "Body art" means tattooing, body piercing or scarification but does not include practices that are considered medical procedures by the New Mexico medical board.

F. "Body art establishment" means a fixed or mobile place where body art is administered on the premises.

G. "Body artist" means a person who administers body piercing, tattooing or scarification.

H. "Body piercing" means to cut, stab or penetrate the skin to create a permanent hole or opening.

I. "Equipment" means machinery used in connection with the operation of a body art establishment, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and other apparatuses and appurtenances.

J. "Instruments used for body art" means hand pieces, needles, needle bars and other items that may come into contact with a person's body during the administration of body art.

K. "Operator" means the owner in charge of a body art establishment.

L. "Scarification" means cutting into the skin with a sharp instrument or branding the skin with a heated instrument to produce a permanent mark or design on the skin.

M. "Sharps" means any sterilized object that is used for the purpose of penetrating the skin or mucosa, including needles, scalpel blades and razor blades.

N. "Single use" means products or items that are intended for one-time, one-person use and are disposed of after use on each client, including cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

O. "Sterilization" means destruction of all forms of microbiotic life, including spores.

P. "Tattooing" means the practice of depositing pigment, which is either permanent, semipermanent or temporary, into the epidermis using needles by someone other than a state-licensed physician or a person under the supervision of a state-licensed physician and includes permanent cosmetics, dermography, micropigmentation, permanent color technology and micropigment implantation.
[16.36.1.7 NMAC - N, 05/16/2008]

16.36.1.8 CUSTODY AND ALTERATION OF LICENSES

- A. Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only as long as the licensee complies with the act and board rules.
- B. Licenses shall not be altered in any way.
- C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment.
- D. A current body art apprenticeship, practitioner or operator license is not transferable from one person to another.

[16.36.1.8 NMAC - N, 05/16/2008]

16.36.1.9 LICENSES POSTED

- A. All licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public at all times.
- B. Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.
- C. All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. The license shall be posted where clearly visible to the public at all times.
- D. Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

[16.36.1.9 NMAC - N, 05/16/2008]

16.36.1.10 EXEMPTIONS

- A. A person who pierces only the outer perimeter of the ear, not including any cartilage, using a pre-sterilized encapsulated single use stud ear piercing system, implementing appropriate procedures, is exempt from the requirements of the Body Art Safe Practices Act [61-17B-1 NMSA 1978].
- B. A member of a federally recognized tribe, band, nation or pueblo who performs scarification rituals for religious purposes is exempt from the requirements of the Body Art Safe Practices Act.
- C. Operators and body artists engaged in the body art business before the effective date of the Body Art Safe Practices Act shall have one hundred eighty days from May 16, 2008 to comply with license requirements.

[16.36.1.10 NMAC - N, 05/16/2008]

16.36.1.11 MUNICIPALITIES: The Body Art Safe Practices Act [61-17B-1 NMSA 1978] provides minimum standards for safe body art practices. A municipality may by ordinance provide more stringent standards.
[16.36.1.11 NMAC - N, 05/16/2008]

HISTORY OF 16.36.1 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 2 LICENSURE REQUIREMENTS

16.36.2.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.2.1 NMAC - N, 05/16/2008]

16.36.2.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.2.2 NMAC - N, 05/16/2008]

16.36.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5.
[16.36.2.3 NMAC - N, 05/16/2008]

16.36.2.4 DURATION: Permanent
[16.36.2.4 NMAC - N, 05/16/2008]

16.36.2.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.2.5 NMAC - N, 05/16/2008]

16.36.2.6 OBJECTIVE: To outline the application process, training and examination requirements and the renewal procedures
[16.36.2.6 NMAC - N, 05/16/2008]

16.36.2.7 DEFINITIONS: [RESERVED]

16.36.2.8 APPLICATION FOR BODY ART TATTOO OR PIERCING-SCARIFICATION
APPRENTICE LICENSE

- A. Application forms:
- (1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.
 - (2) Applications for licensure must include:
 - (a) a completed and signed application;
 - (b) applicant name;
 - (c) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
 - (d) mailing address;
 - (e) business address;
 - (f) phone number;
 - (g) place of employment as a practitioner;
 - (h) proof of completion of tattoo or piercing-scarification training program as set forth below;
 - (i) an apprentice sponsorship form which must be signed by a body art practitioner licensed in the kind of body art the applicant is seeking an apprenticeship license;
 - (j) non-refundable application fee as required by the board in the form of a money order, cashier's check, business check, or credit card, (no personal checks will be accepted).
- B. Photographs: Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.
- C. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or higher.
[16.36.2.8 NMAC - N, 05/16/2008]

16.36.2.9 APPLICATION FOR BODY ART TATTOO OR PIERCING-SCARIFICATION
PRACTITIONER LICENSE

- A. Application forms:

- (1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.
- (2) Applications for licensure must include:
- (a) a completed and signed application;
 - (b) name;
 - (c) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
 - (d) mailing address;
 - (e) business address;
 - (f) phone number;
 - (g) place of employment as a practitioner;
 - (h) proof of completion of tattoo, piercing, or scarification training program and examination as set forth below;
 - (i) verification of completion of tattoo or piercing-scarification apprenticeship or experience as set forth below;
 - (j) non-refundable application fee as required by the board in the form of a money order, cashier's check, business check, or credit card, (no personal checks will be accepted).
- B. Photographs: Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.
- C. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or higher. If the applicant took and passed the jurisprudence exam to obtain an apprentice license within the prior two years the exam results will transfer to the application for a practitioner license.
- [16.36.2.9 NMAC - N, 05/16/2008]

16.36.2.10 APPLICATION FOR PERMANENT COSMETIC PROFESSIONAL

- A. Application forms:
- (1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.
- (2) Applications for licensure must include:
- (a) a completed and signed application;
 - (b) name;
 - (c) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
 - (d) mailing address;
 - (e) business address;
 - (f) phone number;
 - (g) place of employment as a practitioner;
 - (h) proof of completion of permanent cosmetic training program and examination as set forth below;
 - (i) non-refundable application fee as required by the board in the form of a money order, cashier's check, business check, or credit card, (no personal checks will be accepted).
- B. Photographs: Applicants for original licensure shall attach a recent passport size, color photograph, front-view of face.
- C. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or higher.
- [16.36.2.10 NMAC - N, 05/16/2008]

16.36.2.11 APPLICATION FOR BODY ART OPERATOR ESTABLISHMENT LICENSE

- A. Any establishment licensed by the board must be under the immediate supervision of a board licensed practitioner while licensed activity is being practiced therein.
- B. The supervising licensee(s) must be licensed by the board in each aspect of the licensed activity being practiced in the establishment during the time licensee is in charge (e.g. tattoo, piercing, permanent cosmetics or scarification).
- C. Application forms:

- (1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose.
- (2) Applications for licensure must include:
- (a) a completed and signed application;
 - (b) name of the body art establishment;
 - (c) name of the operator of the establishment;
 - (d) proof of age indicating applicant is at least eighteen years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);
 - (e) mailing address;
 - (f) physical business address;
 - (g) business phone number;
 - (h) name(s) of the body art supervising practitioner(s) working at the establishment;
 - (i) non-refundable application fee as required by the board in the form of a money order, cashier's check, business check, or credit card, (no personal checks will be accepted).
- [16.36.2.11 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.12 PROOF OF CURRENT IMMUNIZATIONS: Proof shall be provided upon request of the board or board representative that apprentice, practitioner, and permanent cosmetic practitioner licensee has either completed or declined, on a form provided by the board, the hepatitis B vaccination series. For those who decline the hepatitis B vaccination series, an information brochure developed by the New Mexico department of health will be provided which explains the risks of hepatitis B and C.

[16.36.2.12 NMAC - N, 05/16/2008]

16.36.2.13 PROOF OF COMPLETION OF TRAINING PROGRAM: Proof shall be provided with the original application that the applicant has, at a minimum, completed the following training prior to making application for a license as a body artist apprentice, body artist practitioner, permanent cosmetic professional or body art operator. Such training must include:

- A. blood borne pathogens (disease) training that meets OSHA standards and center for disease control recommendations; an examination is required as a condition of training completion:
- (1) the training must be completed within 12 months prior to application and include, at a minimum, the following:
- (a) a copy and explanation of the OSHA bloodborne pathogen standard;
 - (b) an explanation of the epidemiology and symptoms of bloodborne diseases;
 - (c) an explanation of the modes of transmission of bloodborne pathogens;
 - (d) an explanation of an exposure control plan and the means by which the employee can obtain a copy of the written plan;
 - (e) an explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;
 - (f) an explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;
 - (g) information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
 - (h) an explanation of the basis for selection of personal protective equipment;
 - (i) information on the hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated, and that the vaccine and vaccination will be offered free of charge;
 - (j) information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
 - (k) an explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that must be made available;
 - (l) information on the post-exposure evaluation and follow-up that an employer is required to provide for the employee following an exposure incident;
 - (m) an explanation of the signs and labels or color coding required by OSHA standards; and
 - (n) an opportunity for interactive questions and answers with the person conducting the training session;
- (2) the training may be obtained through any of the following:

- (a) nationally accredited organization;
 - (b) local government sponsored;
 - (c) hospital sponsored;
 - (d) college sponsored;
 - (e) OSHA (occupational safety and health administration) sponsored;
 - (f) red cross; or
 - (g) board approved;
- B. current certification in first aid and cardiopulmonary resuscitation (CPR); the training may be obtained through any of the following:
- (1) nationally accredited organization;
 - (2) local government sponsored;
 - (3) hospital sponsored;
 - (4) college sponsored;
 - (5) OSHA (occupational safety and health administration) sponsored;
 - (6) red cross; or
 - (7) board approved;
- C. an applicant for a tattoo or body piercing-scarification apprenticeship shall file an apprentice agreement notarized by all parties that applicant shall complete the board required training requirements.
[16.36.2.13 NMAC - N, 05/16/2008]

16.36.2.14 TATTOO OR BODY PIERCING-SCARIFICATION APPRENTICESHIP TRAINING AND EXAMINATION REQUIREMENTS

A. An applicant for original tattoo or piercing-scarification practitioner license shall provide proof, acceptable to the board or its designee, that applicant has completed a 1500 hour apprenticeship program under the direct supervision of a licensed practitioner with instruction and experience in the kind of body art for which the applicant seeks a body art practitioner license.

B. Proof of completing 1500 hour apprentice program shall include:

- (1) verification of completion of apprenticeship program on form provided by the board;
- (2) a minimum of 10 original photographs of healed tattoos or piercings-scarifications which the artisan has personally performed and a minimum of three signed testaments from previous clients.

C. Body piercing apprenticeship curriculum:

- (1) Orientation: 200 hours:
 - (a) state laws and regulations;
 - (b) tax and business license requirements;
 - (c) OSHA bloodborne pathogens standard;
 - (d) the establishment's exposure control plan;
 - (e) MSDS sheets;
 - (f) paperwork and business documentation;
 - (g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);
 - (h) environment/appropriate studio set-up;
 - (i) professional image;
 - (j) appropriate communication with clients;
 - (k) ethics and legalities:
 - (i) minors;
 - (ii) drugs and alcohol;
 - (iii) medical conditions/risk assessment;
 - (iv) personal boundaries;
 - (l) dealing with emergencies:
 - (i) blood spills;
 - (ii) fainting;
 - (iii) bleeding;
 - (iv) needlesticks;
 - (v) other exposures.
- (2) Sterilization, disinfection theory and practical: 200 hours:
 - (a) microbiology;
 - (b) definitions;

- (c) microorganisms of the skin;
- (d) factors that influence the survival and growth of microorganisms;
- (e) breaking the chain of infection;
- (f) infection control;
- (g) handwashing;
- (h) types of soaps and hand sanitizers;
- (i) use of gloves and other personal protective equipment;
- (j) how to recognize, prevent and remedy cross-contamination;
- (k) immunizations;
- (l) cleaning, disinfection and sterilization;
- (m) sterile chart;
- (n) cleaning/appropriate procedures;
- (o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;
- (p) disinfection/appropriate use and disposal of disinfecting solutions;
- (q) sterilization/appropriate use and maintenance of autoclave sterilizers.
- (3) Body piercing theory-100 hours:
 - (a) jewelry;
 - (b) standards and certifications;
 - (c) certified materials for new piercings;
 - (d) other appropriate materials for new piercings;
 - (e) jewelry materials for healed piercings;
 - (f) jewelry to avoid;
 - (g) quality jewelry (things to look for);
 - (h) jewelry styles;
 - (i) cleaning, sterilization and storage of jewelry;
 - (j) anatomy;
 - (k) understanding of skin;
 - (l) parts and functions of skin;
 - (m) oral/facial anatomy as it pertains to piercing;
 - (n) body anatomy as it pertains to piercing;
 - (o) determining the appropriateness of a piercing;
 - (p) equipment;
 - (q) disposable supplies;
 - (r) needles;
 - (s) sharps disposal;
 - (t) reusable equipment;
 - (u) storage;
 - (v) aftercare;
 - (w) piercing guns (theory only).
- (4) Body piercing observation/practical-1000 hours:
 - (a) proper use of safety procedures outlined in theory training;
 - (b) aseptic technique;
 - (c) room set-up and break-down;
 - (d) skin preparation;
 - (e) client relations/relaxation techniques;
 - (f) pain management;
 - (g) piercing techniques;
 - (h) dealing with mistakes;
 - (i) in order to be approved, curriculum for body piercing technician training shall include, at a minimum, 50 practical operations observed by the apprentice, 50 practical operations in which the apprentice participated, and 50 practical operations performed by the apprentice under supervision, but without assistance; the 50 unsupervised completed procedures shall consist of at least five completed procedures in each of the following areas:
 - (i) ears;
 - (ii) nose;

- (iii) tongue;
 - (iv) nipple;
 - (v) navel;
 - (vi) eyebrow;
 - (vii) lip/labret;
 - (j) curriculum should include the following for each procedure:
 - (i) related anatomy;
 - (ii) appropriate placement;
 - (iii) skin preparation;
 - (iv) implement selection and use;
 - (v) techniques;
 - (vi) healing and aftercare.
- D. Tattoo apprenticeship curriculum:
- (1) Orientation: 200 hours:
 - (a) state laws and regulations;
 - (b) tax and business license requirements;
 - (c) OSHA bloodborne pathogens standard;
 - (d) the establishment's exposure control plan;
 - (e) MSDS sheets;
 - (f) paperwork and business documentation;
 - (g) HIPAA (Health Insurance Portability and Accountability Act of 1996 privacy rule);
 - (h) environment/appropriate studio set-up;
 - (i) professional image;
 - (j) appropriate communication with clients;
 - (k) ethics and legalities;
 - (i) minors;
 - (ii) drugs and alcohol;
 - (iii) medical conditions/risk assessment;
 - (iv) personal boundaries;
 - (l) dealing with emergencies:
 - (i) blood spills;
 - (ii) fainting;
 - (iii) bleeding;
 - (iv) needlesticks;
 - (v) other exposures.
 - (2) Sterilization, disinfection theory and practical: 200 hours:
 - (a) microbiology;
 - (b) definitions;
 - (c) microorganisms of the skin;
 - (d) factors that influence the survival and growth of microorganisms;
 - (e) breaking the chain of infection;
 - (f) infection control;
 - (g) handwashing;
 - (h) types of soaps and hand sanitizers;
 - (i) use of gloves and other personal protective equipment;
 - (j) how to recognize, prevent and remedy cross-contamination;
 - (k) immunizations;
 - (l) cleaning, disinfection and sterilization;
 - (m) sterile chart;
 - (n) cleaning/appropriate procedures;
 - (o) implement pre-cleaning before sterilization/appropriate use of cleaning solutions and ultrasonic cleaners;
 - (p) disinfection/appropriate use and disposal of disinfecting solutions;
 - (q) sterilization/appropriate use and maintenance of autoclave sterilizers.
 - (3) Tattooing theory-100 hours:
 - (a) artistic development;

- (b) drawing for clients;
 - (c) stencil making and application;
 - (d) color theory/understanding the color wheel;
 - (e) line quality and proportion;
 - (f) shading and coloring technique;
 - (g) pigments and color mixing;
 - (h) portfolio construction and maintenance;
 - (i) anatomy;
 - (j) understanding of skin;
 - (k) parts and functions of skin;
 - (l) determining the appropriateness of a tattoo placement;
 - (m) equipment;
 - (n) disposable supplies;
 - (o) needles;
 - (p) sharps disposal;
 - (q) reusable equipment;
 - (r) storage;
 - (s) tattoo equipment maintenance;
 - (t) understanding the electromagnetic tattoo machine and it's history;
 - (u) liner/shader set-up;
 - (v) quality and conductivity of metals used in tattoo machines;
 - (w) spring gauges and maintenance;
 - (x) the difference between long stroke/short stroke technique;
 - (y) tattoo machine schematics, electronics and constructions;
 - (z) tuning and adjustment of machines;
 - (aa) understanding current/voltage and reciprocation response;
 - (bb) needle-making safety and construction;
 - (cc) aftercare.
- (4) Tattooing observation/practical-1000 hours:
- (a) proper use of safety procedures outlined in theory training;
 - (b) aseptic technique;
 - (c) room set-up and break-down;
 - (d) skin preparation;
 - (e) client relations/relaxation techniques;
 - (f) pain management;
 - (g) tattooing techniques;
 - (h) line quality and solid color techniques;
 - (i) pigment and implementation selection and use;
 - (j) needle depth and machine/hand speed coordination;
 - (k) dealing with mistakes;
 - (l) bandaging techniques.

E. Applicants engaged in the tattoo or body piercing-scarification business before May 16, 2008 may submit notarized letters of employment from past employers or employment records as substitution for an apprenticeship to prove completion of at least 1500 hours of actual experience in the practice of performing body art activities of the kind for which the applicant seeks a body art practitioner license.

F. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules. A body artist licensed in another jurisdiction must submit a verification of licensure from jurisdiction verifying that the artist holds a current license and is in good standing.

G. An applicant for a body art tattoo, piercing-scarification practitioner license shall take the tattoo or body piercing-scarification exam approved by the board with a passing score approved by the board. A candidate who does not meet this score can retest up to two times. A candidate who does not pass the written examination must wait at least seven days before retesting. Any candidate who does not meet the minimum passing score after three attempts shall be required to enroll or re-enroll in an apprentice program.
[16.36.2.14 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.15 APPRENTICE SPONSOR

A. Upon filling an application with the board a licensee may be approved to sponsor a tattoo or body piercing-scarification apprentice if the licensee:

- (1) holds a New Mexico tattoo or body piercing-scarification license;
- (2) provides documentation of legally practicing tattoo or body piercing-scarification for at least five years without any board sanctioned disciplinary action; and
- (3) provides a curriculum as required in 16.36.2.14 NMAC to the board for approval.

B. It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit apprentice documents in a timely fashion to the board.

[16.36.2.15 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.16 PERMANENT COSMETIC TRAINING AND EXAMINATION REQUIREMENTS

A. The permanent cosmetic professional applicant shall have completed a 100 hour training program approved by the board, and shall perform under the direct supervision of a board approved practitioner a minimum of 40 hours and shall include the following requirements:

- (1) Microbiology:
 - (a) microorganisms, viruses, bacteria, fungi;
 - (b) transmission cycle of infectious diseases; and
 - (c) characteristics of antimicrobial agents.
- (2) Immunization:
 - (a) types of immunizations; and
 - (b) general preventative measures to protect the apprentice and client.
- (3) Sanitation and disinfection:
 - (a) definition of terms;
 - (b) use of steam sterilization equipment and techniques;
 - (c) use of chemical agents, antiseptics, disinfectants, and fumigants;
 - (d) use of sanitation equipment;
 - (e) preservice sanitation procedure; and
 - (f) post-service sanitation procedure.
- (4) Safety:
 - (a) proper needle handling and disposal;
 - (b) how to avoid overexposure to chemicals;
 - (c) use of material safety data sheets;
 - (d) blood spill procedures;
 - (e) equipment and instrument storage.
- (5) Bloodborne pathogen standards.
 - (a) OSHA bloodborne pathogen standards;
 - (b) control plan for bloodborne pathogens;
 - (c) exposure control plan;
 - (d) overview of compliance requirements; and
 - (e) disorders and when not to service a client.
- (6) Professional standards:
 - (a) client preparation;
 - (b) recordkeeping;
 - (c) client health history;
 - (d) consent and disclosure forms;
 - (e) sanitation and safety precautions;
 - (f) HIPAA (Health Insurance Portability and Accountability Act of 1996 Privacy rule)

standards;

 - (g) implement selection and use;
 - (h) proper use of equipment;
 - (i) material selection and use;
 - (j) needles.
- (7) Anatomy:
 - (a) understanding of skin; and
 - (b) parts and functions of skin.
- (8) New Mexico laws and regulations.

- B. A minimum of five of each of the following procedures:
 - (1) eye brow simulation;
 - (2) lip liner;
 - (3) lip color; and
 - (4) eye liner/eyelash enhancer.
 - C. Client records shall be maintained by the practitioner applicant to verify that the minimum requirements for the procedures were completed.
 - D. The practitioner applicant shall submit a minimum of one photograph whereby the professional has personally performed one complete procedure for each of the following areas:
 - (1) eye brow simulation;
 - (2) lip liner;
 - (3) lip color; and
 - (4) eye liner/eyelash enhancer.
 - E. A practitioner performing areola restoration shall have completed a training program approved by the board.
 - F. An applicant for a permanent cosmetic professional license shall take an exam approved by the board with a passing minimum score approved by the board.
- [16.36.2.16 NMAC - N, 05/16/2008; A, 04/12/2010]

16.36.2.17 LICENSE RENEWAL

- A. The body artist and operator shall renew the license annually.
 - B. Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in a late fee.
 - C. Renewal application shall include the following information:
 - (1) proof of completion of blood borne pathogens training within the prior 12 months; and
 - (2) current CPR and first aid certification.
 - D. The board will issue renewal licenses within 15 working days of receipt of the renewal application and applicable fee.
 - E. An applicant whose license has expired for one year but less than five years shall submit a reinstatement application, payment of reinstatement fee; proof of completion of blood borne pathogens training within the prior 12 months, current CPR and first aid certification and take and pass a board approved jurisprudence examination with a minimum score of 75% or higher.
 - F. An applicant whose license has expired for more than five years shall re-enter an approved training program and complete a 40 hour theory curriculum, take the tattoo or body piercing-scarification exam approved by the board with a passing minimum score approved by the board and take and pass a board approved jurisprudence examination with a minimum passing score of 75%.
- [16.36.2.17 NMAC - N, 05/16/2008]

16.36.2.18 SPECIAL EVENT, MOBILE BODY ART AND GUEST LICENSE REQUIREMENTS

- A. Any licensee desiring to sponsor a special event that will not be conducted at a licensed establishment must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Approval for the special events may be made administratively.
- B. All provisions of these regulations shall apply with the following exceptions.
 - (1) Hand wash facilities shall be easily accessible to each procedure area and designated for use by artists only. Hand wash facilities or temporary hand wash facilities shall consist of antibacterial liquid soap, single-use paper towels, and adequate supply of potable water dispensed through a continuous flow spout. Wastewater shall be collected and disposed of in a sanitary manner.
 - (2) Body artists may bring pre-sterilized instruments or instruments that have been sterilized at another location with documentation showing a negative spore test result within the previous 30 days. On site sterilization units may be used and shall comply with Part 5 of these rules.
 - (3) After the last procedure is completed, all procedure areas shall be cleaned and disinfected.
- C. A guest licensee is a body artist who is licensed in another jurisdiction or meets the requirements of licensure in New Mexico and shall practice 30 days or less in New Mexico. Registration is required before any person may act as a guest licensee. An applicant for registration as a guest licensee must:

(1) hold current licensure as a body artist in another jurisdiction or have the education or experience relating to the applicable type of New Mexico license requested; and

(2) be under the sponsorship of a New Mexico licensed body artist.

D. To be registered as a guest licensee the following must be submitted to the board:

(1) verification of sponsorship by a licensed body artist;

(2) a complete application;

(3) registration fee; and

(4) verification of licensure in another jurisdiction.

E. Applicants not licensed in another jurisdiction must provide documentation of education and experience relating to the applicable type of New Mexico license requested.

F. Guest body art registration will expire 30 days from the date of issuance. A guest license shall not extend beyond 30 days unless the licensee petitions the board and provides documentation that licensee has not worked thirty days in New Mexico. A guest license shall be granted only once within a 12 month period.

[16.36.2.18 NMAC - N, 05/16/2008]

HISTORY OF 16.36.2 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 3 REQUIREMENTS FOR ESTABLISHMENTS

16.36.3.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.3.1 NMAC - N, 05/16/2008]

16.36.3.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.3.2 NMAC - N, 05/16/2008]

16.36.3.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5.
[16.36.3.3 NMAC - N, 05/16/2008]

16.36.3.4 DURATION: Permanent
[16.36.3.4 NMAC - N, 05/16/2008]

16.36.3.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.3.5 NMAC - N, 05/16/2008]

16.36.3.6 OBJECTIVE: To outline the requirements for all establishments
[16.36.3.6 NMAC - N, 05/16/2008]

16.36.3.7 DEFINITIONS: [RESERVED]

16.36.3.8 REQUIREMENTS FOR ESTABLISHMENT

A. All walls and floors of a body art establishment shall be washable and in good repair. Walls and floors shall be maintained in a clean condition. All surfaces, including client chairs and benches shall be of such construction as to be easily cleaned and sanitized after each client procedure. All body art establishments shall be completely separated by solid partitions, or by walls extending from floor to ceiling, from any room used for human habitation, a food establishment or room where food is prepared, a hair salon, retail sales, or other such activity which may cause potential contamination of work surfaces.

B. Insects, vermin and rodents shall not be present in any part of the body art establishment, its appurtenances or appertaining premises.

C. There shall be a minimum of 40 square feet of floor space for each procedure room. Each body art establishment shall have an area which may be screened from public view for clients requesting privacy. Multiple procedure rooms shall be separated by wipe able dividers, curtains or partitions.

D. The body art establishment shall be well-ventilated and provided with an artificial light source equivalent to at least 20 foot candles three feet off the floor, except that at least 100 foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

E. No animals of any kind shall be allowed in a procedure room except service animals used by persons with limitations. Small animals confined to a cage or aquariums are allowed only outside a procedure room.

F. A separate, readily accessible, hand sink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid antimicrobial soap and disposable paper towels shall be readily accessible within the body art establishment. One hand sink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

G. At least one covered waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. Receptacles in the operator area shall either have a foot operated lid or a lid that can and shall remain open during body art procedures to prevent hand contact with the receptacle during a procedure. All refuse containers shall be cleanable and kept clean.

H. All instruments and supplies shall be stored in clean dry covered containers.

I. If reusable cloth items, including but not limited to lap-cloths, are used, they shall be mechanically washed after each client procedure. Reusable cloth items shall be mechanically washed with detergent and dried. The cloth items shall be stored in a clean dry environment.

J. The following information shall be kept on file on the premises of a body art establishment and available for inspection by the board:

- (1) the full names of all employees in the establishment and their exact duties;
- (2) the board-issued license with identification photograph;
- (3) the body art establishment name and hours of operation;
- (4) the name and address of the body art establishment owner;
- (5) a complete description of all body art performed;
- (6) maintenance of a material safety data sheet (MSDS) file containing pertinent information regarding products ; and
- (7) a copy of the Body Art Safe Practices Act and current rules.

K. An operator shall notify the board in writing not less than 30 days before changing the location of a body art establishment. The notice shall include the street address of the new location.
[16.36.3.8 NMAC - N, 05/16/2008]

HISTORY OF 16.36.3 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 4 ENFORCEMENT, COMPLAINTS AND DISCIPLINARY ACTION

16.36.4.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.4.1 NMAC - N, 05/16/2008]

16.36.4.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.4.2 NMAC - N, 05/16/2008]

16.36.4.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5, 61-17B-9, 61-17B-10, 61-17B-11.
[16.36.4.3 NMAC - N, 05/16/2008]

16.36.4.4 DURATION: Permanent
[16.36.4.4 NMAC - N, 05/16/2008]

16.36.4.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.4.5 NMAC - N, 05/16/2008]

16.36.4.6 OBJECTIVE: To inform licensees of the complaint procedures, enforcement and disciplinary actions.
[16.36.4.6 NMAC - N, 05/16/2008]

16.36.4.7 DEFINITIONS: [RESERVED]

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 Barbers and Cosmetologists Act and 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.

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 fifteen 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 5 [61-17B-5 NMSA 1978] of the Body Art Safe Practices Act, if the board does not lift an immediate suspension within ten days.

[16.36.4.8 NMAC - N, 05/16/2008; A, 04/12/2010]

HISTORY OF 16.36.4 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 5 STANDARDS OF PRACTICE

16.36.5.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.5.1 NMAC - N, 05/16/2008]

16.36.5.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.5.2 NMAC - N, 05/16/2008]

16.36.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-8.
[16.36.5.3 NMAC - N, 05/16/2008]

16.36.5.4 DURATION: Permanent
[16.36.5.4 NMAC - N, 05/16/2008]

16.36.5.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.5.5 NMAC - N, 05/16/2008]

16.36.5.6 OBJECTIVE: To provide minimum licensure with minimum practice of standards.
[16.36.5.6 NMAC - N, 05/16/2008]

16.36.5.7 DEFINITIONS: [RESERVED]

16.36.5.8 STANDARDS OF PRACTICE AND PROFESSIONAL STANDARDS: Practitioners are required to comply with the following minimum standards.

A. A practitioner shall perform all body art procedures in accordance with universal precautions set forth by OSHA and the U.S. centers for disease control.

B. Smoking, eating, or drinking by anyone is prohibited in the procedure room while body art preparation, procedure and clean up is being performed.

C. A practitioner shall refuse service to any person who, in the opinion of a reasonable objective observer, may be under the influence of alcohol or drugs.

D. A practitioner shall maintain the highest degree of personal cleanliness, conform to best standard hygienic practices, and wear clean clothes when performing body art procedures. Before performing body art, the licensee must thoroughly wash their hands in hot running water with liquid antimicrobial soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

E. The skin of the licensee shall be free of rash or infection. No licensee affected with boils, infected wounds, open sores, abrasions, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that that person could contaminate body art equipment, supplies, or working surfaces with body substances or pathogenic organisms.

F. In performing body art procedures, a practitioner shall wear disposable single-use gloves. The gloves shall be discarded, at a minimum, after the completion of each procedure on an individual client, and hands shall be washed in accordance with Subsection D before the next set of gloves is put on. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable single-use gloves does not preclude or substitute for hand washing procedures as part of a good personal hygiene program.

G. If, while performing body art, the licensee's glove is pierced, torn, or otherwise contaminated by contact with any unclean surfaces or objects or by contact with a third person, the procedures in subsections D and E above shall be repeated immediately. Any item or instrument used for body art which is contaminated during the procedure shall be discarded and replaced immediately with new sanitary items or instrument before the procedure resumes.

H. Contaminated waste, which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the international "biohazard" symbol. It must then be disposed of by an approved medical waste facility pursuant to

federal and state regulations including but not limited to 29 CFR 1910.1030 and New Mexico solid waste management regulations promulgated by the New Mexico environment department. Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed 90 days. Establishment shall maintain records of waste removal.

I. Petroleum jellies, soaps, and other products used in the application of stencils shall be dispensed and applied on the area to receive a body art procedure with sterile gauze or other sterile applicator to prevent contamination of the original container and its content. The applicator or gauze shall be used once and then discarded.

J. It is the responsibility of the operator of the body art establishment to be in possession of the most current regulations and aftercare instructions.

K. Jewelry inserted into a newly pierced area must be made surgical implant-grade stainless steel that is ASTM F138 compliant; solid 14k or 18k white or yellow gold, niobium (Nb), titanium (Ti6A4V ELI) that is ASTM F136 compliant, platinum; or a dense, low-porosity plastic, which is free of nicks, scratches, or irregular surfaces and has been properly sterilized prior to use.

[16.36.5.8 NMAC - N, 05/16/2008]

16.36.5.9 STERILE PROCEDURES AND SANITATION

A. All non-disposable instruments used for body art shall be cleaned thoroughly after each use by scrubbing with an antimicrobial soap solution and hot water or an appropriate disinfectant to remove blood and tissue residue and placed in an ultrasonic unit which shall remain on the premises of the body art establishment and which will be operated in accordance with the manufacturer's instructions.

B. All facilities that reprocess reusable instruments shall have an equipment cleaning room that is physically separated from the work stations. Facilities that use all disposable equipment shall be exempt from this requirement.

C. After cleaning, all non-disposable instruments used for body art shall be packed individually in paper peel-packs and sterilized. All paper peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Properly packaged, sterilized and stored equipment can be stored no more than one year. Paper peel-packs must be dated with an expiration date not to exceed one year. Sterile equipment may not be used after the expiration date without first repackaging and resterilizing.

D. All non-disposable instruments used for body art shall be sterilized in an autoclave at the body art establishment. Off site sterilization is prohibited. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instructions. A copy of the manufacturer's recommended procedures for the operation of the sterilization unit must be available for inspection by the board.

E. Each holder of a license to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory. These test records shall be retained by the operator for a period of three years and provided to the board upon request.

F. After sterilization, the instrument used for body art, tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

G. All instruments used for body art, tattooing or body piercing shall remain stored in sterile packages until just prior to performing a body art procedure. When assembling instruments used for performing body art, the operator shall wear disposable medical gloves and use techniques to ensure that the instruments and gloves are not contaminated.

H. All inks, dyes, pigments and sharps shall be specifically manufactured for performing body art procedures and shall not be adulterated. Immediately before applying a tattoo, the quantity of the dye to be used for the tattoo shall be transferred from the bottle and placed into sterile, single use paper cups or plastic caps. Upon completion of the tattoo, these single cups or caps and their contents shall be discarded.

I. For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrater strip.

[16.36.5.9 NMAC - N, 05/16/2008]

16.36.5.10 REQUIREMENTS FOR SINGLE USE ITEMS

- A. All sharps shall be sterilized prior to use and stored in paper peel-packs.
- B. Single use items shall not be used on more than one client for any reason. After use, all single use needles, razors and other sharps shall be immediately disposed of in approved sharps containers. Piercing needles are strictly single use.
- C. All body art stencils shall be single use and disposable. Petroleum jellies, soaps and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner which prevents contamination of the original container and its contents. The gauze shall be used only once and then discarded.

[16.36.5.10 NMAC - N, 05/16/2008]

16.36.5.11 CLIENT CARE AND RECORDS REQUIREMENTS

- A. Prior to performing a body art procedure on a client, the practitioner shall:
 - (1) inform the client, verbally and in writing that the following health conditions may increase health risks associated with receiving a body art procedure:
 - (a) history of diabetes;
 - (b) history of hemophilia (bleeding);
 - (c) history of skin disease, skin lesions, or skin sensitivities to soaps, disinfectants etc.;
 - (d) history of allergies or adverse reactions to pigment, dyes, or other sensitivities;
 - (e) history of epilepsy, seizures, fainting, or narcolepsy;
 - (f) use of medications such as anticoagulants, which thin the blood or interfere with blood clotting; and
 - (g) any other conditions such as hepatitis or HIV.
 - (2) require that the client sign a form confirming that the above information was provided, that the client does not have a condition that prevents them from receiving body art, that the client consents to the performance of the body art procedure and that the client has been given the aftercare instructions as required by Subsection J of 16.36.5.8 NMAC.
- B. Preparation and care of a client's skin area must comply with the following:
 - (1) Any skin area or mucosa surface to receive a body art procedure shall be free of rash or any visible infection.
 - (2) Before a body art procedure is performed, the immediate skin area and the areas of the skin surrounding where body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation. If shaving is necessary, single-use disposable razors or safety razors with single-use blades shall be used. Blades shall be discarded after each use, and reusable holders shall be cleaned and autoclaved after each use. Following shaving, the skin and surrounding area shall be washed with soap and water. The washing pad shall be discarded after a single use.
 - (3) In the event of bleeding, all products used to stop the bleeding or to absorb blood shall be single use, and discarded immediately after use in appropriate covered containers, and disposed of in accordance with the OSHA bloodborne pathogens standard.
- C. The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include:
 - (1) client's name;
 - (2) date of birth;
 - (3) address;
 - (4) the date of the procedure;
 - (5) the name of licensee who performed the procedure(s);
 - (6) the type of procedure performed and its location on the client's body;
 - (7) the signature of the client and, if the client is a minor, written proof of parental or legal guardian presence and consent;
 - (8) specific ink color(s) applied, and, when available, the manufacturer, catalogue identification number or supplier invoice of each color used.
- D. For jewelry, a record of the manufacturer, catalogue identification number or supplier invoice shall be maintained.
- E. All records described in this paragraph shall be retained for a minimum of three years and provided to the board upon request. Records destroyed after three years shall be destroyed by shredding or appropriate destruction methods.

F. The licensee shall provide each client with verbal and written instructions on the aftercare of the body art site. The written instructions shall advise the client:

- (1) on proper cleansing of the area which received the body art;
- (2) to consult a health care provider for:
 - (a) unexpected redness, tenderness or swelling at the site of the body art procedure;
 - (b) any rash;
 - (c) unexpected drainage at or from the site of the body art procedure; or
 - (d) a fever within 24 hours of the body art procedure; and
- (3) the address, and phone number of the establishment; a copy shall be provided to the client; a model set of aftercare instructions shall be made available by the board.

[16.36.5.11 NMAC - N, 05/16/2008]

HISTORY OF 16.36.5 NMAC [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 36 BODY ARTISTS AND OPERATORS
PART 6 FEES

16.36.6.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.36.6.1 NMAC - N, 05/16/2008]

16.36.6.2 SCOPE: Any person licensed to practice body art tattoo, piercing, scarification and all operators.
[16.36.6.2 NMAC - N, 05/16/2008]

16.36.6.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the Body Art Safe Practices Act, Section 61-17B-5.
[16.36.6.3 NMAC - N, 05/16/2008]

16.36.6.4 DURATION: Permanent
[16.36.6.4 NMAC - N, 05/16/2008]

16.36.6.5 EFFECTIVE DATE: May 16, 2008 unless a later date is cited in the history note at the end of a section.
[16.36.6.5 NMAC - N, 05/16/2008]

16.36.6.6 OBJECTIVE: To outline fees for examinations, applications, renewal, late penalty fee, duplicate license and administrative fees
[16.36.6.6 NMAC - N, 05/16/2008]

16.36.6.7 DEFINITIONS: [RESERVED]

16.36.6.8 FEES: All fees are payable to the board and are non-refundable. Fees are as follows:

A.	establishment license (original)	\$300
B.	establishment license (renewal)	\$300
C.	apprentice sponsor application	\$50
D.	apprentice sponsor license(original/renewal)	\$100
E.	apprentice license (original and renewal)	\$50
F.	practitioner license per specialty (original)	\$100
G.	practitioner license per specialty (renewal)	\$100
H.	permanent cosmetic license (original)	\$100
I.	permanent cosmetic license (renewal)	\$100
J.	administrative fee (electronic list)	\$100
K.	duplicate licenses	\$25
L.	late fee	\$35

[16.36.6.8 NMAC - N, 05/16/2008]

HISTORY OF 16.36.6 NMAC: [RESERVED]

61-17A-25. Termination of agency life; delayed repeal. (Repealed effective July 1, 2014.)

The board of barbers and cosmetologists is terminated on July 1, 2013 pursuant to the Sunset Act [12-9A-1 NMSA 1978]. The board shall continue to operate according to the provisions of the Barbers and Cosmetologists Act until July 1, 2014. Effective July 1, 2014, the Barbers and Cosmetologists Act is repealed.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 1 GENERAL PROVISIONS

16.34.1.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.1.1 NMAC - Rp 16 NMAC 34.1.1, 06-16-01]

16.34.1.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.1.2 NMAC - Rp 16 NMAC 34.1.2, 06-16-01]

16.34.1.3 STATUTORY AUTHORITY: Section 61-17A-2 - Definitions
[16.34.1.3 NMAC - Rp 16 NMAC 34.1.3, 06-16-01]

16.34.1.4 DURATION: Permanent
[16.34.1.4 NMAC - Rp 16 NMAC 34.1.4, 06-16-01]

16.34.1.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.1.5 NMAC - Rp 16 NMAC 34.1.5, 06-16-01]

16.34.1.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes definitions.
[16.34.1.6 NMAC - Rp 16 NMAC 34.1.6, 06-16-01]

16.34.1.7 DEFINITIONS: As used in the Barbers and Cosmetologists Act:

- A. "applicant" means a person who has applied for a license;
- B. "approval number" means the number assigned by the board to designate an approved provider;
- C. "approved" means accepted as a provider by the board;
- D. "barber" means a person, other than a student, who for compensation engages in barbering;
- E. "barbering" means shaving or trimming the beard or cutting the hair, curling and waving, including permanent waving, straightening the hair, giving facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances, shampooing, bleaching or dyeing the hair or applying tonics or applying cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper part of the body, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis;
- F. "board" means the board of barbers and cosmetologists;
- G. "booth establishment license" means a license required of an individual who rents space within another licensed establishment for the purpose of rendering licensed services as a separate, independent business;
- H. "branch campus/additional location" means an additional location that provides the same administrative services as the main campus, and offers at least one complete program entered into the programs offered at the main campus; a branch campus/additional location must be approved by the board as a separate school with a stand-alone license;
- I. "contact hour" means one contact hour equals a minimum of fifty minutes of instruction;
- J. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;
- K. "cosmetology" means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or of mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrolysis;
- L. "current work experience" means verified work that has occurred within the previous five years;
- M. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

- N. "enterprise" means a business venture, firm, or organization;
- O. "expansion campus facility" means any separate classroom or clinic used for educational purposes that is separate, detached and apart from the primary facility and main address; its purpose is to allow the licensed school to provide adequate space to train students who are enrolled through the primary facility and the expansion campus facility must be within a two-mile radius of the main campus;
- P. "establishment" means an immobile beauty shop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering or electrolysis is performed;
- Q. "esthetician" means a person, other than a student, who for compensation uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term or title of "medical esthetician" is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent;
- R. "executive director" means the director for the board;
- S. "HSD" means the New Mexico human services department;
- T. "instructor" means a person licensed to teach in a school of cosmetology, barbering or in a school of electrology;
- U. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of the act;
- V. "main campus" means a school, which has been licensed by the board; any change in location of the main campus must comply with the procedures set forth in 16.34.8 NMAC of these rules; the main campus includes the primary facilities and any separate or detached expansion campus facility of the primary training site within a two-mile radius;
- W. "manicurist-esthetician" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and who uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person;
- X. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;
- Y. "manicurist-shampooer" means a person who for compensation performs work on the nails of a person, applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet and practices the art of shampooing, application of conditioners, rinses and scalp manipulations to the hair and scalp of a person and on artificial hair;
- Z. "outreach enterprise" means an independent mobile unit, or system of units, equipped with or carrying both professional and special equipment used by a professional licensee of this act to a site or premises for the purpose of providing professional services to the handicapped, restricted, homebound, impaired, incapacitated, delicate, or otherwise constrained client;
- AA. "provider" means the person, firm, corporation, institution or agency approved to conduct or sponsor a continuing education program and ensure its integrity;
- BB. "revoke a license" means to prohibit the conduct authorized by the license;
- CC. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;
- DD. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering;
- EE. "statement of compliance" means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support;
- FF. "statement of non-compliance" means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support;
- GG. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis;
- HH. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license; "suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension;

II. "verified work experience" means work experience in the applicable discipline in a licensed establishment, enterprise or electrology clinic as verified by:

- (1) certified and notarized statement by employer(s);
- (2) certified and notarized statement by licensed co-worker(s);
- (3) certified and notarized statement by client(s);
- (4) certified and notarized copies of tax returns;
- (5) certified and notarized copies of W-2's; or
- (6) other related form(s) of documentation.

[16.34.1.7 NMAC - Rp 16 NMAC 34.1.7, 06-16-01; A, 07-16-04; A, 10-04-07]

HISTORY OF 16.34.1 NMAC:

Pre-NMAC History: [Reserved]

History of Repealed Material:

16 NMAC 34.1, General Provisions - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 2 LICENSING

16.34.2.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.2.1 NMAC - Rp 16 NMAC 34.2.1, 06-16-01]

16.34.2.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, and establishments.
[16.34.2.2 NMAC - Rp 16 NMAC 34.2.2, 06-16-01]

16.34.2.3 STATUTORY AUTHORITY: Section 61-17A-5 - License required to provide services for compensation directly or indirectly.
[16.34.2.3 NMAC - Rp 16 NMAC 34.2.3, 06-16-01]

16.34.2.4 DURATION: Permanent
[16.34.2.4 NMAC - Rp 16 NMAC 34.2.4, 06-16-01]

16.34.2.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.2.5 NMAC - Rp 16 NMAC 34.2.5, 06-16-01]

16.34.2.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes licensure requirements for barbers, cosmetologists, manicurist/pedicurists, estheticians and electrologists. It further provides for licensure requirements of establishments, enterprises, electrology clinics, schools and instructors.
[16.34.2.6 NMAC - Rp 16 NMAC 34.2.6, 06-16-01]

16.34.2.7 DEFINITIONS: Refer to Part 1
[16.34.2.7 NMAC - Rp 16 NMAC 34.2.7, 06-16-01]

16.34.2.8 GENERAL LICENSING PROCEDURES

A. Application forms:

(1) Application for any license to be issued or renewed by the board shall be made on the official form provided by the board for that purpose. Applications must include the required fee in the form of a money order, cashier's check, business check, or credit card for on-line renewal only, (no personal checks will be accepted). Incomplete applications will be returned. Designated deadlines will apply to resubmitted applications.

(2) Applications for licensure must include:

(a) proof of age indicating applicant is at least seventeen years of age; please provide one of the following: a copy of birth certificate, driver's license, state issued identification card, or baptismal certificate.

(b) proof of applicable secondary education: please provide a copy of one of the following: a high school diploma, G.E.D. certificate or transcript of G.E.D. test scores, letter from the high school attended containing the school seal, copy of the high school transcript showing 10th grade equivalency or higher, a post-secondary transcript, successful completion of a 10th grade equivalency test, letter from the G.E.D. testing facility showing that the G.E.D. has been passed; documents submitted in a language other than English must be accompanied by a certified translation completed by a government certified translator;

(c) a transcript of hours showing that the training hours were completed within the preceding twenty-four months; if the training hours were obtained more than twenty-four months before the application is submitted to the board, then the applicant will need to register at a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education; upon completion and proof of the remediation, the applicant may apply for and submit to the complete theory examination, the applicable practical examination and a state law examination.

B. Photographs: applicants for original licensure shall attach a recent passport size, color photograph, front-view of face. The photo must be at least 1.5" X 1.5" and no larger than 2" X 3".

C. Renewal is the responsibility of the licensee:

(1) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees or reexamination as set forth in the act.

(2) A licensee, with a valid instructor license for the preceding twelve months, may use the instructor license to renew or reinstate his original practitioner license.

(3) The board will issue renewal licenses within fifteen working days of receipt of the renewal request and applicable fee.

(4) Timely renewal of an establishment, enterprise, electrology clinic and school license is the full and complete responsibility of the LICENSEE. Failure to renew the license within thirty days after its expiration, will result in payments of renewal and late fees.

[16.34.2.8 NMAC - Rp 16 NMAC 34.2.8, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.2.9 CUSTODY AND ALTERATION OF LICENSES

A. Licenses issued by the board are at all times the property of the board, and may remain in the custody of the licensee only as long as the licensee complies with the act and board rules.

B. Licenses shall not be altered in any way.

C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment, an enterprise, an electrology clinic, or school.

[16.34.2.9 NMAC - Rp 16 NMAC 34.2.9, 06-16-01; A, 10-04-07]

16.34.2.10 LICENSES POSTED

A. All licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public at all times.

B. Licensees must attach a recent passport size colored photograph to the board issued license and sign the license where indicated.

C. All licensees, who have been placed on probation, will be issued a license, which states the licensee is on disciplinary probation. The license shall be posted where clearly visible to the public at all times.

D. Licensees must present a driver's license or other identification when requested by the public, the board or its authorized representative.

[16.34.2.10 NMAC - Rp 16 NMAC 34.2.10, 06-16-01; A, 10-04-07]

16.34.2.11 PROVISIONS FOR EMERGENCY LICENSURE

A. Barbers, cosmetologists, manicurists/pedicurists, estheticians, electrologists, and instructors currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) refer to 16.34.2.8 NMAC, general licensing procedures; 16.34.5.8 NMAC, general licensure requirements; and 16.34.6.8 NMAC, reciprocity;

(3) other required verification will be that the board office will contact the applicant's prior licensing board by email, mail, or telephone for confirmation of what is provided by the applicant.

B. The board may waive the following requirements for licensure:

(1) application fees;

(2) specific forms or documentation required, on an individual case by case basis, under 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC if the applicant is unable to obtain documentation from the federal declared disaster areas.

C. Nothing in this section shall constitute a waiver of the requirements for licensure contained in 16.34.2.8, 16.34.5.8, and 16.34.6.8 NMAC.

D. Licenses issued under (the emergency provision) shall be issued for a period of one year or less following the date of issuance, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made on or before one year following the date of issue to avoid late renewal fees. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving license renewal.

[16.34.2.11 NMAC - N/E, 11-10-05]

16.34.2.12 EMERGENCY LICENSE TERMINATION

- A. The emergency license shall terminate upon the following circumstances:
- (1) the issuance of a permanent license under section 16.34.2.8, 16.37.5.8, and 16.34.6.8 NMAC; or
 - (2) proof that the emergency license holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license under this section.
- B. Termination of an emergency license shall not preclude application for permanent licensure.
[16.34.2.12 NMAC - N/E, 11-10-05]

HISTORY OF 16.34.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article I, Licensing, 12-21-81

Rule 1, Licensing, 3-8-90

Rule 1, Licensing, 3-9-92

Rule 1, Licensing, 10-19-93

Rule 1, Licensing, 5-23-95

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.2, Licensing - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 3 EXAMINATIONS

16.34.3.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.3.1 NMAC - Rp 16 NMAC 34.3.1, 06-16-01]

16.34.3.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.3.2 NMAC - Rp 16 NMAC 34.3.2, 06-16-01]

16.34.3.3 STATUTORY AUTHORITY: Section 61-17A-7 - Board Powers and Duties - This directs the barbers and cosmetologists board to establish outlines for examinations for licensure.

[16.34.3.3 NMAC - Rp 16 NMAC 34.3.3, 06-16-01]

16.34.3.4 DURATION: Permanent

[16.34.3.4 NMAC - Rp 16 NMAC 34.3.4, 06-16-01]

16.34.3.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.3.5 NMAC - Rp 16 NMAC 34.3.5, 06-16-01]

16.34.3.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this outlines examinations for licensure and scoring requirements.

[16.34.3.6 NMAC - Rp 16 NMAC 34.3.6, 06-16-01]

16.34.3.7 DEFINITIONS: Refer to Part 1

[16.34.3.7 NMAC - Rp 16 NMAC 34.3.7, 06-16-01]

16.34.3.8 NOTICE OF EXAMINATION

A. The application for examination and applicable fee required by the act or these rules must be received by the board or its designee according to the published schedule. It is the applicant's duty to meet all deadlines. Any arrangement to have a third party (such as a school) transmit the fee and application is made at the applicant's risk. Failure of the third party to transmit the fee in a timely manner will render the applicant being ineligible to take the examination in question.

B. The doors to the examination room will close promptly at the scheduled examination start time. Applicants who do not appear on time or who do not have the required documents will not be permitted to the examination or will not be admitted to the examination. In extreme situations where mitigating circumstances are present, the board or its designee will decide whether to allow the applicant to take the examination.

[16.34.3.8 NMAC - Rp 16 NMAC 34.3.8, 06-16-01; A, 10-04-07]

16.34.3.9 EXAMINATION SCORES

A. The minimum passing scaled score for all written and practical licensing examinations is seventy five.

B. Examinations for all licenses except instructor licenses are scored in three individual segments, each requiring a minimum segment scaled score of seventy five. The segments are:

- (1) national practical;
- (2) national theory written; and
- (3) state law written.

C. If an applicant fails to attain a scaled score of seventy five on any segment of the examination, he/she will be required to retake the failed segment in its entirety.

D. Examinations for instructor licenses for all disciplines are scored in two individual segments, each requiring a minimum scaled score of seventy five. The segments are:

- (1) theory written; and
- (2) state law written.

[16.34.3.9 NMAC - Rp 16 NMAC 34.3.9, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.3.10 EXAMINATION CONTRACT

A. To ensure test validity, reliability and standardization, the board may contract with an outside testing agency which has developed examinations to test the qualifications for licensure as a cosmetologist, manicurist, esthetician, electrologist, barber and instructor.

B. All examiners are trained and certified by the testing agency to ensure the fairness and integrity of the examination.

C. Examination answer sheets are scored by the testing agency.

D. The testing agency releases the board, its officers and employees, and the state of New Mexico from all liabilities, claims and obligations whatsoever arising from or under the contract for examination services.

[16.34.3.10 NMAC - Rp 16 NMAC 34.3.10, 06-16-01; A, 10-04-07]

16.34.3.11 EXAMINATIONS FOR EXPIRED LICENSES

A. An applicant whose license has expired for more than five years shall re-enter a licensed school, submit to a scholastic evaluation to determine his training needs, and complete a minimum of 150 hours of remedial education. Upon completion of the remediation, he may apply for and submit to the complete written theory examination, the applicable practical examination and a written state law examination.

B. An applicant whose license has expired for one year but less than five years shall be required to retake the applicable examinations.

[16.34.3.11 NMAC - Rp 16 NMAC 34.3.11, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.3.12 EXAMINATION REQUIREMENTS FOR EXPIRED LICENSES: All applicants for examination to reinstate an expired license shall submit a completed application for examination as required for original licensure and submit proof that he:

A. meets the age requirements set forth for original licensure;

B. meets the secondary education requirements set forth for original licensure; and

C. has been previously licensed by the New Mexico board of barbers and cosmetologists.

[16.34.3.12 NMAC - Rp 16 NMAC 34.3.12, 06-16-01; A, 10-04-07]

16.34.3.13 EXAMINATION REQUIREMENTS FOR FOREIGN TRAINED APPLICANTS: Any foreign indicated person who meets the requirements set forth in 16.34.2.8 NMAC may apply for a New Mexico license by examination. The examination application must be submitted to the board or its designee along with the following supporting documentation:

A. notarized translation of his valid license or certificate from another nation;

B. notarized translation of certified transcript of training from school or nation;

C. notarized translation of any other documents that may be required by the board or its designee;

D. notarized letters of employment from past employers or employment records to prove work experience if applicable as stated in Subsection B of 16.34.6.8 NMAC;

E. the requirements for translation apply only to documents written in a language other than English;

F. the board shall require examination applicants with foreign training who fail any part of the examination to register at a licensed school, submit to a scholastic evaluation to determine their training needs, and complete a minimum of 150 hours of remedial education. Upon completion and proof of the remediation, the applicant will be allowed to re-examine in the failed areas.

[16.34.3.13 NMAC - N, 10-04-07]

16.34.3.14 EXAMINATION REQUIREMENTS FOR APPLICANTS WITH FULL HOURS, NO OUT-OF-STATE LICENSE: An applicant, who has completed an equivalent course of study in the United States, but has not obtained a license in another state, will be admitted to the New Mexico board examinations subject to all requirements, which apply to New Mexico applicants to take examination.

[16.34.3.14 NMAC - N, 10-04-07]

HISTORY OF 16.34.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article II, Licensing Examinations, 12-21-81

Rule 2, Examination Fee, 3-8-90
Rule 2, Examination Fee, 3-9-92
Rule 2, Examinations, 10-19-93
Rule 2, Examinations, 5-13-94
Rule 2, Examinations, 5-13-95
BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86
BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87
BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.3, Examinations - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 4 SPECIAL LICENSES

16.34.4.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.4.1 NMAC - Rp 16 NMAC 34.4.1, 06-16-01]

16.34.4.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, establishments, manicurist/shampooers, Applicants for examination and students.
[16.34.4.2 NMAC - Rp 16 NMAC 34.4.2, 06-16-01]

16.34.4.3 STATUTORY AUTHORITY: Section 61-17A-7 - Board Powers and Duties - The board may create and establish standards for special licenses. Section 61-17A-11 - Requirements for licensure of instructors.
[16.34.4.3 NMAC - Rp 16 NMAC 34.4.3, 06-16-01]

16.34.4.4 DURATION: Permanent
[16.34.4.4 NMAC - Rp 16 NMAC 34.4.4, 06-16-01]

16.34.4.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.4.5 NMAC - Rp 16 NMAC 34.4.5, 06-16-01]

16.34.4.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this establishes licensure requirements for all courses of study pursuant to the Barbers and Cosmetologists Act.
[16.34.4.6 NMAC - Rp 16 NMAC 34.4.6, 06-16-01]

16.34.4.7 DEFINITIONS: Refer to Part 1
[16.34.4.7 NMAC - Rp 16 NMAC 34.4.7, 06-16-01]

16.34.4.8 MANICURISTS/SHAMPOOERS LICENSE RENEWALS: A manicurist/shampooer license holder is subject to the same rules and regulations that apply to manicurist/pedicurist license holders.
[16.34.4.8 NMAC - Rp 16 NMAC 34.4.8, 06-16-01; A, 10-04-07]

16.34.4.9 [RESERVED]
[16.34.4.9 NMAC - Rp 16 NMAC 34.4.9, 06-16-01; Repealed, 10-04-07]

16.34.4.10 [RESERVED]
[16.34.4.10 NMAC - Rp 16 NMAC 34.4.10, 06-16-01; Repealed, 07-16-04]

16.34.4.11 [RESERVED]
[16.34.4.11 NMAC - Rp 16 NMAC 34.4.11, 06-16-01; Repealed, 04/12/10]

16.34.4.12 [RESERVED]
[16.34.4.12 NMAC - Rp 16 NMAC 34.4.12, 06-16-01; Repealed, 07-16-04]

16.34.4.13 QUALIFIED INSTRUCTORS

A. An eligible applicant may be issued an instructor license provided he submits a transcript for a 1000-hour instructor training course or proof of two years work experience and passes the instructor licensing examination which can be taken only once for multiple license.

B. A provisional instructor license will be issued to an eligible applicant who meets the board requirements and has completed three full years of current verified full time work experience as a practitioner in the field in which he/she seeks licensure as an instructor under the following terms and conditions:

(1) The work experience must be current to ensure up-to-date knowledge in the field in which the applicant seeks provisional licensure.

- (2) The provisional license will be effective until the next renewal period of March thirty-one.
 - (3) The provisional license will only be renewed twice upon completion of the required continuing education in professional development and the required fee as set forth by board rules.
 - (4) To obtain an instructor license, the holder of a provisional instructor license must complete an examination application and pass the instructor licensing examination. Failing any portion of the instructor examination automatically voids the provisional instructor license. The provisional license must then be returned to the board office.
 - (5) The holder of a provisional instructor license must sit for the licensing examination prior to the expiration of the provisional license.
 - (6) No more than fifty percent of the total instructional staff at any licensed school in the state of New Mexico may be licensed under this category. When determining ratios, more than one part-time provisional instructor may be combined to count as one instructor.
- [16.34.4.13 NMAC - Rp 16 NMAC 34.4.13, 06-16-01; A, 10-04-07; A, 04-12-10]

16.34.4.14 STUDENT PERMIT LICENSE:

A. Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of date of registration, the board will issue a student permit license and permit license number. The student permit license authorizes the holder to practice course related skills in an approved school and perform services on the public only after fifteen percent of the required hours for graduation from the course of study are accrued.

B. Student permit licenses are valid for 90 days following completion of graduation requirements. The student permit licenses will be issued to the student upon graduation of course of study by a school official and can be used to enter a licensed establishment and provide all services in the applicable course of study under the constant supervision of a licensee of the board, in the applicable course of study. The student permit license holder may not assume supervisory or managerial responsibilities of a licensed establishment at any time. The student permit license is valid for 90 days while waiting to test. Once the 90 days has expired the student permit license must be turned into the state board office and the student must terminate working at the licensed establishment. It is the responsibility of the licensed establishment to monitor the expiration of the student permit license. The student permit license must be turned into the board with initial licensure application as part of the application process. No extensions will be given after the 90 days has terminated. The student must reapply if the course of study goes beyond one year.

C. Student permit licenses are the property of the board and must be returned to the board office with the notice of termination or official transcript of credit by the school. Additional requirements applicable to student permits are found in Subsection A, Paragraph 7 of 16.34.8.13 NMAC of these rules.

[16.34.4.14 NMAC - Rp 16 NMAC 34.4.14, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04-12-10; A, 11-14-10]

16.34.4.15 DUPLICATE LICENSES: A duplicate license will be issued to any board licensee who submits a written, notarized request along with the required fee.

[16.34.4.15 NMAC - Rp 16 NMAC 34.4.15, 06-16-01; A, 10-04-07]

HISTORY OF 16.34.4 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article III, Special Cosmetology Practitioners Licenses, 12-21-81

Rule 3, Special Licenses, 3-8-90

Rule 3, Special Licenses, 3-9-92

Rule 3, Special Licenses, 10-19-93

Rule 3, Special Licenses, 8-12-94

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.4, Special Licenses - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 5 REGULAR LICENSES

16.34.5.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.5.1 NMAC - Rp 16 NMAC 34.5.1, 06-16-01]

16.34.5.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.5.2 NMAC - Rp 16 NMAC 34.5.2, 06-16-01]

16.34.5.3 STATUTORY AUTHORITY: Sections 61-17A-5, 61-17A-7, 61-17A-8, 61-17A-9, 61-17A-10, 61-17A-11, 61-17A-12 and 61-17A-15 of the Barbers and Cosmetologists Act. The board may provide the standards for the licensure of barbers, cosmetologists, manicurist/pedicurists, estheticians, and electrologists and the licensure of instructors, schools, enterprises and establishments.

[16.34.5.3 NMAC - Rp 16 NMAC 34.5.3, 06-16-01]

16.34.5.4 DURATION: Permanent

[16.34.5.4 NMAC - Rp 16 NMAC 34.5.4, 06-16-01]

16.34.5.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.5.5 NMAC - Rp 16 NMAC 34.5.5, 06-16-01]

16.34.5.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes licensure requirements for all courses of study.

[16.34.5.6 NMAC - Rp 16 NMAC 34.5.6, 06-16-01]

16.34.5.7 DEFINITIONS: Refer to Part 1

[16.34.5.7 NMAC - Rp 16 NMAC 34.5.7, 06-16-01]

16.34.5.8 GENERAL LICENSURE REQUIREMENTS

A. Any person is eligible to be registered as a practitioner and is qualified to receive a license as a registered barber, cosmetologist, manicurist, esthetician, manicurist/esthetician, or electrologist who submits proof that he/she:

- (1) is at least seventeen years of age;
- (2) has an education equivalent to the completion of the second year of high school;
- (3) has completed the course of study for the license in a licensed school within the preceding twenty-four months;

- (4) has paid the required fees as set forth in these rules; and
- (5) has passed the practical and written examination conducted by the board.

B. Any person is eligible for initial registration or re-registration as an instructor and is qualified to receive a license as an instructor who submits proof that he/she has met all the above requirements and in addition:

- (1) has an education equivalent to the completion of FOUR years of high school; and
- (2) holds a current license in New Mexico as a practitioner in the field in which the applicant is seeking licensure as an instructor.

C. Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours.

[16.34.5.8 NMAC - Rp 16 NMAC 34.5.8, 06-16-01; A, 07-16-04]

16.34.5.9 BARBER LICENSE (1200 HOURS OR EQUIVALENT CREDIT): A barber license permits the practitioner to perform the following services upon the upper part of the human body for cosmetic purposes:

- A. shave or trim beards;

- B. cut and style hair whether by hand or mechanical or electrical apparatus;
 - C. curl, wave, permanent wave or chemically relax the hair;
 - D. give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances including removal of superfluous or unwanted hair except by means of electrolysis or other invasive techniques;
 - E. shampoo, bleach, dye, or apply tonics to the hair;
 - F. apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to the scalp, face, neck or upper parts of the body;
 - G. care for and service wigs and hairpieces.
- [16.34.5.9 NMAC - Rp 16 NMAC 34.5.9, 06-16-01]

16.34.5.10 COSMETOLOGIST LICENSE (1600 HOURS OR EQUIVALENT CREDIT): A cosmetologist license permits the practitioner to:

- A. cut and style hair whether by hand or mechanical or electrical apparatus;
 - B. braid, natural hair braid, curl, wave, permanent wave or chemically relax the hair;
 - C. give facial and scalp massage or treatments with oils, creams, lotions or other preparations, either by hand or mechanical appliances including removal of superfluous or unwanted hair except by means of electrolysis or other invasive techniques and shaving;
 - D. shampoo, bleach, dye, or apply tonics to the hair;
 - E. apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;
 - F. manicure and pedicure the nails of a person and add nail extensions;
 - G. care for and service wigs and hairpieces;
 - H. cut or trim beards with clippers or scissors only.
- [16.34.5.10 NMAC - Rp 16 NMAC 34.5.10, 06-16-01; A, 10-04-07]

16.34.5.11 MANICURIST/PEDICURIST LICENSE (350 HOURS OR EQUIVALENT CREDIT)

- A. A manicurist/pedicurist license permits the practitioner to:
 - (1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;
 - (2) reduce corns or callouses by using softening preparations and/or abrasion in order to beautify the foot;
 - (3) use chemical substances on the nails for the purpose of strengthening, repairing, or lengthening the nails using nail tips, wraps, or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;
 - (4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;
 - (5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet.
 - B. A manicurist/pedicurist shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.
 - C. A manicurist/pedicurist shall not perform any type of temporary or permanent hair removal techniques without first obtaining appropriate licensure.
- [16.34.5.11 NMAC - Rp 16 NMAC 34.5.11, 06-16-01]

16.34.5.12 ESTHETICIAN LICENSE (600 HOURS OR EQUIVALENT CREDIT)

- A. An esthetician license permits the practitioner to:
 - (1) use cosmetic preparations on the skin for cleansing and stimulating;
 - (2) apply massage and manipulation techniques using the hands or mechanical apparatus;
 - (3) apply light therapy, high frequency and other types of facial treatments;
 - (4) use specialized skin care and facial machines in applying facial treatments;
 - (5) apply cosmetic makeup preparations, antiseptics, powders, oils, clays or lotions to any part of the body of a person;
 - (6) perform lash and brow tinting procedures;
 - (7) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.
- B. An esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.

C. Using the term or title of "medical esthetician" is not allowable under the act. This term is misleading and could be deemed deceptive or fraudulent.
[16.34.5.12 NMAC - Rp 16 NMAC 34.5.12, 06-16-01; A, 10-04-07]

16.34.5.13 ELECTROLOGIST LICENSE (600 HOURS OR EQUIVALENT CREDIT): An electrologist license permits the licensee to remove from or destroy hair on the human body through the use of electrolysis or any other means of temporary or permanent hair removal. Electrolysis is defined as the decomposition of a chemical compound or body tissues, particularly hair root protein through the use of an electric current applied to the body with an invasive, needle-shaped electrode or probe.
[16.34.5.13 NMAC - Rp 16 NMAC 34.5.13, 06-16-01]

16.34.5.14 INSTRUCTOR LICENSE (1000 HOURS OR EQUIVALENT CREDIT)

A. An instructor license permits the instructor to teach only those courses or subjects in which he/she has had practical training and received licensure as a practitioner as follows;

- (1) a cosmetologist who obtains a cosmetologist instructor license can teach all phases of cosmetology, esthetics, manicuring/pedicuring and salon business, but cannot teach or supervise shaving.
- (2) a barber who obtains a barber instructor license can teach barbering, esthetics and salon business, but cannot teach or supervise manicuring/pedicuring.
- (3) a manicurist/pedicurist who obtains a license as a manicuring instructor can teach manicuring/pedicuring and salon business, but cannot teach or supervise other cosmetology or barbering services.
- (4) an esthetician who obtains a license as an esthetician instructor can teach esthetics and salon business, but cannot teach or supervise other cosmetology, barbering, manicuring/pedicuring or electrology services.
- (5) an electrologist who obtains a license as an electrology instructor can teach electrology and salon business, but cannot teach or supervise, cosmetology, barbering, manicuring or esthetic services.
- (6) a manicurist/esthetician who obtains a license as a manicurist/esthetician instructor can teach manicuring/pedicuring, esthetics and salon business, but cannot teach or supervise other cosmetology, barbering, or electrology services.

B. Teaching or supervising unauthorized subjects or courses may lead to revocation of the instructor license or other disciplinary action by the board.

[16.34.5.14 NMAC - Rp 16 NMAC 34.5.14, 06-16-01]

16.34.5.15 MANICURIST/ESTHETICIAN LICENSE (600 HOURS OR EQUIVALENT CREDIT)

A. A combined manicurist/esthetician license permits the practitioner to:

- (1) trim the nails of a person, including the trimming of otherwise healthy ingrown toenails;
- (2) reduce corns or callouses by using softening preparations and/or abrasion in order to beautify the foot;
- (3) use chemical substances on the nails for the purpose of strengthening, repairing or lengthening the nails using nail tips, wraps or acrylic nail products. Nail extensions may be applied only after the nails, cuticles and nail plate have been properly prepared for the service and applicable product;
- (4) apply massage and manipulations to the hands, arms and feet for the purpose of stimulating and smoothing;
- (5) apply polish, oils or other cosmetic preparations for the purpose of beautifying the hands and feet;
- (6) use cosmetic preparations, antiseptics, powders, oils, clays or lotion to any part of the body of a person;
- (7) apply massage and manipulation techniques using the hands or mechanical apparatus;
- (8) apply light therapy, high frequency and other types of facial treatments; and use specialized skin care and facial machines in applying facial treatments;
- (9) apply cosmetic makeup preparations to contour and beautify the skin;
- (10) perform lash and brow tinting procedures; and
- (11) remove superfluous or unwanted hair from the body of a person by any means except electrolysis or other invasive techniques and shaving.

B. A manicurist/esthetician shall not treat an obviously infected ingrown toenail or use any technique involving mechanical penetration of the skin beneath a callous or corn.

C. A manicurist/esthetician shall not perform facial services on any person with a communicable skin disease.

D. A manicurist/esthetician shall not perform any services other than those listed above. To do so may lead to revocation of the license or other disciplinary action by the board.
[16.34.5.15 NMAC - Rp 16 NMAC 34.5.15, 06-16-01]

HISTORY OF 16.34.5 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 4, Regular Licenses, 10-19-93

Rule 4, Regular Licenses, 5-13-94

Rule 4, Regular Licenses, 8-12-94

Rule 4, Regular Licenses, 5-23-95

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.5, Regular Licenses - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 6 LICENSING BY RECIPROCITY: CREDIT FOR OUT-OF-STATE TRAINING

16.34.6.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.6.1 NMAC - Rp 16 NMAC 34.6.1, 06-16-01]

16.34.6.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors and electrologists licensed out-of-state.

[16.34.6.2 NMAC - Rp 16 NMAC 34.6.2, 06-16-01]

16.34.6.3 STATUTORY AUTHORITY: Section 61-17A-17 - Licensure Under Prior Law - Endorsement. This authorizes the board to grant a license to a current licensee from another state, territory or possession of the United States or the District of Columbia.

[16.34.6.3 NMAC - Rp 16 NMAC 34.6.3, 06-16-01]

16.34.6.4 DURATION: Permanent

[16.34.6.4 NMAC - Rp 16 NMAC 34.6.4, 06-16-01]

16.34.6.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.6.5 NMAC - Rp 16 NMAC 34.6.5, 06-16-01]

16.34.6.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes requirements of hours and qualifications for the out-of-state licensees requesting licensure in New Mexico.

[16.34.6.6 NMAC - Rp 16 NMAC 34.6.6, 06-16-01]

16.34.6.7 DEFINITIONS: Refer to Part 1

[16.34.6.7 NMAC - Rp 16 NMAC 34.6.7, 06-16-01]

16.34.6.8 RECIPROCITY

A. An applicant for licensure by reciprocity must meet all the requirements of the act and applicable rules.

B. **CREDIT FOR WORK EXPERIENCE.** Applicants who have not completed a course of study equivalent to the license for which he/she is applying may submit notarized letters of employment or employment records to prove licensed, current, verified work experience. Six full months of work experience will equal one-hundred-fifty hours of training. Work experience less than six full months will not be considered toward training hours. To obtain any license by reciprocity, no more than fifty percent of the hours required for licensure by in-state applicants may be obtained by work experience. Apprenticeship training hours shall be considered on an individual case basis and will not be credited for more than fifty percent of the hours required for licensure by in-state applicants.

C. **FULL HOURS OR WORK EXPERIENCE, OUT-OF-STATE LICENSE.** Any person who seeks licensure in the state of New Mexico through reciprocity from any other state shall:

(1) furnish an affidavit from the state regulatory agency verifying that the applicant holds a current license and is in good standing with the state;

(2) furnish a certified transcript for the course of study or affidavit of hours from the regulatory agency or school attended in the state from which the applicant is applying;

(3) complete the application for reciprocity on a form provided by the board and submit the required fee; and

(4) furnish notarized letters of employment from past employers or employment records to prove work experience as stated in B of this section, if needed.

D. **FOREIGN TRAINING:** All foreign trained applicants must submit to the applicable examination. Refer to 16.34.3 NMAC for requirements.

E. **INCOMPLETE HOURS, OUT OF STATE LICENSE.**

(1) An applicant who holds a valid license in another state and who needs additional training not in excess of 100 hours may obtain the training hours in any state. Upon submitting proof of having acquired the additional training hours, the applicant may then be licensed through reciprocity.

(2) An applicant licensed in a state where the course of study is not equivalent to New Mexico's may apply work experience or apprenticeship training hours, on a case by case basis, toward the training requirements as stated in Subsection B of 16.34.6.8 NMAC, provided these hours do not exceed fifty percent of the required hours in New Mexico. If the allowed hours credited from work experience or apprenticeship training meet or exceed the equivalent of the New Mexico course of study, the applicant may obtain licensure through reciprocity.

(3) An applicant who cannot obtain a license through reciprocity with the previous training and work experience, he will be required to obtain approval of the previous hours of training as stated in Subsection I of 16.34.6.8 NMAC, obtain the additional hours needed and submit to the New Mexico licensing examination applicable to the license he is seeking.

F. In order to expedite the process of approving training hours and work experience for reciprocity applicants and transfer students, the board executive director may forward required documents to a member of the board who is also a licensee for approval.

G. Prior to licensure the applicant shall take and pass a board approved jurisprudence examination. The applicant must pass the jurisprudence exam with a minimum score of 75% or greater.
[16.34.6.8 NMAC - Rp 16 NMAC 34.6.8, 06-16-01; A, 10-04-07; A, 04/12/10]

HISTORY OF 16.34.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article IV, Licensing by Reciprocity: Credit for Out-of-State Training, 12-21-81

Article IV, Licensing By Reciprocity: Credit for Out-of-State Training, 3-24-89

Rule 4, Licensing By Reciprocity: Credit for Out-of-State Training, 3-8-90

Rule 4, Licensing By Reciprocity: Credit for Out-of-State Training, 3-9-92

Rule 5, Licensing By Reciprocity: Credit for Out-of-State Training, 10-19-93

Rule 5, Licensing By Reciprocity: Credit for Out-of-State Training, 5-13-94

Rule 5, Licensing By Reciprocity: Credit for Out-of-State Training, 8-12-94

Rule 5, Licensing By Reciprocity: Credit for Out-of-State Training, 5-23-95

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.6, Licensing By Reciprocity: Credit For Out-of-State Training - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 7 ESTABLISHMENTS AND ENTERPRISES

16.34.7.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.7.1 NMAC - Rp 16 NMAC 34.7.1, 06-16-01]

16.34.7.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.7.2 NMAC - Rp 16 NMAC 34.7.2, 06-16-01]

16.34.7.3 STATUTORY AUTHORITY: Sections 61-17A-15, 61-17A-18 and 61-17A-19 of the Barbers and Cosmetologists Act. This authorizes the board to develop establishment standards and issue a license to establishments, enterprises and clinics that are in compliance with all requirements established by the board.
[16.34.7.3 NMAC - Rp 16 NMAC 34.7.3, 06-16-01]

16.34.7.4 DURATION: Permanent
[16.34.7.4 NMAC - Rp 16 NMAC 34.7.4, 06-16-01]

16.34.7.5 EFFECTIVE DATE: June 16, 2001 unless a different date is cited in the history note at the end of a section.
[16.34.7.5 NMAC - Rp 16 NMAC 34.7.5, 06-16-01]

16.34.7.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part outlines establishment and outreach enterprise requirements.
[16.34.7.6 NMAC - Rp 16 NMAC 34.7.6, 06-16-01]

16.34.7.7 DEFINITIONS: Refer to Part 1
[16.34.7.7 NMAC - Rp 16 NMAC 34.7.7, 06-16-01]

16.34.7.8 APPLICATION FOR ENTERPRISE OR ESTABLISHMENT LICENSE

A. A completed official application for an enterprise or establishment license must be filed with the board at least fifteen days prior to the expected opening of the enterprise or establishment.

B. The application, if complete, may be administratively approved. A formal inspection of the enterprise, outreach enterprise unit or establishment shall occur within ninety days of opening.

C. When an enterprise or establishment relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the administrative fee.

D. If any portion of the establishment is completely segregated from the primary area, a duplicate establishment license must be acquired and posted in the separate area. A duplicate license fee will be assessed.

E. All enterprise and establishment licenses must be renewed on March thirty first of each year beginning with the first renewal year after the implementation of these rules.

F. Each outreach enterprise mobile unit and establishment licensed by the board shall post the applicable license and a current copy of the statutes, rules and regulations and the most recent inspection report in an area clearly visible to the public.

G. Each establishment licensed by the board shall post a sign at the main entrance, which indicates the type of business being performed.

H. Each mobile outreach unit shall post a sign indicating the type of business being performed. The outreach enterprise license will be maintained at its business address. Each mobile outreach unit shall carry and have posted a duplicate enterprise license assigned to that unit.

I. Any establishment or mobile outreach enterprise unit licensed by the board may not be used for living or sleeping quarters or in any way for residential purposes. If an establishment is located in a private residence, a segregated area must be provided for the licensed activity and maintenance of proper water supply and toilet standards to ensure proper sanitation. Reasonable access to a restroom must be provided by the establishment or mobile outreach enterprise unit.

J. Except as provided in 16.34.4.11 NMAC, of these rules, no services authorized under this act may be provided away from a licensed establishment.

K. Services authorized under this act may be provided in mobile outreach units only as specified in these rules.

L. Any licensee performing services in a mobile outreach unit must carry a current duplicate license at all times. The licensee must show the client the license upon request.

M. Each outreach enterprise mobile unit will be equipped with or have available a cellular phone and/or other communication capability necessary for immediate access and/or prompt response.

N. Each outreach enterprise mobile unit must have signage on at least two sides for identification information in letters no smaller than five inches.

O. Outreach enterprise mobile units shall be used for the sole purpose stated in 16.34.1 NMAC of these rules.

[16.34.7.8 NMAC - Rp 16 NMAC 34.7.8, 06-16-01]

16.34.7.9 SANITARY AND SAFETY RULES FOR ESTABLISHMENTS AND ENTERPRISES

A. All licensees who operate enterprise outreach mobile units or establishments must comply with the following minimum sanitation and safety standards. Failure to comply with these requirements may result in an administrative fine as provided in 16.34.15 NMAC of these rules and other disciplinary action by the board.

(1) maintenance of adequate ventilation to ensure that occupants are not improperly exposed to hazardous products or chemicals;

(2) maintenance of smoking restriction to ensure that products or chemicals used are not inadvertently ignited;

(3) maintenance of spill standards to ensure that occupants are not improperly exposed to any product or chemical;

(4) maintenance of hot and cold running water available in such quantities as necessary to perform professional services in a safe and sanitary manner while serving the public;

(5) maintenance of all equipment in safe working condition;

(6) maintenance of clean towels in enclosed containers or cabinets with appropriate sanitizing agents;

(7) maintenance of combs and brushes in enclosed containers or cabinets with appropriate sanitizing agents;

(8) compliance with local licensing, fire, building, health, ventilation, heating and safety requirements;

(9) every person engaged in a licensed enterprise or establishment must keep his/her person in a hygienic condition;

(10) all products and chemicals must be kept in labeled closed containers;

(11) there shall be adequate wet and dry sanitizers;

(12) floors, walls, and other fixtures must be kept reasonably clean at all times; cups, bowls, basins, jars and instruments must be sanitized prior to using on the public;

(13) rest rooms of establishments must be in working order and be segregated and have ceiling high partitions from the rest of the establishment or common area;

(14) clean towels, sheets, robes and other linens must be used for each client; towels, sheets, robes, and other linens must be changed and properly laundered after each use; the use of paper or disposable towels, linens, etc. shall be in compliance with this rule and shall be disposed of after each use;

(15) implementation of proper cleaning and sterilization of head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public; filters and drains must be cleaned or changed according to manufacturer's instructions;

(16) implements must be sanitized in an appropriate germicidal solution by immersion according to the product manufacturer's direction;

(17) all licensees must provide a suitable place equipped to give adequate service, as advertised to clients, subject to inspection by the board;

(18) adherence to the product manufacturer's directions for safe use that appear on the product labeling;

(19) use of protective devices when so indicated by the product manufacturer's direction for safe use or when the nature of the product indicates such protection is necessary;

(20) implementation of proper hand washing practices to ensure that appropriate sanitary standards are maintained for clients and to ensure that cosmetology and barbering professionals are not overexposed to particular cosmetic products or their ingredients;

(21) implementation of proper storage practices to ensure that products are maintained in the manner that prevents any risk of fire or of undesired reactions;

(22) implementation of proper program of identification of products during use and in storage to avoid confusion as to products or their ingredients; such program shall include efforts to ensure that ingredient information provided by manufacturers or distributors remains available with the product for use by licensed professionals and clients;

(23) implementation of proper component mixing practices to reduce the risk of undesired reactions;

(24) implementation of proper sterilization practices of working tools and implements;

(25) licensees may not perform services on the public while under the influence of alcohol or drugs;

(26) maintenance of a material safety data sheet file containing pertinent facts regarding products;

(27) the use, storage or dispensing of such beauty service products containing methyl methacrylate or other chemicals determined to be hazardous to the health of licensees or consumers by the board of any federal, state or local health agency, shall be prohibited; the identification of such materials shall be determined by proper testing procedures approved by the board;

(28) no establishment or school shall use any razor-edged device or tool for the purpose of removing skin or calluses;

(29) all instruments and supplies that come in contact with a the public and cannot be disinfected (e.g. emery boards, sponges, cotton pads), shall be disposed of immediately after use; and

(30) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which penetrates into the dermal layer of the skin is considered invasive and is therefore prohibited.

B. Professional licensees who perform services in an outreach enterprise mobile unit must carry at all times a duplicate license which indicates that they have met the requirements stated in 16.34.4.15 NMAC of these rules.

[16.34.7.9 NMAC - Rp 16 NMAC 34.7.9, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.7.10 CHANGES OF OWNERSHIP

A. An establishment or enterprise license is nontransferable.

B. A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an enterprise or establishment. These actions may include, but are not limited to:

(1) the transfer of the controlling interest of stock of an enterprise or establishment to its parent corporation;

(2) the merger of two or more enterprises or establishments;

(3) the division of enterprise or establishment into two or more enterprises or establishments;

(4) the transfer of the assets or liabilities of an enterprise or establishment to its parent corporation;

(5) the acquisition by an individual of the controlling interest of an enterprise or establishment, whether a proprietorship, partnership or corporation;

(6) the sale of an enterprise or establishment;

(7) the lease of or right to do business as an enterprise or establishment.

C. If ownership or legal control of a licensed enterprise or establishment changes, the new owner, lessee or other legally responsible party must submit a new application and secure a new license from the board.

D. If legal control of an enterprise or establishment does not change, but the organization of the ownership does change (e.g. a sole proprietor becomes the sole stock holder of a corporation which owns the enterprise or establishment), the board must receive notarized proof of such change within thirty days of such change.

[16.34.7.10 NMAC - Rp 16 NMAC 34.7.10, 06-16-01]

16.34.7.11 SUPERVISION OF LICENSED PRACTICE

A. Any enterprise or establishment licensed by the board must be under the immediate supervision of a board licensee while licensed activity is being practiced therein.

B. The supervising licensee must be licensed in ALL aspects of the licensed activity being practiced in the enterprise or establishment during the time he/she is in charge, (e.g. a licensed manicurist cannot supervise a barber shop or beauty salon unless he/she also holds a barber or cosmetology license respectively).

C. The enterprise or establishment owner or manager must appoint a licensee to act on their behalf in their absence. The holder of a temporary license may not act as a supervisor of any enterprise or establishment.
[16.34.7.11 NMAC - Rp 16 NMAC 34.7.11, 06-16-01]

16.34.7.12 PRACTICE IN UNLICENSED ENTERPRISES OR ESTABLISHMENTS

A. The practices, rendering, or offering of licensed activities for compensation in an unlicensed enterprise or establishment is prohibited. It shall constitute malpractice within the meaning of section 61-17A-21 NMSA 1978 of the Barbers and Cosmetologists Act for an individual licensed under the act to provide or offer to provide for compensation any service in an unlicensed enterprise or establishment unless otherwise authorized by the act or these rules.

B. Before a licensee begins to work in an enterprise or establishment required to be licensed under the act, the licensee shall ask to see the enterprise or establishment license. The licensee shall not provide or offer to provide any licensed activity in any enterprise or establishment until the licensee actually has seen a valid, current enterprise or establishment license.

C. The licensee shall notify the board if he or she is not shown a valid, current enterprise or establishment license for the enterprise or establishment promptly upon request.

[16.34.7.12 NMAC - Rp 16 NMAC 34.7.12, 06-16-01]

16.34.7.13 BOOTH ESTABLISHMENT LICENSE

A. The lessee of the space must obtain a booth establishment license fifteen days prior to providing licensed activity. The booth establishment license must be posted where clearly visible to the public. The booth lessee also must have a valid, current practitioner license appropriate for the licensed activity offered.

B. If the licensee is paying the establishment owner rent, a percentage of income earned, operates as an independent business within a licensed establishment, has obtained a tax identification number or a required municipal business license, the licensee must obtain a booth establishment license.

C. The establishment licensee renting space to a booth lessee shall not allow an individual to render any licensed activity until the establishment licensee actually has seen a valid, current booth establishment license and a valid, current practitioner license appropriate for the licensed activity offered by the lessee.

D. A booth establishment license is nontransferable and must be renewed annually.

E. If a booth establishment licensee relocates anywhere within the state, the licensee must notify the board in writing, complete a relocation application, and pay the administrative fee. The establishment licensee must identify booth lessee(s) at the time of original licensure and at each annual renewal.

F. Each licensee is responsible for compliance with minimum sanitation and safety standards. The establishment licensee remains primarily responsible for compliance with the sanitary and safety rules for establishments set forth in 16.34.7 NMAC. The booth establishment licensee will be subject to fines or other disciplinary action for any violation of the sanitary and safety rules within the reasonable control of the booth establishment licensee, including without limitation Subsection A, Paragraphs 5, 6, 7, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26 of 16.34.7.9 NMAC.

G. The board shall notify the establishment licensee of any warnings issued to a booth establishment licensee for violations of the sanitary and safety rules. The board shall notify the establishment licensee if the booth establishment licensee's practitioner license has not been renewed or if the license has been restricted, suspended, or revoked. The board shall notify the booth establishment licensee(s) if the establishment license has not been renewed or if the license has been restricted, suspended, or revoked.

[16.34.7.13 NMAC - Rp 16 NMAC 34.7.13, 06-16-01]

16.34.7.14 SPECIAL EVENTS PERMIT: Any licensee desiring to sponsor a special event such as a fundraiser, garage sale, telethon, etc. that will not be conducted at the licensed establishment, must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Approval for the special events may be made administratively.

[16.34.7.14 NMAC - Rp 16 NMAC 34.7.14, 06-16-01]

HISTORY OF 16.34.7 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article V, Cosmetology Establishments, 12-21-81

Article V, Cosmetology Establishments, 11-4-83
Rule 5, Cosmetology Establishments, 3-8-90
Rule 5, Cosmetology Establishments, 3-9-92
Rule 6, Establishments, 10-19-93
Rule 6, Establishments, 5-13-94
BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86
BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87
BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.7, Establishments and Enterprises - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 8 SCHOOLS

16.34.8.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.8.1 NMAC - Rp 16 NMAC 34.8.1, 06-16-01]

16.34.8.2 SCOPE: All barber, cosmetology, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor, electrolysis schools and all students of barbering, cosmetology, esthetician, manicurist/pedicurist, manicurist/esthetician, instructor and electrolysis.
[16.34.8.2 NMAC - Rp 16 NMAC 34.8.2, 06-16-01]

16.34.8.3 STATUTORY AUTHORITY: Sections 61-17A-12, 61-17A-18 and 61-17A-19 of the Barbers and Cosmetologists Act. This authorizes the board to establish requirements for opening, relocating, school name change for barber, cosmetology, electrolysis and specialty schools.
[16.34.8.3 NMAC - Rp 16 NMAC 34.8.3, 06-16-01]

16.34.8.4 DURATION: Permanent
[16.34.8.4 NMAC - Rp 16 NMAC 34.8.4, 06-16-01]

16.34.8.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.8.5 NMAC - Rp 16 NMAC 34.8.5, 06-16-01]

16.34.8.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the standards for opening, relocating and name change for schools governed by the act.
[16.34.8.6 NMAC - Rp 16 NMAC 34.8.6, 06-16-01]

16.34.8.7 DEFINITIONS: Refer to Part 1
[16.34.8.7 NMAC - Rp 16 NMAC 34.8.7, 06-16-01]

16.34.8.8 APPLICATION FOR OPENING, RELOCATING, CHANGING NAME OF A SCHOOL

- A. A school license is nontransferable.
- B. A change of ownership or control is any action by which a person or corporation obtains authority to control the actions of an institution. These actions may include, but are not limited to:
 - (1) the transfer of the controlling interest of stock of an institution to its parent corporation.
 - (2) the merger of two or more institutions.
 - (3) the division of an institution into two or more enterprises or establishments.
 - (4) the transfer of the assets or liabilities of an institution to its parent corporation.
 - (5) the acquisition by an individual of the controlling interest of an institution, whether a proprietorship, partnership or corporation; or
 - (6) the sale of an institution.
 - (7) the lease of or right to do business as an institution.
- C. If ownership or legal control of a licensed school changes, the new owner, lessee or other legally responsible party must submit a new application and secure a new license from the board.
- D. If legal control of a school does not change, but the organization of ownership does change (e.g. a sole proprietor becomes the sole stockholder of a corporation which owns the school), the board must receive notarized proof of such change within thirty days of such change.
- E. A completed application to open, change ownership or relocate a school authorized under this Act must be filed with the board. An application to open a school, change ownership or relocate or change the name of a school filed by a currently licensed school owner must be filed at least fifteen days in advance of the expected date of change.
 - (1) Applications must be on official forms approved by the board and must include the appropriate fee.

(2) Applicants to open, change ownership or relocate a school must demonstrate that the school is financially responsible and the school has sufficient resources to ensure against precipitous closure. Applicants shall provide at least the following information: evidence of ownership; corporate or business status; identity and address of owners, partners, shareholders, and directors; copies of articles of incorporation and by-laws, if applicable; evidence of financial responsibility, including compiled financial statement and balance sheet indicating assets and liabilities; a corporate surety bond or bank letter of credit in the amount of five thousand dollars to indemnify students for fees and tuition paid to a school if the school ceases operation or terminates a program prior to the completion of a student's contract with the school; disclosure of the filing within the last seven years of bankruptcy of owner(s), partner(s), or director(s); and the identity of two business or financial references.

(3) An owner(s), partner(s), or director(s) of a school applicant must sign a release directed to financial institutions authorizing the disclosure of financial information and shall disclose loan history.

(4) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose civil actions brought within ten years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of debt, fraud, or misrepresentation and the disposition of such action(s).

(5) An owner(s), partner(s), or director(s) of a school applicant will be required to disclose any arrest or conviction within the ten years of the date of the application for fraud, larceny, embezzlement, or any crime involving stealing, taking, theft, robbery, or unlawful appropriation of money or anything of value that belongs to another and the disposition of such action(s).

(6) A school is not financially responsible if an owner(s), partner(s), or director(s) is not making payments in accordance with an agreement, judgment, or debt obligation, or if an owner(s), partner(s), or director(s) has been convicted of felony involving a crime described in paragraph 5 subsection E of 16.34.8.8 NMAC and that owner(s), partner(s), or director(s) is not sufficiently rehabilitated as provided in the Criminal Offender Employment Act, Section 28-2-1 through 28-2-6 NMSA 1978.

(7) In the case of a change of ownership of a school, the school establishment license of the prior owner does not expire for thirty days after the date of sale providing it is a current and valid license. In order to ensure continued training for students, the new owner may operate under the prior license until the earlier of the thirty day expiration date of the prior license or obtaining the new school establishment license.

(8) In case of a change of ownership of a school, the new school shall submit a student roster of all students enrolled at the time of the change which lists for each student the name, the date of birth, the social security number, course enrolled, the course beginning date and the student permit. The school shall submit the student roster to the Board within thirty days of the change of ownership.

F. The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within ninety days of opening. Incomplete applications without proper and complete supporting documents will be returned. The initial school establishment license fee shall be prorated to the following March thirty one.

G. When a school relocates within the state of New Mexico, the owner must complete a new application and obtain approval, including inspection from the board to operate the business at the new location, and pay the school relocation fee.

H. If any portion of the school is completely segregated from the primary area, a duplicate school license must be acquired and posted in the separate area. A duplicate license fee will be assessed. The school must also comply with 16.34.8.12 NMAC, expansion campus facility requirements.

I. All school licenses must be renewed on March thirty first of each year.

J. Each school licensed by the board shall post a current copy of the statutes and rules and regulations and the most recent inspection report in an area where clearly visible to the public.

K. Each school licensed by the board shall post an exterior sign which indicates the facility houses a school.

[16.34.8.8 NMAC - Rp 16 NMAC 34.8.8, 06-16-01]

16.34.8.9 GENERAL REQUIREMENTS

A. Schools may not permit its students to perform any laboratory services on the public under any circumstances until the student has accrued fifteen percent of the total hours required within the course.

B. Schools shall display in a conspicuous place within the reception or clinic area of the school a sign which indicates that all services are performed by supervised students.

C. Schools shall not pay compensation to any of its students, either directly or indirectly.

D. Instructors or student instructors shall not be permitted to perform services on the public other than that part of the practical work which pertains directly to the teaching or demonstration of subjects included in the curriculum.

E. Schools shall provide both theory instruction and practical skills training in all subjects applicable to the course of study according to the curriculum prescribed by the board.

F. Schools shall maintain the equivalent of at least one full time instructor for every twenty students in attendance or part thereof.

G. Schools must at all times be under the immediate supervision of a licensed instructor.

H. Schools, which advertise services to the public in order to attract clients for its students, must include in each advertisement the statement that all services are performed by supervised students.

[16.34.8.9 NMAC - Rp 16 NMAC 34.8.9, 06-16-01]

16.34.8.10 PHYSICAL REQUIREMENTS: All schools must comply with the sanitary and safety rules for establishments outlined in 16.34.7.9 NMAC of these rules and provide for:

A. a clean, well-maintained facility;
B. a reception area for clients and guests;
C. an area designated for theory instruction equipped with enough tables or desks and chairs to meet the instructional needs of assigned or scheduled students;

D. a designated clinic or laboratory area for supervised practical skills training;

E. sanitary, lavatories with hot and cold wash facilities;

F. sufficient grounded electrical outlets to provide for the safe operation of all laboratory and classroom equipment;

G. safe and secure maintenance of student records;

H. separate entrances and visitor reception areas if a professional service facility or salon is in the same building;

I. a designated work area for instructors for the purpose of planning, record keeping, counseling, consultation and administrative tasks;

J. properly marked exits to facilitate safe evacuation in case of emergency;

K. a dispensary or supply room adequately supplied to meet the reasonable anticipated needs of students and staff.

[16.34.8.10 NMAC - Rp 16 NMAC 34.8.10, 06-16-01; A, 10-04-07]

16.34.8.11 EQUIPMENT, TEACHING AIDS: Schools shall have in good working order apparatus, equipment and implements necessary for the full and ready teaching of all subjects included in the curriculum including, but not limited to the following:

A. one applicable workstation for each student assigned a clinic patron at any one time;
B. one suitable bulletin board conspicuously located for posting rules and regulations, licenses, notices, etc.

C. one board of adequate size to be seen by all students in the class;

D. teaching aids and applicable projection equipment for all subjects taught within the curriculum;

E. textbooks and lesson plans for the appropriate and authorized courses of study;

F. suitable reference materials including books, current periodicals, supplementary information to meet the requirements and objectives of the courses of study and which are available for independent study.

[16.34.8.11 NMAC - Rp 16 NMAC 34.8.11, 06-16-01; A, 10-04-07]

16.34.8.12 EXPANSION CAMPUS FACILITY

A. A completed official application to operate an expansion campus facility must be filed with the board at least fifteen days prior to the expected opening of the classroom or clinic. The application must include a statement of the distance between the approved primary facility and the new expansion campus facility, must be within a two mile radius of the main campus.

B. The application, if complete, may be administratively approved. A formal inspection of the establishment shall occur within ninety days of opening. Incomplete applications without proper and complete supporting documents will be returned.

C. Duplicate licenses for the school and all instructors teaching in any expansion campus facility shall be conspicuously displayed therein.

D. If the ownership or address of the original, primary facility changes from that of the expanded campus facility, licensure of the expanded campus facility does not automatically continue for the expansion campus facility.

E. An expansion campus facility must bear the same name as the original, primary facility and its advertising sign must indicate the same name as the primary facility.

[16.34.8.12 NMAC - Rp 16 NMAC 34.8.12, 06-16-01; A, 10-04-07]

16.34.8.13 REGULATIONS CONCERNING STUDENTS

A. Student registration

(1) When a school receives an application from a prospective student, it shall promptly notify the student of the registration requirements of the board.

(2) It shall constitute a violation of the rules, within the meaning of the act, for a school to engage in failure to transmit student registration documents and fees in a timely fashion to the board pursuant to Subsection G of 16.34.15.8 NMAC, wherein fines will be imposed.

(3) It shall be the responsibility of the prospective student to comply with the registration requirements by the first day he/she attends class for credit. Failure to do so may result in loss of hours earned prior to proper registration.

(4) No school shall allow a student to attend class for credit until the student has complied with the registration requirements:

(a) Applicants for the barber, cosmetology, manicure/pedicure, esthetician, electrologist, and manicure/esthetician courses must be at least sixteen years of age and have successfully completed two years of high school or the equivalent.

(b) Applicants for the instructor course must be at least seventeen years of age and have successfully completed four years of high school or the equivalent.

(5) Acceptable proof of age and education requirements as follows:

(a) Proof of age includes a copy of a birth certificate, a driver's license or a state issued identification card, or a baptismal certificate.

(b) Proof of two years of secondary education includes a high school diploma, a G. E. D. certificate or transcript of G. E. D. test scores, a sealed letter from the high school attended, a copy of the high school transcript showing all required grades have been passed, a letter from the G. E. D. testing facility stating that the G. E. D. test has been passed, or any other test approved by the United States department of education for the purpose of determining an applicant's ability to benefit, providing that documentation of GRADE EQUIVALENCY is established by the test publisher and the required grade level for the course of study has been achieved.

(c) The board, or its executive director, may accept as proof of secondary education the applicant's notarized statement that he/she has completed the required secondary education, but has been unable to obtain documentary proof of that from a FOREIGN NATION. A notarized statement will not be accepted for students who have completed the secondary education in the United States.

(6) Evidence of compliance with the foregoing requirements shall accompany the application for registration form provided by the board.

(7) Upon receipt of a complete student registration form and applicable fee, which shall be received in the board office within fifteen days of the date of registration, the board office will then issue a STUDENT PERMIT and a permit number. The student permit authorizes the holder to practice course related skills in an approved school on the public only after successful completion of fifteen percent of the program. In addition, the student permit also authorizes the student to participate in the student externship program pursuant to 16.34.8.17 NMAC of these rules. A photograph of the student (front view, head only, at least 1.5" by 1.5") shall be attached to the permit. The permit shall be displayed in a binder in the school in which the student is enrolled and open to review by the state inspector or other board designee. Student permits are the property of the board and must be returned to the board by the school upon termination of the student's enrollment.

(8) If inspection of the student permits and school records determines that students are attending class without being properly registered with the board, the student may be denied the hours previously accrued and the school will be reported to the board for disciplinary action.

B. Student transfers/re-entries

(1) Any previously registered student desiring to transfer to another school, or re-enter the previous school shall submit a new registration form and required fees to the board. Students transferring schools as a result of a school closure shall submit a new registration form but are not required to pay a re-registration fee. Students attending a school, which undergoes a change of ownership, are not required to re-register with the board.

(2) Any student desiring to re-enter school must submit proof of the successfully completed previous training in order to receive credit for it.

(3) A student enrolled in any course may withdraw and transfer hours or equivalent credit acquired to another course not to exceed the amount of hours or equivalent credit of each subject within the new course curriculum requirements. Appropriate termination notices and course registration documents must be submitted to the board office when a student transfers to another course.

(4) Students enrolled in the cosmetology curriculum may take the examination for one of the specialty courses at which time the school certifies that the student has completed the requirements for the course in which the student seeks licensure. All other requirements for examination must also be met. The student may continue to attend classes in the cosmetology course. However, if licensure is obtained in any specialty course and the student continues attending classes in the cosmetology course, he/she cannot perform any services on the public in the school for which the individual is now licensed.

C. Records of student academic progress

(1) Schools shall keep records of academic progress for each student and these records shall be open for inspection by members of the board or its designees.

(2) Schools will designate in the enrollment contract and other consumer information, all requirements for withdrawal or graduation. When all requirements have been met, the school must return the student's permit to the board, and submit a sealed official transcript of training to the board and to the student showing that course requirements for graduation have been met. The board recognizes for transfer, hours or equivalent credits reported on the official transcript of training. Circumstances regarding transfer of or approval of student hours may be brought to the board on an individual basis for special consideration by the board. The board may, in its discretion, recognize hours or equivalent credit or partial hours or partial credit for transfer when an official transcript of training has not been submitted by the school.

(3) If a student terminates his/her enrollment status without meeting all withdrawal or graduation requirements, the school in which he/she was enrolled shall notify the board of termination in writing within thirty days of the student's formal termination date using the format prescribed by the board, and return the student's permit.

(4) Schools offering clock hour training shall define its attendance requirements to include one hundred percent attendance for the course length for licensure or may allow excused absences for no more than ten percent of the course length for satisfactory course completion.

(a) student attendance policies are applied uniformly and fairly.

(b) attendance policies give appropriate credit for all hours attended;

(c) do not add or deduct attendance hours as a penalty;

(d) the school shall report actual hours attended by the student OR shall round the hours to the nearest half hour (i.e. if a student attended forty-four minutes past the hour, the school would report the previous half hour; if a student attended forty-five minutes past the hour, the school would report the next hour);

(e) the school must maintain attendance records for each student to verify that the minimum attendance standard set forth by the board is being met;

(f) in cases where schools are authorized to offer training via distance learning methods, the school establish standards for converting competencies achieved to clock or credit hours.

(5) To be considered a graduate, a student must have completed the course scheduled for completion and met the minimum attendance standard (or ninety percent) of the established course of study and all other academic and evaluation factors established by the school. Therefore, in addition to completion of the required hours, the student must have satisfactorily completed the practical and theoretical curriculum requirements set forth by the school. Those requirements must include documentation that the student has satisfactorily completed each unit of study prescribed by the board in the applicable course of study. The excused absences DO NOT allow a student to accelerate in their course of study. Even though they may limit excused absences, they WILL NOT be allowed to sit for the state licensing examination until the number of hours prescribed by the board for the applicable course of study have elapsed.

(6) If a student is required OR allowed by the school to train more than the scheduled hours in a class day, he/she must be given credit for the additional time in the appropriate subject. Schools have full discretion in setting forth class schedules for each course offered as long as minimum requirements for graduation meet the board standards.

(7) Students may not be called from a scheduled theory class to perform services on the public.

(8) Schools expressing academic measurement in terms of credit hours shall set forth requirements for each unit of study within a course or program which ensure that required levels of competency or skills ability

have been met. Such schools must award appropriate credit for each unit of study completed satisfactorily. Records of the students' academic progress within the course of study must be maintained for all students.

(9) The school shall provide a catalog to prospective students containing enough information to permit an informed choice among training opportunities and institutions. Catalogs which comply with the school's accrediting agency will be deemed to comply with this rule.

(10) Schools must comply with the Family Education Right to Privacy Act and must guarantee the rights of students to have access to their cumulative records and provide for proper supervision and interpretation of student records when reviewed.

(11) Schools and students shall enter into a signed written agreement which fully and accurately reflects the contractual rights and obligations of the parties, particularly with regard to suspension, expulsion, refunds, tuition and fees, withdrawal and graduation requirements. Contracts which comply with the school's accrediting agency will be deemed in compliance with this rule.

D. Records regarding state board examinations: Each school shall disclose to prospective students its annual statistics regarding the school's state examination pass rate. The board or its designee will send a letter to each school after each examination containing the result information on each student, which will serve as the source documentation for calculating the disclosed statistics.

[16.34.8.13 NMAC - Rp 16 NMAC 34.8.13, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.8.14 STUDENT SCHOOL GRIEVANCES: Each school licensed by the board must have an internal grievance process for students to seek solutions to any student complaint or concern that is not frivolous or without merit. Evidence of final resolution of such complaints will be retained in the school's file in order to determine the frequency, nature, and patterns of complaints for the institution. Verification that the procedure is in place and being followed will occur during routine inspections of schools. Formal complaints can be filed with the board pursuant to 16.34.13 NMAC of these rules. Schools may not retaliate against students who file complaints with the board.

[16.34.8.14 NMAC - Rp 16 NMAC 34.8.14, 06-16-01]

16.34.8.15 CURRICULUM

A. The following minimum curriculum requirements are established for all schools licensed under the act. Schools offering training in clock hours must meet the following minimum hours in each unit of study. Schools offering training in credit hours must offer an equivalent training program as prescribed by the schools accrediting agency clock hour/credit hour conversion formula. In absence of such a formula the state board will prescribe the credit hour/clock hour conversion formula. Schools may offer all or part of the courses set forth herein provided appropriate facility requirements are met and Instructors have appropriate practitioner training to teach the subjects offered. This does not preclude schools from offering non-related courses or advanced courses, which are not prescribed in these rules. Courses are automatically approved if the course units are between one hundred percent and one hundred twenty percent of the minimum. Schools desiring to offer instruction that exceeds one hundred twenty percent of the minimum requirements (i.e. a course that is over twenty five percent of the board's published minimum requirements) must submit to the board the following:

- (1) a course outline indicating all course hours or credits offered;
 - (2) a class schedule for the entire course indicating how and when each unit of instruction is offered;
 - (3) justification of why the course should be approved at the extended length.
- B. Barber course curriculum - 1200 course hours or equivalent credit:
- (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;
 - (g) job seeking; and
 - (h) ethics
 - (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;

- (e) methods of sanitation and sterilization;
- (f) chemical agents;
- (g) types and classifications of bacteria;
- (h) bacterial growth; and
- (i) infections
- (3) SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation;
 - (e) procedures and practice;
 - (f) products, materials and implements;
 - (g) hair analysis;
 - (h) disorders of the hair and scalp;
 - (i) hair and scalp treatments;
 - (j) related chemistry; and
 - (k) client record keeping and safety;
- (4) CHEMICAL REARRANGING - PERMS AND RELAXERS: 200 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry; and
 - (h) client record keeping and safety;
- (5) HAIRSTYLING: 150 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry;
 - (h) wet styling;
 - (i) blow drying;
 - (j) finger waving;
 - (k) air waving;
 - (l) hair pressing;
 - (m) hair extensions;
 - (n) hair weaving;
 - (o) braiding;
 - (p) corn rowing;
 - (q) client consultation and recommendations;
 - (r) client record keeping and safety, and
 - (s) care of wigs and hair pieces;
- (6) HAIR COLORING - BLEACHING: 125 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry;
 - (h) temporary, semi-permanent, and permanent applications;
 - (i) bleaching, tinting, toning, frosting, special effects and problems;

- (j) client consultation and recommendations; and
- (k) client record keeping and safety;
- (7) **HAIR CUTTING AND BEARD TRIMMING: 250 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) shaving, honing and stropping;
 - (e) preparation, procedures, and practice;
 - (f) use of scissors, shears, razor and clippers;
 - (g) products, materials and implements;
 - (h) client consultation and recommendations; and
 - (i) client record keeping and safety;
- (8) **FACIALS: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage and facial treatments;
 - (g) makeup application;
 - (h) use of electrical appliances, currents and specialized machines for treatments;
 - (i) artificial eyelashes;
 - (j) removal of unwanted hair;
 - (k) eyelash and brow tinting;
 - (l) light therapy;
 - (m) client consultation and recommendations; and
 - (n) client record keeping and safety;
- (9) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
- (10) **MISCELLANEOUS: 25 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas, or
 - (b) for supervised field trips and other course related training;
- C. **Cosmetology course curriculum - 1600 course hours or equivalent credit**
 - (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;
 - (g) job seeking; and
 - (h) ethics
 - (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;
 - (e) methods of sanitation and sterilization;

- (f) chemical agents;
- (g) types and classifications of bacteria;
- (h) bacterial growth; and
- (i) infections
- (3) SHAMPOO, RINSES, SCALP TREATMENTS: 75 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation;
 - (e) procedures and practice;
 - (f) products, materials and implements;
 - (g) hair analysis;
 - (h) disorders of the hair and scalp;
 - (i) hair and scalp treatments;
 - (j) related chemistry; and
 - (k) client record keeping and safety;
- (4) CHEMICAL REARRANGING - PERMS AND RELAXERS: 200 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry; and
 - (h) client record keeping and safety;
- (5) HAIRSTYLING: 150 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry;
 - (h) wet styling;
 - (i) blow drying;
 - (j) finger waving;
 - (k) air waving;
 - (l) hair pressing;
 - (m) hair extensions;
 - (n) hair weaving;
 - (o) braiding;
 - (p) corn rowing;
 - (q) client consultation and recommendations;
 - (r) client record keeping and safety, and
 - (s) care of wigs and hair pieces;
- (6) HAIR COLORING - BLEACHING: 125 hours or equivalent credit
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) hair analysis and client consultation;
 - (g) related chemistry;
 - (h) temporary, semi-permanent, and permanent applications;
 - (i) bleaching, tinting, toning, frosting, special effects and problems;
 - (j) client consultation and recommendations; and

- (k) client record keeping and safety;
 - (7) **HAIR CUTTING: 200 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures, and practice;
 - (e) use of scissors, shears, razor and clippers;
 - (f) products, materials and implements;
 - (g) client consultation and recommendations; and
 - (h) client recordkeeping and safety.
 - (8) **FACIALS: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage and facial treatments;
 - (g) makeup application;
 - (h) use of electrical appliances, currents and specialized machines for treatments;
 - (i) artificial eyelashes;
 - (j) removal of unwanted hair;
 - (k) eyelash and brow tinting;
 - (l) light therapy;
 - (m) client consultation and recommendations; and
 - (n) client record keeping and safety;
 - (9) **MANICURING/PEDICURING: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage;
 - (g) advanced nail techniques;
 - (h) client consultation and recommendations; and
 - (i) client record keeping and safety
 - (10) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
 - (11) **MISCELLANEOUS: 300 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
 - (b) for supervised field trips and other course related training
- D. Manicurist/pedicurist course curriculum - 350 course hours or equivalent credit
- (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;

- (g) job seeking; and
- (h) ethics
- (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 25 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;
 - (e) methods of sanitation and sterilization;
 - (f) chemical agents;
 - (g) types and classifications of bacteria;
 - (h) bacterial growth; and
 - (i) infections
- (3) **MANICURING/PEDICURING: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage;
 - (g) advanced nail techniques;
 - (h) client consultation and recommendations; and
 - (i) client record keeping and safety
- (4) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
- (5) **MISCELLANEOUS: 25 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
 - (b) for supervised field trips and other course related training
- E. **Esthetician course curriculum - 600 course hours or equivalent credit**
 - (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;
 - (g) job seeking; and
 - (h) ethics
 - (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;
 - (e) methods of sanitation and sterilization;
 - (f) chemical agents;
 - (g) types and classifications of bacteria;
 - (h) bacterial growth; and
 - (i) infections
 - (3) **FACIALS: 350 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) theory of massage;
- (g) facial treatments and makeup application;
- (h) use of electrical appliances, currents and specialized machines for treatments;
- (i) artificial eyelashes;
- (j) removal of unwanted hair;
- (k) eyelash and brow tinting;
- (l) light therapy;
- (m) client consultation and recommendations;
- (n) client record keeping and safety
- (4) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
- (5) **MISCELLANEOUS: 50 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
 - (b) for supervised field trips and other course related training
- F. **Manicurist/wsthetician course curriculum - 600 course hours or equivalent credit**
 - (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;
 - (g) job seeking; and
 - (h) ethics
 - (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;
 - (e) methods of sanitation and sterilization;
 - (f) chemical agents;
 - (g) types and classifications of bacteria;
 - (h) bacterial growth; and
 - (i) infections
 - (3) **FACIALS: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage;
 - (g) facial treatments and makeup application;
 - (h) Use of electrical appliances, currents and specialized machines for treatments;

- (i) artificial eyelashes;
- (j) removal of unwanted hair;
- (k) eyelash and brow tinting;
- (l) light therapy;
- (m) client consultation and recommendations; and
- (n) client record keeping and safety
- (4) **MANICURING/PEDICURING: 175 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) theory of massage;
 - (g) advanced nail techniques;
 - (h) client consultation and recommendations; and
 - (i) client record keeping and safety
- (5) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
- (6) **MISCELLANEOUS: 50 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
 - (b) for supervised field trips and other course related training
- G. **Electrology course curriculum - 600 course hours or equivalent credit**
 - (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) professional image;
 - (d) first aid;
 - (e) chemistry;
 - (f) electricity;
 - (g) job seeking; and
 - (h) ethics
 - (2) **STERILIZATION, SANITATION, BACTERIOLOGY: 75 hours or equivalent credit**
 - (a) related theory and safety;
 - (b) preparation, procedures and practice;
 - (c) products, materials and implements;
 - (d) public sanitation;
 - (e) methods of sanitation and sterilization;
 - (f) chemical agents;
 - (g) types and classifications of bacteria;
 - (h) bacterial growth; and
 - (i) infections
 - (3) **ELECTROLYSIS AND THERMOLOGY: 350 hours or equivalent credit**
 - (a) related theory;
 - (b) anatomy;
 - (c) physiology;
 - (d) preparation, procedures and practice;
 - (e) products, materials and implements;
 - (f) use of electrical currents;

- (g) insertion of needles;
- (h) before and after treatment and care;
- (i) destruction of the papilla;
- (j) consultation and recommendations; and
- (k) client record keeping and safety
- (4) **SALON BUSINESS, RETAIL SALES: 50 hours or equivalent credit**
 - (a) related theory;
 - (b) opening a salon and business plan;
 - (c) written agreements;
 - (d) regulations and laws;
 - (e) salon operation, policies, practices, personnel, compensation, payroll deductions;
 - (f) use of telephone, advertising, retail and salesmanship, client communications, public relations, insurance; and
 - (g) salon safety
- (5) **MISCELLANEOUS: 50 hours or equivalent credit**
 - (a) to be applied by the Instructor to strengthen student performance in curriculum related areas; or
 - (b) for supervised field trips and other course related training
- H. **Instructor course curriculum - 1000 course hours or equivalent credit**
 - (1) **THEORY: 75 hours or equivalent credit**
 - (a) limited to orientation;
 - (b) state laws and regulations;
 - (c) employment and compensation information;
 - (d) professional ethics and image;
 - (e) effective communications;
 - (f) first aid;
 - (g) chemistry;
 - (h) electricity;
 - (i) job seeking;
 - (j) ethics;
 - (k) principles of teaching;
 - (l) teacher maturity;
 - (m) student learning principles; and
 - (n) academic advising
 - (2) **COURSE DEVELOPMENT AND LESSON PLANNING: 100 hours or equivalent credit**
 - (a) planning;
 - (b) analysis;
 - (c) implementation
 - (d) benefits;
 - (e) outline;
 - (f) examples of lesson plans;
 - (g) components of effective lesson plans;
 - (h) principles of preparing lesson plans; and
 - (i) practical course review
 - (3) **TEACHING METHODS: 100 hours or equivalent credit**
 - (a) preparation;
 - (b) presentation;
 - (c) application;
 - (d) testing;
 - (e) lecture and workbooks;
 - (f) demonstrations and return demonstrations;
 - (g) discussion;
 - (h) question and answer;
 - (i) projects; and
 - (j) field trips
 - (4) **TEACHING AIDS: 50 hours or equivalent credit**

- (a) films or videos;
- (b) charts;
- (c) mannequins;
- (d) reference materials;
- (e) chalkboards; and
- (f) overhead projectors and transparencies
- (5) **THEORY TEACHING AND CLASSROOM MANAGEMENT: 200 hours or equivalent credit**
 - (a) independent classroom instructing;
 - (b) records and reports;
 - (c) safety measures;
 - (d) classroom conditions and maintenance;
 - (e) class supervision and control;
 - (f) classroom problems and solutions; and
 - (g) academic advising
- (6) **TESTING AND STUDENT EVALUATION: 50 hours or equivalent credit**
 - (a) measurement of student ability/achievement;
 - (b) diagnosis of student weaknesses;
 - (c) motivation for study;
 - (d) oral and written testing; and
 - (e) development and use of testing/measurement instruments
- (7) **LABORATORY SUPERVISION: 300 hours or equivalent credit**
 - (a) independent clinic supervision;
 - (b) client communications/reception desk;
 - (c) inventory control;
 - (d) effective dispensary procedures;
 - (e) supervision of clinic sanitation/client safety; and
 - (f) technical skills ability
- (8) **MISCELLANEOUS: 125 hours or equivalent credit**
 - (a) fundamentals of business management;
 - (b) to be applied by Instructor to strengthen student performance in curriculum areas; or
 - (c) for supervised field trips and other course related training.

I. Field trips: Students enrolled in an approved course of study are allowed to supplement their training through supervised field trips. Such trips and hours or equivalent credit accrued must be supervised and verified by a school official. Field trips, which include curriculum activities such as providing services to residents of nursing homes, must be supervised by a licensed instructor. Hours or equivalent credit accrued through field trips are recorded in the miscellaneous category. If a student is actually participating in a technical skills competition, the hours may be recorded in the applicable curriculum category.

[16.34.8.15 NMAC - Rp 16 NMAC 34.8.15, 06-16-01]

16.34.8.16 CROSSOVER CREDITS

A. Individuals who are licensed as barbers and who wish to become licensed as cosmetologists must have at least one year of full time, verified work experience in a licensed establishment and complete 175 course hours or applicable credit hours in a licensed school, unless otherwise approved by the board, as follows:

B. **MANICURING/PEDICURING: 175 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements;
- (f) theory of massage;
- (g) advanced nail techniques;
- (h) client consultation and recommendations; and
- (i) client record keeping and safety

C. Individuals who are licensed as cosmetologists and who wish to become licensed as barbers must complete 50 course hours or applicable credit hours in a school, unless otherwise approved by the board, as follows:

D. **BEARD TRIMMING AND SHAVING: 50 hours or equivalent credit**

- (a) related theory;
- (b) anatomy;
- (c) physiology;
- (d) preparation, procedures and practice;
- (e) products, materials and implements; and
- (f) Beard trimming, shaving, honing and stropping

E. To obtain a license with the crossover credits listed above, the applicant must submit to and pass a practical examination in the applicable subject(s) only.

F. The board will consider, on a case-by-case basis, approval of crossover credits for training in other disciplines that may directly or indirectly relate to courses approved in these rules. The applicant shall furnish copies of all applicable transcripts by subject and clock or credit hours previously earned. The board may approve such hours or equivalent credits not to exceed fifty percent of the requirements for regular applicants for licensure under these rules. Credit for work experience completed in other disciplines will not be credited toward course requirements under these rules.

[16.34.8.16 NMAC - Rp 16 NMAC 34.8.16, 06-16-01]

16.34.8.17 STUDENT EXTERNSHIPS

A. Students enrolled in any course licensed by this act may, at the school's option, participate in an externship program upon completion of fifty percent of the contracted course of study. The externship program would allow students to train in a licensed establishment for one day or up to eight hours per week until graduation. The training would be supervised by a designated salon licensee and would include any activity that is routine in a salon except offering complete services on the public. The student would be allowed, for example, to perform receptionist duties, ASSIST stylists with salon services; perform inventory or dispensary activities, sanitation duties, etc. Students will NOT be allowed to take appointments for complete services or apply chemicals (specifically hair color or bleach, perm solution, chemical relaxers, or acrylic nail products) to any client. This program will allow students who are nearing graduation to begin a professional relationship with a salon and increase the graduate's opportunities for successful employment after graduation. In addition, it will allow the salon to perform very valuable "on-the-job" training while the student is still in training. In order to qualify for the externship program, the following requirements must be met:

- (1) the student must have successfully completed fifty percent of the contracted course of study;
- (2) the student must have taken and passed an interim FINAL written and practical examination establishing the individual's qualifications to assist in the establishment;
- (3) the establishment must agree to and complete a certification of attendance and training completed during the externship. The training must relate to curriculum requirements;
- (4) the student must apply for and post a duplicate student permit in the establishment while training in the establishment;
- (5) the student must meet any other eligibility requirement established by the school;
- (6) the establishment must notify and obtain permission from each individual client to allow the student to assist in any manner in providing services to the client.
- (7) the school must accept the training certified by the establishment and include it on the official transcript of training for state board;
- (8) a school official must make periodic visits to establishments to observe and verify the program is being followed according to requirements.

B. Establishments are not required to participate in this program. However, if they elect to participate, they must agree to comply with the requirements of the program.

[16.34.8.17 NMAC - Rp 16 NMAC 34.8.17, 06-16-01]

16.34.8.18 REFRESHER COURSES

A. Schools may offer a customized refresher course for individuals who have been out of school for an extended period of time and not yet obtained licensure and to licensees who wish to re-enter school and update their professional skills. The following requirements must be met for those students enrolled in a refresher course who are not already licensed.

- (1) The student must be re-registered with the board and all other matriculation requirements met as required for regular students;
- (2) The earned hours or equivalent credit will be added to the student's existing transcript even though the requirements for licensure may have already been met.

(a) Successfully completed training must be reported on the official transcript of training accompanied by the student permit must be sent to the board office upon completion.

(b) A notice of termination and student permit must be sent to the board office upon termination from enrollment for unsuccessful completion of training.

B. Individuals who are already licensed who enroll in a refresher course must meet the following requirements.

C. The student file must contain a copy of the individual's current license, which may be reviewed by the inspector.

[16.34.8.18 NMAC - Rp 16 NMAC 34.8.18, 06-16-01; A, 10-04-07]

16.34.8.19 SCHOOL TUITION REFUND AND SETTLEMENT POLICY

A. In cases where students are regulated by federal or special program refund policies that policy prevails. The school must publish in its enrollment agreement or registration contract a refund policy that contains the following minimum guidelines:

(1) If a student cancels the enrollment more than three business days after signing the contract but prior to starting classes, a refund of all monies paid to the school less the applicable registration (administration fee not to exceed two hundred dollars or fifteen percent of the tuition and fees, whichever is less) will be made.

(2) For students who enroll and begin classes but withdraw prior to course completion (after three business days of signing the contract), the school must apply a refund calculation schedule at least as liberal as the following: The percent of scheduled time enrolled to total course and total tuition school shall receive or retain is as follows:

(a)	0.01% to 04.9%	20%
(b)	5% to 09.9%	30%
(c)	10% to 14.9%	40%
(d)	15% to 24.9%	45%
(e)	25% to 49.9%	70%
(f)	50% and over	100%

B. If permanently closed or no longer offering instruction after a student has enrolled, the school will provide a pro rata refund of tuition to the student.

C. If the course is canceled subsequent to a student's enrollment, the school will either provide a full refund of all monies paid or completion of the course at a later time.

D. Students who withdraw or terminate prior to course completion may be charged a separate cancellation fee not to exceed one hundred fifty dollars.

E. All extra costs, such as books, equipment, graduation fees, etc., which are not included in the tuition price must be stated in the contract and any non-refundable items will be identified. Such costs may be deducted from the contracted program cost prior to applying the tuition adjustment calculation.

F. If promissory notes or contracts for tuition are sold or discounted to third parties, the institution and/or third party must comply with this cancellation and settlement policy.

[16.34.8.19 NMAC - Rp 16 NMAC 34.8.21, 06-16-01]

16.34.8.20 SPECIAL EVENTS PERMIT: A school desiring to sponsor a special event such as a fund-raiser, garage sale, telethon, etc. that will not be conducted at the licensed establishments, must first obtain approval from the board office. The purpose of prior approval is to ensure professional integrity and that sanitation and safety requirements are met. An application on the form provided by the board office must be submitted at least ten days prior to the event. Applications for special events may be approved administratively.

[16.34.8.20 NMAC - Rp 16 NMAC 34.8.22, 06-16-01]

16.34.8.21 STUDENT TRAINING - HIGH SCHOOL PROGRAMS

A. Students enrolled in the career enrichment courses (CEC) or any other associate high school program must meet the following requirements before enrolling for any course as follows:

(1) proof of completion of the second year of high school or its equivalent (i.e. only juniors and seniors can participate);

(2) proof that student is at least sixteen years of age;

(3) submission of a complete student registration form and required fees through the associate school licensed under this act.

B. In order for students to receive credit for attendance in high school related programs, such as CEC or EXCEL or others, the high school must certify the training provided and send that documentation to the licensed school that has registered the student. The licensed school will report the hours or equivalent credit to the state board and identify the type of student on a separate form designated by the board upon completion of the high school training program. The following restrictions apply:

(1) Students participating in high school programs cannot earn more than fifteen percent of the program in the high school facility.

(2) The licensed school must provide the student with an OFFICIAL TRANSCRIPT OF TRAINING for all hours or equivalent credit earned under the high school program because the board office retains those records for only one year.

[16.34.8.21 NMAC -Rp 16 NMAC 34.8.23, 06-16-01; A, 10-04-07]

16.34.8.22 DISTANCE EDUCATION: It is recognized that delivery of relevant course content can be achieved in a variety of methods including online learning and distance education. Programs such as Instructor training may be completely accomplished via distance learning. Practitioner programs are limited to no more than twenty-five percent of the program content online. The following standards should apply when schools choose to use distance learning methods.

A. The school must notify the board and obtain approval before offering any distance learning courses.

B. The school must determine if the student has the requisite skills and competencies to succeed in a distance learning environment prior to enrollment.

C. The school must make available to students the necessary textbooks, supplementary educational materials and equipment needed to fulfill the program requirements.

D. The school must establish measurable and achievable performance outcomes that shall be compared to similar subject matter and objectives whether offered through traditional or distance methods.

E. The school must specify the expected knowledge, skills, and competency levels that students will achieve in a distance learning course.

F. The school shall effectively oversee the distance learning course and ensure it meets the objectives and mission of the school.

G. The school is responsible for the quality of courses of study offered through distance learning and the achievement of expected acceptable outcomes for each student irrespective of any contractual arrangements, partnerships, or consortia entered into with third parties for provision of components of a distance learning course.
[16.34.8.22 NMAC - N, 07-16-04]

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Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article VI, Schools of Cosmetology, 3-29-89

Rule 6, Schools of Cosmetology, 3-8-90

Rule 6, Schools of Cosmetology, 3-9-92

Article VII, Schools of Electrology, 12-22-81

Rule 7, Schools of Electrology, 3-8-90

Rule 7, Schools of Electrology, 3-9-92

Rule 7, Schools, 10-19-93

Rule 7, Schools, 5-13-94

Rule 7, Schools, 8-12-94

Rule 7, Schools, 5-23-95

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

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TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 9 CONTINUING EDUCATION

16.34.9.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.9.1 NMAC - Rp 16 NMAC 34.9.1, 06-16-01]

16.34.9.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, and providers.
[16.34.9.2 NMAC - Rp 16 NMAC 34.9.2, 06-16-01]

16.34.9.3 STATUTORY AUTHORITY: Section 61-17A-7 - Board Powers and Duties - This authorizes the board to establish continuing education requirements for licensure renewal.
[16.34.9.3 NMAC - Rp 16 NMAC 34.9.3, 06-16-01]

16.34.9.4 DURATION: Permanent
[16.34.9.4 NMAC - Rp 16 NMAC 34.9.4, 06-16-01]

16.34.9.5 EFFECTIVE DATE: June 16, 2001 unless a different date is cited in the history note at the end of a section.
[16.34.9.5 NMAC - Rp 16 NMAC 34.9.5, 06-16-01]

16.34.9.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes continuing education requirements for licensees licensed to engage or teach any course authorized under this act and to set guidelines for continuing education providers.
[16.34.9.6 NMAC - Rp 16 NMAC 34.9.6, 06-16-01]

16.34.9.7 DEFINITIONS: Refer to Part 1
[16.34.9.7 NMAC - Rp 16 NMAC 34.9.7, 06-16-01]

16.34.9.8 CONTINUING EDUCATION REQUIREMENTS

A. Instructors licensed to teach any course authorized under this act shall provide proof of attendance at a seminar of twelve contact hours or more per year for professional development or improvement of professional proficiency. Instructor licenses are renewed every March thirty first. Therefore, each instructor must obtain twelve contact hours of continuing education between April first and March thirty first of the following year in order to renew the license. Continuing education hours do not carry over and must be completed each year. For initial instructor licenses, the continuing education requirement will not apply until after the first full year of licensure.

B. Entities that are automatically recognized as providers of continuing education are listed below. These entities do not have to obtain formal provider approval in order to offer recognized continuing education for instructors. These entities do not have to meet the approval, recordkeeping, and certificate of attendance requirements. However, the licensee must provide proof of attendance with license renewal.

- (1) cosmetology educators of America (CEA) seminars and workshops conducted in any state;
- (2) adult continuing education association programs in professional development, education, counseling, instructing or related programs;
- (3) continuing education units (CEU's) recognized by four year institutions in any state in professional development, education, counseling, teaching or related programs;
- (4) all schools licensed by the New Mexico state board of barbers and cosmetologists;
- (5) credits recognized for teacher certification in any state according to the following conversion table:

- (a) theory (cognitive/lecture): 1 credit hour = 30 clock hours;
- (b) practice/demonstration: 1 credit hour = 45 clock hours.
- (6) attendance at accreditation and team training workshops and instructor continuing education programs offered by nationally recognized accrediting agencies;
- (7) certification of completion of Dale Carnegie professional development and business courses;
- (8) the pivot point instructor symposium classes;

- (9) educational classes or conferences sponsored by the Aveda institute;
- (10) conferences sponsored by the American aesthetics education association;
- (11) classes sponsored by Milady/Thomson learning's career institute;
- (12) classes sponsored by Vidal Sassoon; or
- (13) local, state, regional, or national industry trade shows with credit not to exceed fifty percent of the annual requirement for continuing education, or six hours; in addition, no more than fifty percent of the hours scheduled at such a trade show can contribute to the six hour maximum; the licensee must provide verifiable proof of attendance including an agenda of the event, a receipt for payment of attendance, or other such reasonable evidence of attendance;

- (14) online faculty and professional development programs.

C. Licensee may also submit, subsequent to their attendance, copies of other programs and seminars that are not automatically approved. The board will consider such programs at the next regularly scheduled meeting and determine if credit is approved or denied. Detailed documentation of the program length and content must be submitted for the board to make a determination. Notification of approval or denial will be sent to the licensee within thirty days after the board meeting.

[16.34.9.8 NMAC - Rp 16 NMAC 34.9.8, 06-16-01; A, 10-04-07]

16.34.9.9 CONTINUING EDUCATION PROVIDERS

A. Continuing education provider standards

(1) In order for a continuing education provider to be considered for approval by the board, the provider must demonstrate his/her/its qualifications to conduct such programs on an application provided by the board.

(2) Continuing education programs may be conducted in segments of not less than two contact hours.

B. Provider approval for conducting continuing education programs

(1) All continuing education programs shall be directed and supervised by approved providers. If the provider is an institution or corporation, the entity must designate an individual to supervise all sponsored events and must notify the board of that designee. To obtain approval, the applicant must complete an application furnished by the board and pay the required provider fee. The application must provide evidence of expertise, competency, and qualifications of the provider to present continuing education programs. Qualifications can be demonstrated by means of a resume, education and work history or other appropriate documentation. The applicant must also provide a SAMPLE DETAILED OUTLINE OF ONE TWELVE HOUR PROGRAM for the board's consideration and provide evidence that the organization has access to appropriate facilities and resources to implement the required programs.

(2) The board, at a regular scheduled meeting, shall verify that the application complies with these rules and determine whether approval is granted.

(3) Provider approval shall be granted for a period of two years and must be renewed in order to continue providing continuing education programs. Provider approval is subject to periodic review and may be withdrawn if the board determines that adherence to the standards of the board is not maintained, or if information submitted to the board by the provider is found to be material misrepresentation of fact. Disapproval does not prohibit resubmission of the application with evidence the deficiencies have been corrected. Approval is granted for a period of two years.

(4) A list of approved providers is available from the board office upon request and receipt of an administrative fee.

(5) Applicants receiving approval will be assigned a provider number by the board. The number will be used on all the programs and correspondence to the board.

(6) The provider will be notified within fifteen days after the next regularly scheduled meeting as to the status of application. Approval, if granted, is for a period of two years.

(7) All provider licenses will be renewed on March thirty first every two years. Requests for renewal must be submitted every two years and may be renewed administratively.

(8) Timely renewal of license(s) is the full and complete responsibility of the LICENSEE. Failure to renew the license by the expiration date will result in late fees as set forth in the act.

(9) If the provider application is not approved after the evaluation by the board, the application will be returned with an itemized list of deficiencies within fifteen days of the board's evaluation.

(10) An incomplete application will be returned to the applicant by the board office within thirty days, with an explanation for the return.

C. Record keeping

- (1) Records of approved provider shall be maintained by the board office.
 - (2) Records shall include provider qualifications and hours and rosters of participants receiving certificates of attendance.
 - (3) Records will be maintained by the board office for a period of two years.
 - (4) The provider shall send a roster of all participants to the board within thirty days of completion of the program to be entered as an official part of the participant's files for the purpose of license renewal.
 - D. The program provider shall develop a certificate of attendance that includes the following data:
 - (1) provider name, number and program name;
 - (2) name of participant;
 - (3) date program began and ended and number of hours offered; and
 - (4) number of contact hours to be credited to the participant.
 - E. The program provider shall develop a participant roster that includes the following data:
 - (1) provider name and number;
 - (2) program name and brief outline of contents;
 - (3) location of offering;
 - (4) name and license number of each participant receiving a certificate of attendance and how many hours were earned; and
 - (5) date program began and ended and number contact hours offered.
- [16.34.9.9 NMAC - Rp 16 NMAC 34.9.9, 06-16-01]

16.34.9.10 ADVANCED TRAINING: Educational programs provided for the purpose of continuing or advanced education in a specific field of licensure that are more than one hundred fifty hours in length must be conducted in a licensed school and supervised by a licensed instructor whether or not the program leads to licensure. Programs for advanced or continuing education of one hundred fifty hours or less will be considered seminars or workshops. They may or may not be conducted in a licensed establishment but must be supervised by a New Mexico licensee or approved provider for continuing education.

[16.34.9.10 NMAC - Rp 16 NMAC 34.9.10, 06-16-01; A, 07-16-04]

HISTORY OF 16.34.9 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article VIII, Continuing Education, 12-22-81
 Article VIII, Continuing Education, 3-24-89
 Rule 8, Continuing Education, 3-8-90
 Rule 8, Continuing Education, 3-9-92
 Rule 8, Continuing Education, 10-19-93
 Rule 8, Continuing Education, 5-13-94
 Rule 8, continuing Education, 5-23-95
 BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86
 BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87
 BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.9, Continuing Education - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 10 INVESTIGATIONS AND CONFIDENTIALITY

16.34.10.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.
[16.34.10.1 NMAC - Rp 16 NMAC 34.10.1, 06-16-01]

16.34.10.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.10.2 NMAC - Rp 16 NMAC 34.10.2, 06-16-01]

16.34.10.3 STATUTORY AUTHORITY: Section 61-17A-7 - This authorizes any member of the board, its employees or agents to enter and inspect any establishment or enterprise for the purpose of determining compliance with the Barbers and Cosmetologists Act.
[16.34.10.3 NMAC - Rp 16 NMAC 34.10.3, 06-16-01]

16.34.10.4 DURATION: Permanent
[16.34.10.4 NMAC - Rp 16 NMAC 34.10.4, 06-16-01]

16.34.10.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.10.5 NMAC - Rp 16 NMAC 34.10.5, 06-16-01]

16.34.10.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the investigative methods.
[16.34.10.6 NMAC - Rp 16 NMAC 34.10.6, 06-16-01]

16.34.10.7 DEFINITIONS: Refer to Part 1
[16.34.10.7 NMAC - Rp 16 NMAC 34.10.7, 06-16-01]

16.34.10.8 INVESTIGATIVE METHODS: The board may use any lawful method of investigation it deems necessary and appropriate, including undercover investigation using board personnel, law enforcement personnel, and other investigative personnel and techniques.
[16.34.10.8 NMAC - Rp 16 NMAC 34.10.8, 06-16-01]

16.34.10.9 CONFIDENTIALITY OF INVESTIGATIONS: The board shall take all lawful confidentiality measures, which it deems necessary and appropriate to protect the effectiveness of its investigations, subject to the requirements of the New Mexico Inspection of the Public Records Act.
[16.34.10.9 NMAC - Rp 16 NMAC 34.10.9, 06-16-01]

16.34.10.10 COMPLIANCE WITH BOARD REQUESTS
 A. Pursuant to powers vested in it, the board may from time to time request that a licensee provide it with information or documents concerning the licensee's activities.
 B. Within fifteen days of receipt of such request the licensee shall respond by complying with the request.
 C. Failure to respond timely is a violation of the rules and provides sufficient evidence to issue a notice of contemplated action against the licensee.
[16.34.10.10 NMAC - Rp 16 NMAC 34.10.10, 06-16-01]

HISTORY OF 16.34.10 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article X, Investigations and Confidentiality, 12-22-81
Rule 9, Investigations and Confidentiality, 3-8-90
Rule 9, Investigations and Confidentiality, 10-19-93

Rule 9, Investigations and Confidentiality, 5-23-95

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.10, Investigations and Confidentiality - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 11 VIOLATIONS

16.34.11.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists
[16.34.11.1 NMAC - Rp 16 NMAC 34.11.1, 06-16-01]

16.34.11.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.
[16.34.11.2 NMAC - Rp 16 NMAC 34.11.2, 06-16-01]

16.34.11.3 STATUTORY AUTHORITY: Sections 61-17A-7 and 61-17A-21 of the Barbers and Cosmetologists Act. This authorizes the board to refuse to issue, renew, suspend or revoke a license for anyone in non-compliance with the Barbers and Cosmetologists Act.
[16.34.11.3 NMAC - Rp 16 NMAC 34.11.3, 06-16-01]

16.34.11.4 DURATION: Permanent
[16.34.11.4 NMAC - Rp 16 NMAC 34.11.4, 06-16-01]

16.34.11.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.11.5 NMAC - Rp 16 NMAC 34.11.5, 06-16-01]

16.34.11.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the board to take action against a licensee in non-compliance of the act.
[16.34.11.6 NMAC - Rp 16 NMAC 34.11.6, 06-16-01]

16.34.11.7 DEFINITIONS: Refer to Part 1
[16.34.11.7 NMAC - Rp 16 NMAC 34.11.7, 06-16-01]

16.34.11.8 VIOLATIONS BY LICENSEES

A. When the board becomes aware of information or evidence tending to indicate that a violation of the act or these rules has been or is being committed by a licensee or student, it will review the matter and take appropriate action, or it may refer the matter to an informal subcommittee for review and recommendation, or it may make such investigation as it deems appropriate.

B. If an investigation is made, upon conclusion, the board shall:

- (1) take no further action; or
- (2) issue a notice of contemplated action (NCA) under the Uniform Licensing Act;
- (3) invite the parties to an informal conference with the board or the board's designee to aid in the board's resolution of the matter;
- (4) assess an administrative penalty pursuant to 16.34.15 NMAC of these rules, subject to appropriate procedural requirements and safeguards;
- (5) file a formal complaint with the magistrate court;
- (6) issue or direct the board's executive director to issue a letter of warning, a statement of what the board believes must be done to come into compliance with the act or these rules or a similar communication.

[16.34.11.8 NMAC - Rp 16 NMAC 34.11.8, 06-16-01; A, 07-16-04]

16.34.11.9 [RESERVED]
[16.34.11.9 NMAC - Rp 16 NMAC 34.11.9, 06-16-01; Repealed, 10-04-07]

HISTORY OF 16.34.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article XI, Procedures For Handling Violations, 12-22-81
Rule 10, Violations, 3-8-90

Rule 10, Violations, 3-9-92

Rule 10, Violations, 10-19-93

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.11, Violations - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 12 RECORD KEEPING BY THE BOARD OFFICE

16.34.12.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.12.1 NMAC - Rp 16 NMAC 34.12.1, 06-16-01]

16.34.12.2 SCOPE: All schools governed by the Barbers and Cosmetologists Act.

[16.34.12.2 NMAC - Rp 16 NMAC 34.12.2, 06-16-01]

16.34.12.3 STATUTORY AUTHORITY: Section 61-17A-12 - Licensure of Schools - This authorizes the board to establish record keeping procedures.

[16.34.12.3 NMAC - Rp 16 NMAC 34.12.3, 06-16-01]

16.34.12.4 DURATION: Permanent

[16.34.12.4 NMAC - Rp 16 NMAC 34.12.4, 06-16-01]

16.34.12.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.12.5 NMAC - Rp 16 NMAC 34.12.5, 06-16-01]

16.34.12.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the time frame in which student documents are kept in the board office.

[16.34.12.6 NMAC - Rp 16 NMAC 34.12.6, 06-16-01]

16.34.12.7 DEFINITIONS: Refer to Part 1

[16.34.12.7 NMAC - Rp 16 NMAC 34.12.7, 06-16-01]

16.34.12.8 RETENTION PERIOD: Student registration and official transcript of training or notices of termination will be kept in the board office for one year from the date of formal termination or withdrawal from the school. If the student wishes to validate incomplete hours or equivalent credits earned in previous years, he/she must be able to document the hours or equivalent credits with a sealed transcript from the school. Official transcripts of training received by the board for students who complete the course of training are retained in the board office.

[16.34.12.8 NMAC - Rp 16 NMAC 34.12.8, 06-16-01]

HISTORY OF 16.34.12 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Article XII, Administrative Regulations, 12-22-81

Rule 11, Record Keeping by the Board Office, 3-8-90

Rule 11, Record Keeping by the Board Office, 10-19-93

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.12, Recording Keeping by the Board Office - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 13 ADMINISTRATIVE PROCEDURES

16.34.13.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.13.1 NMAC - Rp 16 NMAC 34.13.1, 06-16-01]

16.34.13.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, establishments, applicants and consumers.

[16.34.13.2 NMAC - Rp 16 NMAC 34.13.2, 06-16-01]

16.34.13.3 STATUTORY AUTHORITY: Section 61-17A-7 - Board Powers and Duties - This authorizes the board to adopt and file rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act.

[16.34.13.3 NMAC - Rp 16 NMAC 34.13.3, 06-16-01]

16.34.13.4 DURATION: Permanent

[16.34.13.4 NMAC - Rp 16 NMAC 34.13.4, 06-16-01]

16.34.13.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.13.5 NMAC - Rp 16 NMAC 34.13.5, 06-16-01]

16.34.13.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the requirements and standards for complaints, inspections, examinations and tele-conference meetings.

[16.34.13.6 NMAC - Rp 16 NMAC 34.13.6, 06-16-01]

16.34.13.7 DEFINITIONS: Refer to Part 1

[16.34.13.7 NMAC - Rp 16 NMAC 34.13.7, 06-16-01]

16.34.13.8 COMPLAINTS

A. 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.

B. 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 fifteen days of receipt of such request.

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

D. 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 executive director will notify all individuals involved of the action taken.

[16.34.13.8 NMAC - Rp 16 NMAC 34.13.8, 06-16-01; A, 10-04-07]

16.34.13.9 INSPECTIONS

A. Schools and establishments licensed by the board are subject to inspection by any member of the board, its employees or agents who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.

B. Outreach enterprise mobile units are subject to inspection by any member of the board, its employees or agent who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act. Inspections may occur at the enterprise's base location, a mutually convenient public pullover location, at a unit's appointment destination. The outreach enterprise will maintain with each client's service record a permission statement, provided by the board, signed by the client allowing the board inspection to be conducted on the client's property while services are being performed.

C. It shall constitute a violation of the Barbers and Cosmetologists 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.

[16.34.13.9 NMAC - Rp 16 NMAC 34.13.9, 06-16-01]

16.34.13.10 EXAMINATION PROCEDURES

A. The be eligible for the examination, the applicant must meet all requirements and follow all procedures set forth by the board or its designee.

B. Special needs: If an applicant has a physical disability or a special need that prevents him/her from taking the examination under the regular conditions, he/she may request special accommodations. Written documentation of the disability must be submitted to the board office to determine what special accommodations are necessary. If special accommodations are needed to take the exam, the board office or its designee must be notified with the examination application.

C. Policy on cheating: The exchange of information related to exam performance between examinees during the exam is prohibited. Applicants are not allowed to have any written or taped material in the testing area other than the supplies listed and approved for the exam.

[16.34.13.10 NMAC - Rp 16 NMAC 34.13.10, 06-16-01; A, 07-16-04; A, 10-04-07]

16.34.13.11 TELE-CONFERENCE MEETINGS: Pursuant to Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment under the following conditions:

A. this rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person;

B. each member participating by conference telephone must be identified when speaking;

C. all participants must be able to hear each other at the same time;

D. members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting;

E. the member of the board participating by telephone can only vote on a matter if he/she has copies of the documents that are available to the members who are physically present; and

F. the member participating by telephone cannot vote on any matter where the credibility of a witness who physically appears at the meeting is an issue that the board members must consider when voting on a pending matter.

[16.34.13.11 NMAC - Rp 16 NMAC 34.13.11, 06-16-01]

16.34.13.12 RECORD KEEPING - FEES: Records of monies received in the board office for licenses and fees are maintained in the board office for a period of one year from date of receipt.

[16.34.13.12 NMAC - Rp 16 NMAC 34.13.12, 06-16-01]

16.34.13.13 PETITIONS

A. The board shall accept for consideration at its regular meetings where licensee actions are taken, petitions for variance of these rules. If a licensee wishes to petition the board for a variance of these rules, he/she/it shall do so by filing with the board, in writing, a petition for variance. Such petition shall cite the specific section of these rules from which a variance is sought. It shall include an explanation of all factors and considerations to support the variance sought. A petition needs to be submitted at least fifteen days prior to the board meeting where it is to be considered. The petitioner may also request to personally appear before the board to support the petition. The board will only accept petitions that are submitted in the following format:

(1) list the specific section of the rules to be varied, including part number and section;

(2) provide the petitioner's rationale for the variance;

(3) provide thorough documentation to support the request for variance; and

(4) provide nine copies of the petition and supporting documentation in soft-sided binders for review by the board.

B. Decisions made by the board on a petition for variance shall be made in the same procedural manner as other actions of the board.

C. The denial of a petition for variance cannot be appealed.

[16.34.13.13 NMAC - N, 06-16-01; A, 10-04-07]

HISTORY OF 16.34.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 12, Administrative Procedures, 5-23-95

History of Repealed Material:

16 NMAC 34.13, Administrative Procedures - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 14 FEES

16.34.14.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.14.1 NMAC - Rp 16 NMAC 34.14.1, 06-16-01]

16.34.14.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.14.2 NMAC - Rp 16 NMAC 34.14.2, 06-16-01]

16.34.14.3 STATUTORY AUTHORITY: Sections 61-17A-7 and 61-17A-16 of the Barbers and Cosmetologists Act. This authorizes the board to establish fees.

[16.34.14.3 NMAC - Rp 16 NMAC 34.14.3, 06-16-01]

16.34.14.4 DURATION: Permanent

[16.34.14.4 NMAC - Rp 16 NMAC 34.14.4, 06-16-01]

16.34.14.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.14.5 NMAC - Rp 16 NMAC 34.14.5, 06-16-01]

16.34.14.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part itemizes all fees.

[16.34.14.6 NMAC - Rp 16 NMAC 34.14.6, 06-16-01]

16.34.14.7 DEFINITIONS: Refer to Part I

[16.34.14.7 NMAC - Rp 16 NMAC 34.14.7, 06-16-01]

16.34.14.8 FEES: The fees for examination, original licensure and annual renewal, licensure by reciprocity and special fees are as follows:

A.	Enterprise or establishment license (original).....	\$200.00
B.	Enterprise or establishment license (renewal).....	\$50.00
C.	Booth establishment license (original).....	\$200.00
D.	Booth establishment license (renewal).....	\$50.00
E.	School license (original and renewal).....	\$500.00
F.	Relocation of a school.....	\$185.00
G.	Barber license (original and renewal).....	\$50.00
H.	Cosmetologist license (original and renewal).....	\$50.00
I.	Manicurist/pedicurist license (original and renewal).....	\$50.00
J.	Manicurist/esthetician license (original and renewal).....	\$50.00
K.	Electrologist license (original and renewal).....	\$50.00
L.	Esthetician license (original and renewal).....	\$50.00
M.	Instructor license (original and renewal).....	\$50.00
N.	Reciprocity (original).....	\$150.00
O.	Administrative fee (other examination administrative costs).....	a maximum of \$100.00
P.	Administrative fee (lists on disks).....	\$ 95.00
Q.	Administrative fee (relocation of establishments, etc.).....	\$ 25.00
R.	Examinations and re-examinations all licenses except instructor.....	a maximum of \$100.00
S.	Instructor examination and re-examination.....	a maximum of \$100.00
T.	Duplicate licenses.....	\$25.00
U.	Student permit license.....	\$25.00
V.	Late fee.....	\$40.00
W.	Provider approval, initial and renewal.....	\$ 50.00

[16.34.14.8 NMAC - Rp 16 NMAC 34.14.8, 06-16-01; A, 07-16-04; A, 10-04-07; A, 04/12/10]

HISTORY OF 16.34.14 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 13, Fees, 10-19-93

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.14, Fees - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 15 ADMINISTRATIVE PENALTIES AND FINES

16.34.15.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists

[16.34.15.1 NMAC - Rp 16 NMAC 34.15.1, 06-16-01]

16.34.15.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.15.2 NMAC - Rp 16 NMAC 34.15.2, 06-16-01]

16.34.15.3 STATUTORY AUTHORITY: Sections 61-17A-7 and 61-17A-23 of the Barbers and Cosmetologists Act. This authorizes the board to establish administrative penalties and fines.

[16.34.15.3 NMAC - Rp 16 NMAC 34.15.3, 06-16-01]

16.34.15.4 DURATION: Permanent

[16.34.15.4 NMAC - Rp 16 NMAC 34.15.4, 06-16-01]

16.34.15.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.15.5 NMAC - Rp 16 NMAC 34.15.5, 06-16-01]

16.34.15.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part defines the violations of any provision of the act and lists possible penalties and fines.

[16.34.15.6 NMAC - Rp 16 NMAC 34.15.6, 06-16-01]

16.34.15.7 DEFINITIONS: Refer to Part 1

[16.34.15.7 NMAC - Rp 16 NMAC 34.15.7, 06-16-01]

16.34.15.8 ADMINISTRATIVE PENALTIES AND FINES

A. 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 thousand dollars 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 or revocation of license or other disciplinary action. The penalties to be assessed are as follows:

B. Failure to comply with establishment requirements:

(1) first offense: two hundred dollars

(2) second offense: four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

C. Failure to comply with sanitation and safety requirements for establishments:

(1) first offense: warning from inspector/"board"

(2) second offense: two hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

D. Failure to post required licenses:

(1) first offense: one hundred fifty dollars

(2) second offense: four hundred dollars

(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

E. Working on an expired or invalid license:

(1) first offense: one hundred fifty dollars

(2) second offense: four hundred dollars
(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

F. Performing services for compensation in an unlicensed establishment:
(1) first offense: five hundred dollars
(2) second offense: six hundred dollars
(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

G. Failure by a school to properly and timely register all students:
(1) first offense: two hundred dollars
(2) second offense: four hundred dollars
(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

H. Committing any of the causes listed in 61-17A-21 not otherwise addressed in these rules:
(1) first offense: two hundred dollars
(2) second offense: four hundred dollars
(3) third and subsequent offenses: The board shall take steps to impose a further fine up to the limit of nine hundred ninety nine dollars or to take other disciplinary action as permitted by the act or the New Mexico Uniform Licensing Act.

I. Student loan default is defined as "the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the lender or guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the obligation to repay, provided that this failure persists for one hundred eighty days."

J. Official notice of default: The board shall take steps to impose a fine up to nine hundred ninety nine dollars or take other disciplinary action as permitted by the act or the Uniform Licensing Act which may include suspension, revocation or failure to renew a license.

[16.34.15.8 NMAC - Rp 16 NMAC 34.15.8, 06-16-01; A, 04/12/10]

16.34.15.9 COST INCURRED FOR HEARINGS: Section 61-1-4G, NMSA 1978 states as follows, 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 16-1-3 NMSA 1978 is not taken by the board.

[16.34.15.9 NMAC - N, 06-16-01]

HISTORY OF 16.34.15 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 14, Administrative Penalties and Fines, 10-19-93

Rule 14, Administrative Penalties and Fines, 5-13-94

BBE Rule 86-1, Board of Barber Examiners, Rules and Regulations - 1986, 6-27-86

BBE Rule 87-1, NM Board of Barber Examiners, Rules and Regulations - 1987, 11-4-87

BBE Rule 88-1, NM Board of Barber Examiners, Rules and Regulations - 1988, 10-4-88

History of Repealed Material:

16 NMAC 34.15, Administrative Penalties And Fines - Repealed, 6-16-01

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 16 PARENTAL RESPONSIBILITY ACT COMPLIANCE

16.34.16.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.

[16.34.16.1 NMAC - Rp 16 NMAC 34.16.1, 06-16-01]

16.34.16.2 SCOPE: All barbers, cosmetologists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises and establishments.

[16.34.16.2 NMAC - Rp 16 NMAC 34.16.2, 06-16-01]

16.34.16.3 STATUTORY AUTHORITY: The board adopts this section pursuant to the Parental Responsibility Act, Chapter 25, Laws of 1995.

[16.34.16.3 NMAC - Rp 16NMAC 34.16.3, 06-16-01]

16.34.16.4 DURATION: Permanent

[16.34.16.4 NMAC - Rp 16 NMAC 34.16.4, 06-16-01]

16.34.16.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.

[16.34.16.5 NMAC - Rp 16 NMAC 34.16.5, 06-16-01]

16.34.16.6 OBJECTIVE: This part establishes the requirements and possible penalties for non-compliance of the Parental Responsibility Act.

[16.34.16.6 NMAC - Rp 16 NMAC 34.16.6, 06-16-01]

16.34.16.7 DEFINITIONS: Refer to Part 1

[16.34.16.7 NMAC - Rp 16 NMAC 34.16.7, 06-16-01]

16.34.16.8 DISCIPLINARY ACTION: If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A. shall deny an application for a license;
- B. shall deny the renewal of a license; and
- C. has grounds for suspension or revocation of the license.

[16.34.16.8 NMAC - Rp 16 NMAC 34.16.8, 06-16-01]

16.34.16.9 CERTIFIED LIST: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the later receipt of an application for license or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action board has taken in connection with such applicants and licensees.

[16.34.16.9 NMAC - Rp 16 NMAC 34.16.9, 06-16-01]

16.34.16.10 INITIAL ACTION: Upon determination that an applicant or licensee appears on the certified list, the board shall:

A. commence a formal proceeding under 16.34.16.11 NMAC to take the appropriate action under 16.34.16.8 NMAC; or

B. for current licensees only, informally notify the licensee that the licensee's name is on the certified list, and that the licensee must provide the board with a subsequent statement of compliance from HSD by the earlier of the application for license renewal or a specified date not to exceed sixty days; if the licensee fails to provide this statement, the board shall commence a formal proceeding under 16.34.16.11 NMAC.

[16.34.16.10 NMAC - Rp 16 NMAC 34.16.10, 06-16-01]

16.34.16.11 NOTICE OF CONTEMPLATED ACTION: Prior to taking any action specified in 16.34.16.8 NMAC, the board shall serve upon the applicant or licensee a written notice stating that:

A. the board has grounds to take such action, and that the board shall take such action unless the licensee or applicant;

(1) mails a letter (certified mail return receipt requested) within twenty days after service of the notice requesting a hearing; or

(2) provides the board, within thirty days of the date of the notice, with a statement of compliance from HSD; and

B. if the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division.

[16.34.16.11 NMAC - Rp 16 NMAC 34.16.11, 06-16-01]

16.34.16.12 EVIDENCE AND PROOF: In any hearing under this part, relevant evidence is limited to the following:

A. a statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.34.16.8 NMAC, unless;

B. the applicant or licensee provides the board with a subsequent statement of compliance, which shall preclude the board from taking any action under this section.

[16.34.16.12 NMAC - Rp 16 NMAC 34.16.12, 06-16-01]

16.34.16.13 ORDER: When a disciplinary action is taken under this part solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other condition necessary to comply with board requirements for reapplication or reinstatement of lapsed licenses.

[16.34.16.13 NMAC - Rp 16 NMAC 34.16.13, 06-16-01]

16.34.16.14 PROCEDURES: Proceedings under this part shall be governed by the Uniform Licensing Act, Section 61-1-1, et seq.

[16.34.16.14 NMAC - Rp 16 NMAC 34.16.14, 06-16-01]

HISTORY OF 16.34.16 NMAC:

Pre-NMAC History: [Reserved]

History of Repealed Material:

16 NMAC 34.16, Parental Responsibility Act Compliance - Repealed, 6-16-01

