

NEW MEXICO BOARD OF OPTOMETRY



RULES AND STATUTES

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Effective May 29, 2019

NEW MEXICO BOARD OF OPTOMETRY

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TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 1 GENERAL PROVISIONS

16.16.1.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.1.1 NMAC - Rn, 16 NMAC 16.1.1, 03-15-2001; A, 07-06-2012]

16.16.1.2 SCOPE: Provisions for Part 1 of Chapter 16 apply to licensees, applicants, other agencies, professional associations, and any member of the general public.
[10-14-95; 16.16.1.2 NMAC - Rn, 16 NMAC 16.1.2, 03-15-2001]

16.16.1.3 STATUTORY AUTHORITY: Authority for Part 1 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-6 (1995 Repl. Pamp.); the Inspection of Public Records Act NMSA 1978 Section 14-2-1 et seq. (1993 Repl. Pamp.); the Public Records Act NMSA Section 14-3-1 et seq. (1993 Repl. Pamp.) and the Uniform Licensing Act Section 61-1-1 et seq. (1993 Repl. Pamp.).
[8-21-92; 6-24-94; 10-14-95; 16.16.1.3 NMAC - Rn, 16 NMAC 16.1.3, 03-15-2001]

16.16.1.4 DURATION: Permanent.
[10-14-95; 16.16.1.4 NMAC - Rn, 16 NMAC 16.1.4, 03-15-2001]

16.16.1.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[8-21-92...10-14-95; 16.16.1.5 NMAC - Rn, 16 NMAC 16.1.5, 03-15-2001; A, 07-06-2012]

16.16.1.6 OBJECTIVE: The objective of Part 1 of Chapter 16 is to establish regulations for the general provisions which apply to all of the board of optometry's rules, policies, and procedures.
[10-14-95; 16.16.1.6 NMAC - Rn, 16 NMAC 16.1.6, 03-15-2001; A, 07-06-2012]

16.16.1.7 DEFINITIONS:

A. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, a patient to seek the services of an optometrist.

B. "Advertisement of Health Care Services Act" means NMSA 1978, Sections 57-21-1 to 57-21-3, and herein referred to as the Advertisement of Health Care Services Act.

C. [RESERVED]

D. "Board" means the New Mexico board of optometry, herein referred to as the board.

E. "Controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act.

F. "Controlled Substances Act" means NMSA 1978 Sections 30-31-1 to 30-31-41 and herein referred to as the Controlled Substances Act.

G. [RESERVED]

H. "Inspection of Public Records Act" refers to NMSA 1978 Sections 14-2-1 through 14-2-10 (1993 Repl. Pamp.), herein referred to as the Inspection of Public Records Act.

I. "New Mexico Drug, Device and Cosmetic Act" means Sections 26-1-1 to 26-1-26 NMSA 1978 (1987 Repl. Pamp.), herein referred to as the Drug, Device and Cosmetic Act.

J. "Optometric physician" means an optometrist who has been certified by the board to administer pharmaceutical medication in the diagnosis, treatment and management of ocular diseases.

K. "Open Meetings Act" means NMSA 1978 Sections 10-15-1 to 10-15-4 (1993 Repl. Pamp.), herein referred to as the Open Meetings Act.

L. "Optometry Act" means NMSA 1978 Sections 61-2-1 through 61-2-18 (1995 Repl. Pamp.), herein referred to as the Optometry Act or Section 61-2-1 et seq.

M. [RESERVED]

N. "Parental Responsibility Act" refers to Chapter 25 Laws of 1995, herein referred to as the Parental Responsibility Act or PRA.

O. "Prescription" as defined in Section 26-1-2.I of the Drug, Device and Cosmetic Act means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of an electronic or written order signed by the prescriber, and bearing the name and address of

the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue.

P. “Public Records Act” refers to NMSA 1978 Sections 14-3-2 through 14-3-25 (1995 Repl. Pamp.) herein referred to as the Public Records Act.

Q. [RESERVED]

R. “State Rules Act” means NMSA 1978 Sections 14-4-1 to 14-4-9 (1995 Repl. Pamp.), herein referred to as the State Rules Act.

S. “Uniform Licensing Act” means NMSA 1978 Sections 61-1-1 to 61-1-33 (1993 Repl. Pamp.), herein referred to as the Uniform Licensing Act or ULA.
[10-14-95; 16.16.1.7 NMAC - Rn, 16 NMAC 16.1.7, 03-15-2001; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

16.16.1.8 INSPECTION OF BOARD RECORDS:

A. Except as otherwise provided by law, all applications, pleadings, petitions, motions, exhibits, decisions and orders entered following formal disciplinary proceedings conducted pursuant to the Uniform Licensing Act are matters of public record as of the time of filing with or by the board.

B. [RESERVED]

C. Any person may examine all public records in the board's custody. The following procedure shall be followed by persons requesting inspection of public records.

(1) The request shall identify the records sought with reasonable particularity. The board will produce public records as required under the Inspection of Public Records Act, NMSA 1978, §§ 14-2-1 to -12.

(2) Upon request, the board may provide copies of public records, lists, labels, and verifications and may charge a reasonable fee to defray copying and mailing charges. The board is not obligated to create lists, labels, or materials which are not already in existence.

(3) No person shall be permitted to remove documents from the board's office.
[8-21-92; 10-14-95; 16.16.1.8 NMAC - Rn, 16 NMAC 16.1.8, 03-15-2001; A, 07-06-2012]

16.16.1.9 TELEPHONE CONFERENCES: As authorized by NMSA 1978 (1993 Repl. Pamp.) Section 10-15-1.C of the Open Meetings Act, when it is difficult or impossible for a Board member to attend a Board meeting in person, the member may participate by means of a conference telephone or similar communications equipment. Participation by such means shall constitute presence in person at the meeting. Each member participating by conference telephone must be identified when speaking. All participants must be able to hear each other at the same time, and members of the public attending the meeting must be able to hear any member of the Board who speaks during the meeting.
[N, 6-26-00; 16.16.1.9 NMAC - Rn, 16 NMAC 16.1.9, 03-15-2001]

HISTORY of 16.16.1 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 20, Board Rule No. 20 - Inspection of Board Records, filed 7-22-92.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.1, General Provisions, filed 9-21-95, replaced that relevant portion of NMBO Rule 20, Board Rule No. 20 - Inspection of Board Records.

16 NMAC 16.1, General Provisions, filed 9-21-95, renumbered and reformatted to 16.16.1 NMAC, General Provisions, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 2 FEES

16.16.2.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.2.1 NMAC - Rn, 16 NMAC 16.2.1, 03-15-2001; A, 07-06-2012]

16.16.2.2 SCOPE: Provisions in Part 2 of Chapter 16 apply to all licensed optometrists; applicants for optometric licensure in New Mexico; anyone wishing to purchase licensee lists or mailing labels; or anyone who requests a written verification of licensure to be completed by the Board.
[10-14-95; 16.16.2.2 NMAC - Rn, 16 NMAC 16.2.2, 03-15-2001]

16.16.2.3 STATUTORY AUTHORITY: The authority for Part 2 of Chapter 16 is NMSA 1978, Sections 61-2-11, 61-2-6.D. (1) and (2) (1995 Repl. Pam.).
[6-24-94; 10-14-95; 16.16.2.3 NMAC - Rn, 16 NMAC 16.2.3, 03-15-2001]

16.16.2.4 DURATION: Permanent.
[10-14-95; 16.16.2.4 NMAC - Rn, 16 NMAC 16.2.4, 03-15-2001]

16.16.2.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...5-31-96; 16.16.2.5 NMAC - Rn, 16 NMAC 16.2.5, 03-15-2001; A, 03-15-2004]

16.16.2.6 OBJECTIVE: The objective of Part 2 of Chapter 16 is to establish the required fees for application, examination, licensure, certification, renewal, retirement, reinstatement and reactivation of a license, duplicate licenses, verifications of licensure, and so forth.
[10-14-95; 16.16.2.6 NMAC - Rn, 16 NMAC 16.2.6, 03-15-2001]

16.16.2.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.6.7 NMAC - Rn, 16 NMAC 16.6.7, 03-15-2001]

16.16.2.8 APPLICATION PROCESSING FEE: \$175.00
A. The application fee must accompany the letter of intent to sit for a scheduled exam 16.16.3.9 and 16.16.4.8 NMAC.
B. The application-processing fee is required each time the candidate is scheduled for the board exam.
[6-24-94; 10-14-95; 5-31-96; 16.16.2.8 NMAC - Rn, 16 NMAC 16.2.8, 03-15-2001; A, 07-06-2012]

16.16.2.9 EXAMINATION FEE: \$400.00. The examination fee is required each time the candidate is scheduled for the Board exam.
[6-24-94; 10-14-95; 5-31-96; 16.16.2.9 NMAC - Rn, 16 NMAC 16.2.9, 03-15-2001]

16.16.2.10 LICENSE FEE FOR EXAM CANDIDATES: \$200.00
[6-24-94; 10-14-95; 5-31-96; A, 6-26-00; 16.16.2.10 NMAC - Rn, 16 NMAC 16.2.10, 03-15-2001; A, 07-06-2012]

16.16.2.11 LICENSE FEE FOR ENDORSEMENT CANDIDATES: \$250.00
[6-24-94; 10-14-95; 5-31-96; A, 6-26-00; 16.16.2.11 NMAC - Rn, 16 NMAC 16.2.11, 03-15-2001; A 07-06-2012]

16.16.2.12 [RESERVED]
[10-14-95; 5-31-96; 16.16.2.12 NMAC - Rn, 16 NMAC 16.2.12, 03-15-2001; Repealed, 07-06-2012]

16.16.2.13 RENEWAL FEE: \$300.00
[6-24-94; 10-14-95; 5-31-96; 2-15-99; 16.16.2.13 NMAC - Rn, 16 NMAC 16.2.13, 03-15-2001; A, 07-06-2012]

16.16.2.14 LATE PENALTY FEE: \$325.00
[6-24-94; 10-14-95; 5-31-96; 16.16.2.14 NMAC - Rn, 16 NMAC 16.2.14, 03-15-2001; A, 03-15-2004; A, 07-06-

2012]

16.16.2.15 DUPLICATE WALL LICENSE FEE: \$35.00

[6-24-94; 10-14-95; 5-31-96; 16.16.2.15 NMAC - Rn, 16 NMAC 16.2.15, 03-15-2001]

16.16.2.16 DUPLICATE WALL CERTIFICATE FEE: \$50.00

[6-24-94; 10-14-95; 5-31-96; 16.16.2.16 NMAC - Rn, 16 NMAC 16.2.16, 03-15-2001; A, 07-06-2012]

16.16.2.17 VERIFICATION OF LICENSURE FEE: \$25.00

[6-24-94; 10-14-95; 16.16.2.17 NMAC - Rn, 16 NMAC 16.2.17, 03-15-2001; A, 07-06-2012]

16.16.2.18 INACTIVE STATUS FEE: \$300.00

[16.16.2.18 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.2.19 INACTIVE RENEWAL FEE: \$200.00

[10-14-95; 16.16.2.19 NMAC - Rn, 16 NMAC 16.2.19, 03-15-2001; 16.16.2.19 NMAC - N, 07-06-2012]

16.16.2.20 REACTIVATION FEE: \$300.00

[2-15-99; 16.16.2.20 NMAC - Rn, 16 NMAC 16.2.20, 03-15-2001; 16.16.2.20 NMAC - N, 07-06-2012]

16.16.2.21 LICENSEE LISTINGS AND MAILING LABELS FEE: \$100.00

[N, 6-26-00; 16.16.2.21 NMAC - Rn, 16 NMAC 16.2.21, 03-15-2001; 16.16.2.21 NMAC - Rn & A, 16.16.2.19 NMAC, 07-06-2012]

16.16.2.22 ALL FEES ARE NON-REFUNDABLE:

[16.16.2.22 NMAC - Rn, 16.16.2.20 NMAC, 07-06-2012]

16.16.2.23 OTHER ADMINISTRATIVE FEES:

A. Application packet: \$10.00. The license application packet is also downloadable at no cost from the board's internet website at www.rld.state.nm.us.

B. Hard copy of board's rules and regulations and statute: \$15.00. These documents are available and downloadable at no cost from the board's internet website at www.rld.state.nm.us.

C. Request for CE review for approval for licensees as provided in 16.16.13.10 NMAC: \$35.00
[16.16.2.23 NMAC - Rn, 16.16.2.21 NMAC, 07-06-2012]

HISTORY of 16.16.2 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 23, Board Rule No. 23 - Fees, filed 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.2, Fees, filed 9-21-95, replaced that relevant portion of NMBO Rule 23, Board Rule No. 23 - Fees. 16 NMAC 16.2, Fees, filed 9-21-95, renumbered and reformatted to 16.16.2 NMAC, Fees, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 3 REQUIREMENTS FOR LICENSURE BY EXAMINATION

16.16.3.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.3.1 NMAC - Rn, 16 NMAC 16.3.1, 03-15-2001; A, 07-06-2012]

16.16.3.2 SCOPE: The provisions in Part 3 of Chapter 16 apply to any applicant for optometric licensure in New Mexico who does not meet the requirements for licensure by endorsement.
[10-14-95; 16.16.3.2 NMAC - Rn, 16 NMAC 16.3.2, 03-15-2001]

16.16.3.3 STATUTORY AUTHORITY: Authority for Part 3 of Chapter 16 is the Optometry Act NMSA 1978, Section 61-2-4.1; Section 61-2-6.B and D. (2), (6) and (7); Section 61-2-8; and Section 61-2-9 (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.3.3 NMAC - Rn, 16 NMAC 16.3.3, 03-15-2001]

16.16.3.4 DURATION: Permanent.
[10-14-95; 16.16.3.4 NMAC - Rn, 16 NMAC 16.3.4, 03-15-2001]

16.16.3.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...10-14-95; 5-31-96; 2-15-99; 16.16.3.5 NMAC - Rn, 16 NMAC 16.3.5, 03-15-2001; A, 03-15-2004]

16.16.3.6 OBJECTIVE: The objective of Part 3 of Chapter 16 is to establish clearly the licensure application procedures and requirements for candidates who are seeking licensure by examination to qualify to sit for the Board's licensing examination.
[10-14-95; 16.16.3.6 NMAC - Rn, 16 NMAC 16.3.6, 03-15-2001]

16.16.3.7 DEFINITIONS:
A. "NBEO" means the National Board of Examiners in Optometry.
B. "NBEO Part I" refers to the NBEO Basic Science Exam.
C. "NBEO Part II" refers to the NBEO Clinical Science Exam.
D. "NBEO Part III" refers to the NBEO Patient Care Exam which consists of PMP's (Patient Management); VRICS (Visual Recognition and Interpretation of Clinical Signs); and Clinical Skills.
E. "The TMOD" means the NBEO Treatment and Management of Ocular Disease Exam.
[10-14-95; 16.16.3.7 NMAC - Rn, 16 NMAC 16.3.7, 03-15-2001]

16.16.3.8 EXAMINATION REQUIREMENTS:
A. As of January 15, 1995, all candidates for licensure are required to take the Board's licensing examination.
B. As of January 15, 1995, **all** candidates, except those who have met the qualification requirements set forth in Subsections A and B of 16.16.4.8 NMAC and have been approved as candidates for licensure by endorsement, shall be required to pass Part I, Part II, Part III, and the TMOD of the NBEO national standards examination as a prerequisite to sitting for the Board's licensing examination.
[10-14-95, 5-31-96, 2-15-99; 16.16.3.8 NMAC - Rn, 16 NMAC 16.3.8, 03-15-2001]

16.16.3.9 APPLICATION REQUIREMENTS: In accordance with Section 61-2-8 NMSA 1978, and those qualifications set forth therein, candidates for examination must submit to the board office, at least sixty-five (65) days prior to the announced examination date, a letter of intent applying for the next regularly scheduled board examination accompanied by the required application processing fee. In addition to a completed, board-approved application form, the following documents must be received by the board office no later than forty (40) days prior to the requested examination.
A. A copy of the applicant's birth certificate certified to be a true and correct copy of the original.
B. Letters of reference from two currently licensed optometrists actively engaged in the practice of optometry, and not related to the applicant, written on their letterhead stationery.
C. Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.

D. A complete official optometry transcript showing the applicant's graduation sent directly to the board by a college of optometry as approved by the American optometric association's council of optometric education.

(1) An applicant expecting to graduate in the spring or summer prior to the board's examination who does not expect completed transcripts to be available before the documentation deadline, must make arrangements for the school to send a letter directly to the board regarding the applicant's expected graduation.

(2) The letter must be postmarked before the forty-day documentation deadline.

(3) The completed, official transcript must be received by the board before the scheduled examination date or the application will be considered incomplete, and the applicant will be denied entrance into the examination.

E. A statement and copy of other state license(s) held by the applicant.

F. A recent, passport-type photograph of the applicant. The applicant must sign the back of the photograph in the presence of the notary who is also witnessing the applicant's signature on the board-approved exam application form.

G. An affidavit from the applicant that the applicant has not engaged in any optometry practice of an illegal or unethical nature as defined in the New Mexico Optometry Act, NMSA 1978, Sections 61-2-1 to 61-21-18 (1995 Repl. Pam.).

H. Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self-study.

I. A verification from an accredited optometry school of successful completion of one hundred (100) or more post-graduate clock hours of ocular therapeutics pharmacology, as provided in Subsection A of 16.16.7.10 NMAC, and a minimum of twenty (20) post-graduate clock hours in clinical pharmacology as provided in Subsection B of 16.16.7.11 NMAC.

J. Verification directly from the national board of examiners in optometry (NBEO) that the applicant has successfully passed part I, part II, part III, and the TMOD of the NBEO as provided in Subsection B of 16.16.3.8 NMAC.

(1) If NBEO examination results will not be released by the NBEO prior to the documentation deadline, the applicant must submit to the board a copy of the NBEO letter scheduling the applicant for the NBEO exam(s).

(2) Upon receipt of verification of successful completion of the required NBEO exam(s), and upon having met all other requirements stipulated in this regulation, the approved candidate will be scheduled for the next regularly scheduled board examination.

K. A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination deadline may disqualify the candidate from the exam.

L. Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

[11-17-73; 3-8-86; 3-31-91; 8-21-92; 6-24-94; 9-30-95; 10-14-95; 5-31-96; 2-15-99; 16.16.3.9 NMAC - Rn, 16 NMAC 16.3.9, 03-15-2001; A, 03-15-2004; A, 03-22-2008; A, 07-06-2012; A, 06-25-2015]

16.16.3.10 APPLICATION APPROVAL: Upon Board review and approval of the above listed documentation, each approved candidate will be scheduled by letter to sit for the board's examination.

A. Candidates will not be allowed entrance into the examination without this schedule notification letter.

B. At least one form of picture identification will be required for entrance into the examination.

C. Each candidate will be assigned an identification number that will be the sole means of candidate identification throughout the administration and scoring of the examination.

[10-14-95; A, 2-15-99; 16 NMAC 16.3.10 - Rn, 16 NMAC 16.3.10, 03-15-2001]

16.16.3.11 INELIGIBILITY FOR LICENSURE: Any applicant for licensure who desires to take the Board examination and who has had a license either suspended or revoked in any jurisdiction shall be ineligible to take the

examination until that license is reinstated.

[11-17-73; 10-14-95; 16 NMAC 16.3.11 - Rn, 16 NMAC 16.3.11, 03-15-2001]

16.16.3.12 INCOMPLETE APPLICATIONS PURGED: Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and board staff created a file. [N, 6-26-00; 16.16.3.12 NMAC - Rn, 16 NMAC 16.3.12, 03-15-2001, A, 03-15-2004]

HISTORY of 16.16.3 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 1 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

NMBO Rule 1, Board Rule No. 1 - Requirements for Application, filed 3-1-91.

NMBO Rule 1, Board Rule No. 1 - Requirements for Application, filed 7-22-92.

NMBO Rule 1, Board Rule No. 1 - Requirements for Application, filed 5-25-94.

History of Repealed Material: [RESERVED]

Other History:

16 NMAC 16.3, Requirements For Licensure By Examination, filed 9-21-95 replaced that relevant portion of NMBO Rule 1, Board Rule No. 1 - Requirements for Application.

16 NMAC 16.3, Requirements For Licensure By Examination, filed 9-21-95, renumbered and reformatted to 16.16.3 NMAC, Requirements For Licensure By Examination, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 4 REQUIREMENTS FOR LICENSURE BY ENDORSEMENT

16.16.4.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10/14/1995; 2/15/1999; A, 6/26/2000; 16.16.4.1 NMAC - Rn, 16 NMAC 16.4.1, 3/15/2001; A, 7/6/2012]

16.16.4.2 SCOPE: The provisions in Part 4 of Chapter 16 apply to all applicants for licensure by endorsement.
[10/14/1995; 16.16.4.2 NMAC - Rn, 16 NMAC 16.4.2, 3/15/2001]

16.16.4.3 STATUTORY AUTHORITY: The authority for Part 4 of Chapter 16 is Section 61-2-8 NMSA 1978; Section 61-2-9 NMSA 1978; Subsection C of 61-2-11 NMSA; and Subsection D of 61-2-6 NMSA 1978 (1995 Repl. Pam.).
[11/17/1973; 3/31/1991; 8/21/1992; 6/24/1994; 10/14/1995; 16.16.4.3 NMAC - Rn, 16 NMAC 16.4.3, 3/15/2001]

16.16.4.4 DURATION: Permanent.
[10/14/1995; 16.16.4.4 NMAC - Rn, 16 NMAC 16.4.4, 3/15/2001]

16.16.4.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11/17/1973...5/31/1996; 16.16.4.5 NMAC - Rn, 16 NMAC 16.4.5, 3/15/2001; A, 3/15/2004]

16.16.4.6 OBJECTIVE: The objective of Part 4 of Chapter 16 is to establish clearly the licensure application procedures and requirements for endorsement candidates to qualify to sit for the board's licensing examination.
[10/14/1995; 16.16.4.6 NMAC - Rn, 16 NMAC 16.4.6, 3/15/2001]

16.16.4.7 DEFINITIONS:
A. "NBEO" means the national board of examiners in optometry.
B. "NBEO Part I" refers to the NBEO basic science exam.
C. "NBEO Part II" refers to the NBEO clinical science exam.
D. "NBEO Part III" refers to the NBEO patient care exam which consists of PMP's (patient management); VRICS (visual recognition and interpretation of clinical signs); and clinical skills.
E. "The TMOD" refers to the NBEO treatment and management of ocular disease exam.
[10/14/1995; 16.16.4.7 NMAC - Rn, 16 NMAC 16.4.7, 3/15/2001]

16.16.4.8 EXAMINATION REQUIREMENTS:
A. Prior to January 15, 1995, the board administered its own ten-part written examination in the following areas: practical optometry, theoretical optometry, pharmacology, contact lenses, geometrical optics, perimetry (visual fields), ocular pathology, ocular anatomy, physiological optics, and orthoptics.
 (1) Prior to January 15, 1995, qualified endorsement candidates were waived the requirement of sitting for these 10 sections of the board's written examination if the state of original licensure could verify that the applicant was examined in these areas in a state exam, and that the applicant passed each section with a seventy-five percent passing score or higher.
 (2) Prior to January 15, 1995, qualified endorsement candidates were required to sit only for the board's practical examination and were required to pass it with seventy-five percent.
B. As of January 15, 1995, in order to qualify for licensure by endorsement, an applicant licensed in other states prior to January 15, 1995, must provide verification from the other state licensing board that the applicant successfully passed a written state examination in the areas examined in New Mexico prior to January 15, 1995, and that the applicant passed the exams with a seventy-five percent or higher.
C. Applicants licensed as optometrists in other states prior to January 15, 1995, who have not successfully passed a written state examination with a seventy-five percent or higher in the areas examined in New Mexico prior to January 15, 1995, must present proof of having successfully passed Part I, Part II, Part III, and the TMOD of the NBEO exam as a prerequisite to sitting for the board's examination.
D. As of January 15, 1995, the board's written exam no longer consists of the 10 areas listed in Subsection A of 16.16.4.8 NMAC. The board now accepts Part I, Part II, Part III, and the TMOD of the NBEO

exam instead. Applicants licensed in other states after January 15, 1995 must provide verification of having successfully passed Part I, Part II, Part III, and the TMOD of the NBEO in order to sit for the board's exam.

E. As of January 15, 1995, endorsement candidates are required to take all of the board's licensing examination and to pass each section with a seventy-five percent or better in order to qualify for licensure. [10/14/1995; 5/31/1996; 16.16.4.8 NMAC - Rn, 16 NMAC 16.4.8, 3/15/2001]

16.16.4.9 APPLICATION REQUIREMENTS: At least 65 days prior to the next scheduled examination every applicant for licensure by endorsement must submit to the board office the required application-processing fee with a letter of intent stating the date of examination for which he/she wishes to be scheduled. The following items must be received by the board office at least 40 days prior to the regularly scheduled board examination for which the applicant wishes to be scheduled.

- A.** A copy of the applicant's birth certificate certified to be a true and correct copy of the original.
- B.** An affidavit that the applicant has not at any time preceding application been engaged in any optometric practice of an illegal or unethical nature as defined in the Optometry Act.
- C.** Copy(ies) of any other state license(s) held by the applicant.
- D.** Official pre-optometry transcript(s) sent directly to the board office by each college or university attended by the applicant.
- E.** A complete, official optometry transcript showing the applicant's graduation sent directly to the board office by a college of optometry as approved by the American optometric association's council on optometric education.
- F.** Letters of reference from two currently licensed optometrists in the endorsing state of licensure.
- G.** Verification of successful completion of 100 or more post-graduate clock hours of ocular therapeutics pharmacology from an accredited institution.
- H.** A complete professional resume or curriculum vitae to date.
- I.** Copy of current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be self-study.
- J.** A completed, signed, and notarized board-approved exam application form.
- K.** The required application and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).
- L.** A recent, passport-type photograph of the applicant which the applicant has signed on the back in the presence of the notary public who is also witnessing the applicant's signature on the application form.
- M.** Verifications of licensure status sent directly to the board from all state licensing boards where the applicant is or has ever been licensed. Endorsement candidates will require the following information:
 - (1)** verification that the applicant has been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made to the board office;
 - (2)** verification that the applicant has completed 14 days, or 112 hours of continuing education during the immediate seven years prior to the application, providing that at least 22 of those hours were completed within the immediate prior year; and
 - (3)** verification of examination requirements which the applicant met to be licensed to practice in that state (see 16.16.4.8 NMAC).
- N.** Verification must be provided for pre-1994-1995 academic year optometry school graduates of successful completion of a minimum 20 hour course in clinical pharmacology as set forth in Subsection B of 16.16.7.11 NMAC.
- O.** A list of the names of any New Mexico licensed optometrist(s) with whom the applicant is acquainted; with whom the applicant has a professional or personal affiliation; or that the applicant would feel uncomfortable being examined by, in the event that one of those optometrists is a board member or a clinical examiner for the board. Failure to provide this information prior to the examination may disqualify the candidate from the exam.
- P.** Each approved exam candidate will be required to bring his/her copy of the board's exam policy and procedures document to the clinical exam and to sign it in the presence of the board's representative in attestation that the candidate has read the document; and a copy of the document will become a part of the candidate's examination records.

16.16.4.10 EXPEDITED LICENSURE: Doctors of Optometry with current licenses in good standing in jurisdictions within the United States with licensing standards equal to or greater than New Mexico as determined by

the board of optometry shall be eligible for expedited licensure. Criterion for this licensure shall include payment of the licensure fee, completing the proper application forms, and passing the New Mexico jurisprudence examination within one year of licensure. Any applicant for this expedited licensure procedure who has had a license suspended or revoked in another jurisdiction within the United States and its territories shall not be eligible for expedited licensure.

[16.16.4.10 NMAC - N, 05-29-2019]

16.16.4.11 APPLICATION APPROVAL: When the candidate has met all the requirements stipulated in this regulation, and upon board review and approval of the above documentation, each approved candidate will be scheduled by letter to sit for the board's examination. Candidates will not be allowed entrance into the examination without this schedule notification letter.

A. Candidate Identification. Each candidate will be assigned an identification number that will be the sole means of candidate identification throughout the administration and scoring of the examination.

B. At least one form of picture identification will be required for entrance into the examination.
[11/17/1973; 12-6-87; 3/31/1991; 8/21/1992; 6/24/1994; 10/14/1995; 2/15/1999; 16.16.4.10 NMAC - Rn, 16 NMAC 16.4.10, 3/15/2001; A, 5/29/2019]

16.16.4.12 INELIGIBILITY FOR LICENSURE: Any applicant for licensure who desires to take the board examination and who has had a license either suspended or revoked in any jurisdiction shall be ineligible to take the examination until that license is reinstated by the other licensing jurisdiction.

[11/17/1973; 10/14/1995; 5/31/1996; 2/15/1999; 16.16.4.11 NMAC - Rn, 16 NMAC 16.4.11, 3/15/2001; A, 5/29/2019]

16.16.4.13 INCOMPLETE APPLICATIONS PURGED: Incomplete applications for licensure will be kept on file for two years from the date the first item of documentation was received and board staff created a file.
[N, 6/26/2000; 16.16.4.12 NMAC - Rn, 16 NMAC 16.4.12, 3/15/2001; A, 3/15/2004; A, 5/29/2019]

HISTORY of 16.16.4 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 1 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10/18/1973.

NMBO Rule 8, Board Rule No. 8 - Licensure By Endorsement, filed 3/1/1991.

NMBO Rule 8, Board Rule No. 8 - Licensure By Endorsement, filed 7/22/1992.

NMBO Rule 8, Board Rule No. 8 - Licensure By Endorsement, filed 5/25/1994.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.4, Requirements For Licensure By Endorsement, filed 9/21/1995, replaced NMBO Rule 8, Board Rule No. 8 - Licensure By Endorsement. Filed 5/25/1994.

16 NMAC 16.4, Requirements For Licensure By Endorsement, filed 9/21/1995, was renumbered and reformatted to 16.16.4 NMAC, Requirements For Licensure By Endorsement, effective 3/15/2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 5 EXAMINATION FOR OPTOMETRIC LICENSURE

16.16.5.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.5.1 NMAC - Rn, 16 NMAC 16.5.1, 03-15-2001; A, 07-06-2012]

16.16.5.2 SCOPE: The provisions in Part 5 of Chapter 16 apply to all applicants for optometric licensure in New Mexico.
[10-14-95; 16.16.5.2 NMAC - Rn, 16 NMAC 16.5.2, 03-15-2001]

16.16.5.3 STATUTORY AUTHORITY: The authority for Part 5 of Chapter 16 is NMSA 1978, Section 61-2-4.1; Section 61-2-6.B and D. (6) (7); Section 61-2-9; and 61-2-6.D. (1) and (2) (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.5.3 NMAC - Rn, 16 NMAC 16.5.3, 03-15-2001]

16.16.5.4 DURATION: Permanent.
[10-14-95; 16.16.5.4 NMAC - Rn, 16 NMAC 16.5.4, 03-15-2001]

16.16.5.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...5-31-96; 16.16.5.5 NMAC - Rn, 16 NMAC 16.5.5, 03-15-2001; A, 03-15-2004]

16.16.5.6 OBJECTIVE: The objective of Part 5 of Chapter 16 is to establish the requirements, policies, and procedures for examination for licensure to practice optometry in New Mexico.
[10-14-95; 16.16.5.6 NMAC - Rn, 16 NMAC 16.5.6, 03-15-2001]

16.16.5.7 DEFINITIONS:
A. “NBEO” means the national board of examiners in optometry.
B. “NBEO Part I” refers to the NBEO basic science exam.
C. “NBEO Part II” refers to the NBEO clinical science exam.
D. “NBEO Part III” refers to the NBEO patient care exam which consists of PMP's (patient management); VRICS (visual recognition and interpretation of clinical signs); and clinical skills.
E. “The TMOD” means the NBEO treatment and management of ocular disease exam.
[10-14-95; 16.16.5.7 NMAC - Rn, 16 NMAC 16.5.7, 03-15-2001]

16.16.5.8 NATIONAL STANDARDS EXAMINATION:
A. As of January 15, 1995, all candidates, except those who have met the qualification requirements set forth in Subsections A and B of 16.16.4.8 NMAC and have been approved by the board as candidates for licensure by endorsement, shall be required to pass Part I, Part II, Part III, and the TMOD of the NBEO national standards examination as a prerequisite to sitting for the board's licensing examination.
B. [RESERVED]
C. Official notice of examination scores for all required parts of the NBEO examination must be received directly from the NBEO.
[10-14-95, 5-31-96; 16.16.5.8 NMAC - Rn, 16 NMAC 16.5.8, 03-15-2001; A, 03-15-2004]

16.16.5.9 NEW MEXICO LICENSING EXAMINATION:
A. As of January 15, 1995, all candidates for licensure shall be required to take the board's licensing examination, consisting of a jurisprudence exam and a clinical practicum exam.
B. The board examination shall only be seen by board members, individuals preparing and administering the examination and by examination candidates while sitting for the examination.
C. As soon as practical after the board examination is scored, each examination candidate will be notified in writing by certified mail, return receipt requested, of his or her individual scores and pass/fail status.
 (1) Successful exam candidates will have ninety (90) days from the date of receipt of the exam results notification to complete the licensure process as provided in 16.16.2.10 NMAC or 16.16.2.11 NMAC and 16.16.2.12 NMAC.
 (2) Candidates who do not complete the licensure process within the time provided in Subsection C, Paragraph (1) of 16.16.5.9 NMAC must reapply for licensure and meet all the requirements of

application and examination as set forth in 16.16.3 NMAC.

D. A grade of seventy-five percent (75%) or better in each of the clinical sections and in the jurisprudence exam is required for passing the licensure examination.

E. Candidates failing to pass the board's examination may re-take a regularly scheduled examination upon approved re-application.

(1) Failed candidates must repeat all portions of the board's examination.

(2) The applicant must complete a new exam application form and submit an updated resume', provide updated license verifications directly from other licensing jurisdictions, and pay the required application processing and examination fees (16.16.2.8 NMAC and 16.16.2.9 NMAC).

F. Any candidate detected cheating in any manner during the course of any examination shall automatically fail the entire examination. Cheating on an examination shall be deemed unprofessional conduct, and shall demonstrate that the applicant is not of good moral character. Individuals detected cheating shall be afforded notice and the opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

G. The deadline for challenging the examination is three (3) months from the date the exam scores are mailed to the candidate by certified mail.

[11-17-73; 12-6-87; 10-14-95; 5-31-96; 2-15-99; A, 6-26-00; 16.16.5.9 NMAC - Rn, 16 NMAC 16.5.9, 03-15-2001; A, 03-10-2005; A, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

HISTORY of 16.16.5 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.5, Examination For Optometric Licensure, filed 9-21-95 replaced that relevant portion of OEB 73-1, Administrative Rules and Regulations of the State Board of Examiners in Optometry.

16 NMAC 16.5, Examination For Optometric Licensure, filed 9-21-95, renumbered and reformatted to 16.16.5 NMAC, Examination For Optometric Licensure, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 6 LICENSE ISSUANCE TO PRACTICE OPTOMETRY

16.16.6.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.6.1 NMAC - Rn, 16 NMAC 16.6.1, 03-15-2001; A, 07-06-2012]

16.16.6.2 SCOPE: Part 6 of Chapter 16 applies to all applicants qualified for optometric licensure in New Mexico.
[10-14-95; 16.16.6.2 NMAC - Rn, 16 NMAC 16.6.2, 03-15-2001]

16.16.6.3 STATUTORY AUTHORITY: The authority for Part 6 of Chapter 16 is NMSA 1978 Section 61-2-4; Section 61-2-8; Section 61-2-9.B; Section 61-2-9.1; Section 61-2-11 and 61-2-12.A and E (1995 Repl. Pam.).
[10-14-95; 10-15-97; 16.16.6.3 NMAC - Rn, 16 NMAC 16.6.3, 03-15-2001]

16.16.6.4 DURATION: Permanent.
[10-14-95; 16.16.6.4 NMAC - Rn, 16 NMAC 16.6.4, 03-15-2001]

16.16.6.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[10-14-95; 10-15-97; 16.16.6.5 NMAC - Rn, 16.16.6.5, 03-15-2001; A, 07-06-2012]

16.16.6.6 OBJECTIVE: The objective of Part 6 of Chapter 16 is to establish the rules and procedures for licensure of candidates who have met all the qualifications for licensure to practice optometry in New Mexico.
[10-14-95; 16.16.6.6 NMAC - Rn, 16 NMAC 16.6.6, 03-15-2001]

16.16.6.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.6.7 NMAC - Rn, 16 NMAC 16.6.7, 03-15-2001]

16.16.6.8 ISSUANCE OF INITIAL LICENSE: After the applicant has met all application, examination, and licensure requirements, and has paid the required license and certificate fees, the applicant will be issued a license to practice optometry in New Mexico.
[10-14-95; 16.16.6.8 NMAC - Rn, 16 NMAC 16.6.8, 03-15-2001]

16.16.6.9 DISPLAY OF LICENSE: The licensee must display the license to practice optometry in a conspicuous place in his principal office or place of business.
[10-14-95; 16.16.6.9 NMAC - Rn, 16 NMAC 16.6.9, 03-15-2001]

16.16.6.10 ADDRESS AND EMPLOYMENT PRACTICE CHANGES: It is the licensee's responsibility to provide immediate written notification to the Board of any changes in addresses, phone numbers, and practice location(s).
[10-15-97; 16.16.6.10 NMAC - Rn, 16 NMAC 16.6.10, 03-15-2001]

HISTORY of 16.16.6 NMAC:
Pre-NMAC History: None

History of Repealed Material: [Reserved]

Other History:
16 NMAC 16.6, License Issuance To Practice Optometry, filed 9-21-95, renumbered and reformatted to 16.16.6 NMAC, License Issuance To Practice Optometry, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 7 PHARMACEUTICAL CERTIFICATION

16.16.7.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.7.1 NMAC- Rn, 16 NMAC 16.7.1, 03-15-2001; A, 07-06-2012]

16.16.7.2 SCOPE: Part 7 of Chapter 16 applies to all currently licensed New Mexico optometrists and to all applicants for licensure by the Board.
[10-14-95; 16.16.7.2 NMAC - Rn, 16 NMAC 16.7.2, 03-15-2001]

16.16.7.3 STATUTORY AUTHORITY: The authority for Part 7 of Chapter 16 is NMSA 1978 Section 61-2-6.D. (10); Section 61-2-10; Section 61-2-10.2; Section 61-2-10.3.A, and Section 61-2-6.D. (1) and (2) (1995 Repl. Pam.).
[1-15-78, 3-8-86, 3-31-91, 6-24-94, 10-14-95; 16.16.7.3 NMAC - Rn, 16 NMAC 16.7.3, 03-15-2001, A, 03-17-2004]

16.16.7.4 DURATION: Permanent.
[10-14-95; 16.16.7.4 NMAC - Rn, 16 NMAC 16.7.4, 03-15-2001]

16.16.7.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[1-15-78...10-14-95, 10-15-97; 16.16.7.5 NMAC - Rn, 16 NMAC 16.7.5, 03-15-2001, A, 03-17-2004]

16.16.7.6 OBJECTIVE: The objective of Part 7 of Chapter 16 is to set forth the requirements and procedures for certification in the use of diagnostic, therapeutic, and oral pharmaceuticals for use by qualified licensees in the diagnosis, treatment, and management of ocular diseases.
[10-14-95; 16.16.7.6 NMAC - Rn, 16 NMAC 16.7.6, 03-15-2001]

16.16.7.7 DEFINITIONS: “**Certificate**” means a document issued by the board certifying that the applicant has met the requirements for which the certificate is issued.
[10-14-95; 16.16.7.7 NMAC - Rn, 16 NMAC 16.7.7, 03-15-2001]

16.16.7.8 CERTIFICATE DISPLAY: The licensee must display the pharmaceutical certificate(s) for which he has been qualified and certified by the Board in a conspicuous place at his/her principal office or place of business.
[10-14-95; 16.16.7.8 NMAC - Rn, 16 NMAC 16.7.8, 03-15-2001]

16.16.7.9 OPTOMETRISTS AS PRESCRIBING PRACTITIONERS: The New Mexico Drug, Device and Cosmetic Act defines optometrists as prescribing practitioners. Subject to the provisions of the Optometry Act, New Mexico licensed optometrists may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of diseases of the eye or adnexa including controlled substances classified as Schedule II-V, provided that an optometrist:

- A.** may prescribe hydrocodone and hydrocodone combination medications;
 - B.** may administer epinephrine auto-injections to counter anaphylaxis;
 - C.** shall not prescribe any other controlled substances classified in Schedule I or II pursuant to the Controlled Substances Act, Chapter 30, Article 31 NMSA 1978.
- [1-15-78; 3-31-91; 10-14-95; 16.16.7.9 NMAC - Rn, 16 NMAC 16.7.9, 03-15-2001; Repealed, 2-12-2016; 16.16.7.9 NMAC - N, 2-12-2016]

16.16.7.10 [RESERVED]
[3-8-86; 10-14-95; 16.16.7.10 NMAC - Rn, 16 NMAC 16.7.10, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

16.16.7.11 [RESERVED]
[10-14-95; A, 6-26-00; 16.16.7.11 NMAC - Rn, 16 NMAC 16.7.11, 03-15-2001; A, 03-22-2008; Repealed 03-02-2016]

16.16.7.12 DEA REGISTRATION REQUIRED: Before a New Mexico optometric physician may administer, dispense, or prescribe any of the controlled substances which are allowed by the Optometry Act (Section 61-2-10.2) and for which a DEA registration is required, he/she must be registered by the New Mexico board of pharmacy and by the United States drug enforcement administration as provided in 16.16.8 NMAC.
[10-14-95; 16.16.7.12 NMAC - Rn, 16 NMAC 16.7.12, 03-15-2001; A, 07-06-2012]

16.16.7.13 “OPTOMETRIC PHYSICIAN” TITLE USE: Only those optometrists who have been certified as provided in 16.16.7.11 NMAC may use the title of “optometric physician”.
[10-15-97; 16.16.7.13 NMAC - Rn, 16 NMAC 16.7.13, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.7.14 PRESCRIPTION FOR PHARMACEUTICAL AGENTS: A prescription written for a pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the following items:

- A. the name and address of the prescriber;
- B. the prescriber’s professional designation;
- C. the name and address of the patient;
- D. the name and quantity of the agent being prescribed;
- E. directions for the use of the agent;
- F. the prescription issue date; and
- G. the number of refills allowed.

[16.16.7.14 NMAC - N, 03-17-2004; A, 03-02-2016]

16.16.7.15 OPTOMETRIC PHYSICIAN CERTIFICATION REQUIREMENT: All New Mexico licensed optometrists shall have pharmaceutical certification as determined by the board prior to licensure and may use the title “optometric physician”.
[16.16.7.15 NMAC - N, 03-22-2008; A, 03-02-2016]

HISTORY of 16.16.7 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 1 of Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

NMBO Rule 12, - Board Rule No. 12 - Requirements for Pharmacology Certificate, filed 3-1-91.

OPT Rule No. 17 - Education Requirements, Therapeutic Pharmaceutical Agents, filed 2-6-86.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.7, Pharmaceutical Certification, filed 9-21-95, replaced that relevant portion of NMBO Rule 12 and OPT Rule No. 17.

16 NMAC 16.7, Pharmaceutical Certification, filed 9-21-95, renumbered and reformatted to 16.16.7 NMAC, Pharmaceutical Certification, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 8 DEA REGISTRATION REQUIREMENTS

16.16.8.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.8.1 NMAC - Rn, 16 NMAC 16.8.1, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.8.2 SCOPE: Part 8 of Chapter 16 applies to all New Mexico.
[10-14-95; 16.16.8.2 NMAC - Rn, 16 NMAC 16.8.2, 03-15-2001; A, 03-02-2016]

16.16.8.3 STATUTORY AUTHORITY: The authority for Part 8 of Chapter 16 is NMSA 1978, Section 61-2-10.2, Section 61-2-14.A, Section 61-2-6.D. (2) (1995 Repl. Pam.).
[10-14-95; 16.16.8.3 NMAC - Rn, 16 NMAC 16.8.3, 03-15-2001]

16.16.8.4 DURATION: Permanent.
[10-14-95; 16.16.8.4 NMAC - Rn, 16 NMAC 16.8.4, 03-15-2001]

16.16.8.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[10-14-95; 10-15-97; 16.16.8.5 NMAC - Rn, 16 NMAC 16.8.5, 03-15-2001; A, 03-22-2008]

16.16.8.6 OBJECTIVE: The objective of Part 8 of Chapter 16 is to inform optometrists of the procedures to complete for certification before the optometrist can administer, dispense, and prescribe dangerous controlled substances in the treatment and management of ocular disease and conditions as provided in NMSA 1978 Section 61-2-10.2 (1995 Repl. Pam.).
[10-14-95; 16.16.8.6 NMAC - Rn, 16 NMAC 16.8.6, 03-15-2001; A, 03-02-2016]

16.16.8.7 DEFINITIONS:
A. “DEA” means the United States drug enforcement administration.
B. “dangerous controlled substances” means a drug or substance listed in Schedules I through V of the Controlled Substances Act.
C. “Board of Pharmacy” means the New Mexico board of pharmacy.
[10-14-95; 16.16.8.7 NMAC - Rn, 16 NMAC 16.8.7, 03-15-2001]

16.16.8.8 PRE-DEA REGISTRATION REQUIREMENTS:
A. All New Mexico optometric physicians must first register with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA).
B. Upon receipt of official recognition and authorization from the DEA, the board will send the board of pharmacy an official list, as required by the board of pharmacy, of all board licensees who have met the required qualifications and have received the proper board certification as provided by Section 61-2-10.2 of the Optometry Act.
[10-14-95; 16.16.8.8 NMAC - Rn, 16 NMAC 16.8.8, 03-15-2001; A, 03-02-2016]

16.16.8.9 DEA REGISTRATION REQUIREMENTS FOR CERTIFIED OPTOMETRISTS:
A. Upon completion of the board of pharmacy's requirements, and upon receipt of a New Mexico registration for controlled substances from the board of pharmacy, the optometrist shall apply for a DEA registration number from the DEA.
B. Upon receipt of a DEA registration number, the optometrist may administer, dispense, or prescribe dangerous controlled substances as provided in 16.16.7 NMAC for the treatment and management of ocular disease.
[10-14-95; 10-15-97; 16.16.8.9 NMAC - Rn, 16 NMAC 16.8.9, 03-15-2001; A, 07-06-2012; A, 03-02-2016]

HISTORY of 16.16.8 NMAC:
Pre-NMAC History: None.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.8, DEA Registration Requirements, filed 9-21-95, renumbered and reformatted to 16.16.8 NMAC, DEA Registration Requirements, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 9 INACTIVE STATUS

16.16.9.1 ISSUING AGENCY: New Mexico Board of Optometry.
[16.16.9.1 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.2 SCOPE: Part 9 of Chapter 16 applies to all New Mexico optometry licensees who are not practicing in New Mexico, but are actively practicing in another state and would like to place their New Mexico licenses on inactive status rather than allow those licenses to expire, and possibly lapse.
[16.16.9.2 NMAC - N, 03-15-2004]

16.16.9.3 STATUTORY AUTHORITY: The authority for Part 9 of Chapter 16 is Section 61-2-12 and 61-2-6.D, NMSA 1978, (2003 Repl. Pamp.).
[16.16.9.3 NMAC - N, 03-15-2004]

16.16.9.4 DURATION: Permanent.
[16.16.9.4 NMAC - N, 03-15-2004]

16.16.9.5 EFFECTIVE DATE: March 15, 2004, unless a later date is cited at the end of a section.
[16.16.9.5 NMAC - N, 03-15-2004]

16.16.9.6 OBJECTIVE: The objective of Part 9 of Chapter 16 is to set forth the requirements and procedures for placing a New Mexico license on inactive status. Through the inactive status process, licensees who live and practice outside of New Mexico can keep their New Mexico licenses valid instead of allowing them to expire and perhaps subsequently become null and void and lapse. Furthermore, the board can still ensure that these licensees are continuing the educational process and keeping up with advancements in the profession in the event they ever take up residence in New Mexico and/or choose to practice optometry in New Mexico.
[16.16.9.6 NMAC - N, 03-15-2004]

16.16.9.7 DEFINITIONS:

A. “Valid license” means a license that is subject to regulation by, and statutory authority of, the board.

B. “Active status” means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

C. “Expired status” means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

D. “Inactive status” means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, provided the licensee is practicing in another state and is currently in good standing with that state.

E. “Null and void status” means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

F. “Lapsed license” means a license that is null and void.
[16.16.9.7 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.8 REQUIREMENTS FOR INACTIVE STATUS: A licensee whose license is in good standing with the board, and who is practicing in another state, may request his/her license be placed on inactive status by meeting the following requirements:

A. Complete, sign, and return the renewal application form, specifying the intent to be placed on inactive status.

B. Submit verifications for the required number of continuing education hours.

C. Remit the required inactive status fee (see 16.16.2.18 NMAC).

D. Return the application postmarked on or before the license expiration date.
[16.16.9.8 NMAC - N, 03-15-2004]

16.16.9.9 INACTIVE STATUS NOTIFICATION: Upon receipt of a duly and properly made application for inactive status, the board or its designee will review and approve the application and send the licensee written verification that the license has been placed on inactive status. A licensee with an inactive license will be required to renew it every year as defined in 16.16.10 NMAC.
[16.16.9.9 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.10 PRACTICE PROHIBITED: During the period of inactive status, the optometrist is prohibited from practicing optometry in the State of New Mexico.
[16.16.9.10 NMAC - N, 03-15-2004]

16.16.9.11 [RESERVED]
[16.16.9.11 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

16.16.9.12 REACTIVATION FROM INACTIVE STATUS: Upon receipt of the written request the board shall provide the applicant with a reactivation application.

A. The completed application and the required reactivation fee as defined in 16.16.2.19 NMAC shall be delivered to the board's consideration.

B. Continuing education shall be at the current requirement of board-approved continuing education taken during the previous 12 months prior to reactivation as set forth in Subsection A of 16.16.13.8 NMAC.
[16.16.9.12 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.9.13 [RESERVED]
[16.16.9.13 NMAC - N, 03-15-2004; Repealed, 07-06-2012]

16.16.9.14 REACTIVATION APPROVED:

A. If the board finds the request for reactivation and reactivation application in order and is satisfied that the applicant has fulfilled the requirements as specified; the board shall reactivate the applicant's license.

B. The optometrist may not practice optometry in New Mexico until the reactivated license has been received from the board.
[16.16.9.14 NMAC - N, 03-15-2004]

16.16.9.15 INELIGIBILITY FOR REACTIVATION:

A. The optometrist whose license was on inactive status in New Mexico will be ineligible for license reactivation if he or she is under investigation, is facing disciplinary proceedings, or has had a disciplinary action taken against his or her license in any jurisdiction while on inactive status in New Mexico.

B. An optometrist whose application for reactivation from inactive status has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.
[16.16.9.15 NMAC - N, 03-15-2004]

16.16.9.16 TIME LIMITATION ON INACTIVE STATUS LICENSE:

A. Licenses on inactive status that are not reactivated within five (5) years from the date the inactive status was approved, shall become null and void (lapsed). Null and void (lapsed) licenses may not be reactivated.

B. In order to practice optometry in New Mexico, the optometrist whose New Mexico license has become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board.
[16.16.9.16 NMAC - N, 03-15-2004]

History of 16.16.9 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 10 RENEWAL OF NEW MEXICO OPTOMETRY LICENSES

16.16.10.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.10.1 NMAC - Rn, 16 NMAC 16.10.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.10.2 SCOPE: Part 10 of Chapter 16 applies to all New Mexico optometry licensees.
[10-14-95; 16.16.10.2 NMAC - Rn, 16 NMAC 16.10.2, 03-15-2001]

16.16.10.3 STATUTORY AUTHORITY: The authority for Part 10 of Chapter 16 is NMSA 1978, Section 61-2-6.D. (9); Section 61-2-12; Section 61-2-14. (A). 4 and Section 61-2-6.D. (2) (1995 Repl. Pam.).
[10-14-95; 16.16.10.3 NMAC - Rn, 16 NMAC 16.10.3, 03-15-2001]

16.16.10.4 DURATION: Permanent.
[10-14-95; 16.16.10.4 NMAC - Rn, 16 NMAC 16.10.4, 03-15-2001]

16.16.10.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[10-14-95; 10-15-97; 16.16.10.5 NMAC - Rn, 16 NMAC 16.10.5, 03-15-2001; A, 03-15-2004]

16.16.10.6 OBJECTIVE: The objective of Part 10 of Chapter 16 is to set forth the requirements and procedures for license renewal. Through the renewal process, the board ensures that licensees are continuing the educational process and keeping up with advancements in the profession.
[10-14-95; 10-15-97; 16.16.10.6 NMAC - Rn, 16 NMAC 16.10.6, 03-15-2001]

16.16.10.7 DEFINITIONS: “**Expired license**” means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.
[10-14-95; 16.16.10.7 NMAC - Rn, 16 NMAC 16.10.7, 03-15-2001; A, 03-15-2004; A, 06-25-2015]

16.16.10.8 LICENSE EXPIRATION DATE: All current New Mexico optometry licenses not renewed by July 1 of every year shall be considered expired.
[10-14-95; 16.16.10.8 NMAC - Rn, 16 NMAC 16.10.8, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.10.9 LICENSE RENEWAL DEADLINE: Licenses must be renewed on or before July 1 of each year to be considered current.
[10-14-95; 16.16.10.9 NMAC - Rn, 16 NMAC 16.10.9, 03-15-2001]

16.16.10.10 LICENSE RENEWAL NOTIFICATION: License renewal notification will be mailed at least forty-five (45) days prior to the expiration date of the license.
[10-14-95; 16.16.10.10 NMAC - Rn, 16 NMAC 16.10.10, 03-15-2001; A, 07-06-2012]

16.16.10.11 CURRENT ADDRESS NOTIFICATION:

A. License renewal notification will be mailed to the last address on file with the board. It is the responsibility of the licensee to keep the board informed of any changes in home or employment addresses and phone numbers.

B. It is a licensee’s responsibility to renew a license. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.
[10-14-95; 16.16.10.11 NMAC - Rn, 16 NMAC 16.10.11, 03-15-2001; A, 07-06-2012]

16.16.10.12 RENEWAL APPLICATION:

A. A completed license renewal application, verification of continuing education, a current CPR certification and applicable renewal fee must be received in the board office on or before July 1 of every year. The CPR course shall show a current certification attesting to completion of a CPR course offered by the American red cross, the American heart association, or the American safety and health institute (ASHI). The course cannot be a self-study. CPR is not considered continuing education.

B. The board may audit any licensee's continuing education documentation for the current licensing year and the two (2) previous years.

[10-14-95; 16.16.10.12 NMAC - Rn, 16 NMAC 16.10.12, 03-15-2001; A, 03-22-2008; A, 07-06-2012; A, 06-25-2015]

HISTORY of 16.16.10 NMAC:

Pre-NMAC History: None

History of Repealed Material: [RESERVED]

Other History:

16 NMAC 16.10, Renewal Of New Mexico Optometry License, filed 9-21-95, renumbered and reformatted to 16.16.10 NMAC, Renewal Of New Mexico Optometry License, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 11 LICENSE EXPIRATION DUE TO NON-RENEWAL; REACTIVATION

16.16.11.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10/14/1995; 2/15/1999; 16.16.11.1 NMAC - Rn, 16 NMAC 16.11.1, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

16.16.11.2 SCOPE: Part 11 of Chapter 16 applies to licensees whose licenses have expired due to non-renewal and who wish to reactivate their license.
[10/14/1995; 16.16.11.2 NMAC - Rn, 16 NMAC 16.11.2, 3/15/2001, A, 3/15/2004]

16.16.11.3 STATUTORY AUTHORITY: The authority for Part 11 of Chapter 16 is Subsection D of 61-2-6 NMSA 1978; Subsection A of 61-2-11 NMSA 1978; and Section 61-2-12 NMSA 1978.
[10/14/1995; 16.16.11.3 NMAC - Rn, 16 NMAC 16.11.3, 3/15/2001]

16.16.11.4 DURATION: Permanent.
[10/14/1995; 16.16.11.4 NMAC - Rn, 16 NMAC 16.11.4, 3/15/2001]

16.16.11.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[10/14/1995; 10/15/1997; 16.16.11.5 NMAC - Rn, 16 NMAC 16.11.5, 3/15/2001; A, 3/15/2004]

16.16.11.6 OBJECTIVE: The objective of Part 11 of Chapter 16 is to set forth regulations on expiration of an optometry license due to non-renewal and the requirements for reactivation of the license. When a licensee fails to renew or reactivate an expired license after a certain time period and the license becomes null and void and lapses, the board requires a reapplication process to re-test the applicant for competence to practice the profession in New Mexico, ensuring continued competence and thereby protecting the health, safety, and welfare of the public.
[10/14/1995; 10/15/1997; 16.16.11.6 NMAC - Rn, 16 NMAC 16.11.6, 3/15/2001; A, 3/15/2004]

16.16.11.7 DEFINITIONS:

A. “Valid license” means a license that is subject to regulation by, and statutory authority of, the board.

B. “Active status” means the license is valid and current and that the licensee is authorized by the board to practice optometry in New Mexico.

C. “Expired status” means the license has not been renewed by the license expiration date in accordance with 16.16.11.8 NMAC, but is still under the statutory authority of the board for the period specified in 16.16.11.16 NMAC.

D. “Inactive status” means a New Mexico license that has been placed on non-working status in accordance with board rule 16.16.9 NMAC, provided the licensee is practicing in another state and is currently in good standing with that state.

E. “Null and void status” means an expired, retired, or inactive status license that has passed the time limitation set forth in 16.16.11.16 NMAC or 16.16.12.15 NMAC, or 16.16.9.16 NMAC, and is thus lapsed and cannot be reactivated.

F. “Lapsed status” means a license that is null and void.

G. “Retired status” means a license that has been withdrawn from active status at the request of the licensee because the licensee has retired from business and is no longer practicing optometry in any licensing jurisdiction, but which is still subject to the authority of the board for a period of five years after the license was placed on retired status as specified in 16.16.12.15 NMAC.

[10/14/1995; 16.16.11.7 NMAC - Rn, 16 NMAC 16.6.11.7, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

16.16.11.8 LICENSE EXPIRATION DUE TO NON-RENEWAL: Licenses not renewed on or before July 1, as set forth in 16.16.10.8 NMAC, shall be expired.
[10/14/1995; 16.16.11.8 NMAC - Rn, 16 NMAC 16.11.8, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

16.16.11.9 LATE PENALTY FEE: Licenses not renewed on or before July 1, as set forth in 16.16.10.8 NMAC, shall be subject to the required late penalty fee, as provided in 16.16.2.14 NMAC, in addition to the renewal fee, as provided in 16.16.2.13 NMAC.

[10/14/1995; 16.16.11.9 NMAC - Rn, 16 NMAC 16.11.9, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

16.16.11.10 [RESERVED]

[10/14/1995; 16.6.11.10 NMAC - Rn, 16 NMAC 16.11.10, 3/15/2001; Repealed, 3/15/2004]

16.16.11.11 LICENSE STATUS REPORTED: Licenses that expire or that are inactive, retired, revoked or suspended for any other reason, shall be reported by the board to the New Mexico board of pharmacy, as required by the Optometry Act; to other state or federal agencies as required; and to any other inquirer as requested.

[10/14/1995; 10/15/1997; 16.16.11.11 NMAC - Rn, 16 NMAC 16.11.11, 3/15/2001; A, 3/15/2004; A, 7/6/2012]

16.16.11.12 PRACTICE PROHIBITED:

A. An optometrist shall not practice optometry in the state of New Mexico while his or her license is expired; or while it is inactive, retired, revoked, suspended, or is otherwise invalid as provided in Subsection A of 61-2-14 NMSA 1978.

B. Any person who practices optometry in New Mexico without an active, current, and valid license is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions in Subsection A of Section 61-31-18 NMSA 1978, which states, "If a person is convicted of a non-capital felony, the basic sentence of imprisonment is as follows: for a fourth degree felony, 18 months' imprisonment."

C. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed five thousand dollars (\$5,000).

[10/14/1995; 10/15/1997; 16.16.11.12 NMAC - 16 NMAC 16.11.12, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012]

16.16.11.13 APPLICATION FOR REACTIVATION OF LICENSE: The licensee whose license is expired due to non-renewal, and who wishes to reactivate the license to active and current status, must apply for, and receive, approval by the board for reactivation of the license. The application for reactivation must be made on a reactivation form received from the board office, and must be accompanied by the following items:

A. proof of completion of a minimum of 22 hours of board-approved continuing education (see 16.16.13 NMAC) taken for each year the license was expired due to non-renewal, 22 of which must have been taken in the immediate preceding year;

B. verification directly from at least one of the applicant's other licensing jurisdiction(s) certifying that the licensee has been in active practice there during the time the license was in expired status due to non-renewal in New Mexico, unless the New Mexico license has only been in expired status for less than a year, in which case verification of licensure from another licensing jurisdiction is not necessary;

C. verification directly from the applicant's other licensing jurisdiction(s), as to the status of the license with respect to disciplinary actions if the New Mexico license is in expired status for more than a year, and provided that the licensee is licensed in other jurisdiction(s);

D. a reactivation fee in an amount totaling the renewal fees for each year the license was in expired status due to non-renewal; and

E. a one-time penalty fee in an amount totaling the penalty fees in 16.16.2.14 NMAC.

[10/14/1995, 10/15/1997; 16.16.11.13 NMAC - Rn, 16 NMAC 16.11.13, 3/15/2001; A, 3/15/2004; A, 3/22/2008; A, 7/6/2012; A, 5/29/2019]

16.16.11.14 REACTIVATION APPROVED: Upon receiving approval for license reactivation by the board, the applicant will receive a reactivated license to practice optometry in the state of New Mexico.

[10/14/1995, A, 10/15/1997; 16.16.11.14 NMAC - Rn, 16 NMAC 16.11.14, 3/15/2001; A, 3/15/2004]

16.16.11.15 REACTIVATION DENIED: An applicant whose application for reactivation has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

[10/14/1995; 16.16.11.15 NMAC - Rn, 16 NMAC 16.11.15, 3/15/2001; A, 3/15/2004]

16.16.11.16 TIME LIMITATION FOR REACTIVATION: The time limitation for reactivating a license that has been expired due to non-renewal is five years.

A. Licenses not reactivated within the time limitation specified shall become null and void (lapsed).

B. Null and void (lapsed) licenses may not be reactivated.

[10/15/1997; 16.16.11.16 NMAC - Rn, 16 NMAC 16.11.16, 3/15/2001; A, 3/15/2004]

16.16.11.17 APPLICATION FOR LICENSURE REQUIRED: In order to practice optometry in New Mexico, the optometrist whose New Mexico license has become null and void (lapsed) must complete the entire application process and meet all the licensure requirements in effect at the time of application, including re-examination by the board.

[10/15/1997; 16.16.11.17 NMAC - Rn, 16 NMAC 16.11.17, 3/15/2001; A, 3/15/2004]

HISTORY of 16.16.11 NMAC:

Pre-NMAC History: None

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.11, License Expiration; Revocation Due To Non-Renewal; Reactivation, filed 9/21/1995, renumbered and reformatted to 16.16.11 NMAC, License Expiration; Revocation Due To Non-Renewal; Reactivation, effective 3/15/2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 12 RETIREMENT AND REINSTATEMENT OF OPTOMETRY LICENSE

16.16.12.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.12.1 NMAC - Rn, 16 NMAC 16.12.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.12.2 SCOPE: Part 12 of Chapter 16 applies to all optometrists who wish to place their New Mexico licenses in retirement status.
[10-14-95; 16.16.12.2 NMAC - Rn, 16 NMAC 16.12.2, 03-15-2001]

16.16.12.3 STATUTORY AUTHORITY: The authority for Part 12 of Chapter 16 is NMSA 1978 Section 61-2-12 and 61-2-6.D. (2) (1995 Repl. Pamp.).
[11-20-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.12.3 NMAC - Rn, 16 NMAC 16.12.3, 03-15-2001]

16.16.12.4 DURATION: Permanent.
[10-14-95; 16.16.12.4 NMAC - Rn, 16 NMAC 16.12.4, 03-15-2001]

16.16.12.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[8-21-92...10-14-95, 10-15-97; 16.16.12.5 NMAC - Rn, 16 NMAC 16.12.5, 03-15-2001; A, 03-15-2004]

16.16.12.6 OBJECTIVE: The objective of Part 11 of Chapter 16 is to set forth the requirements and procedures for placing a New Mexico optometry license in retirement status and having it reinstated from retirement status.
[10-14-95; 16.16.12.6 NMAC - Rn, 16 NMAC 16.12.6, 03-15-2001]

16.16.12.7 DEFINITIONS: "Retired status" means a license that has been withdrawn from active status at the request of the licensee due to retirement provided the licensee is not practicing optometry in another jurisdiction. Such license is still subject to the board authority for five (5) years from the date the license is placed on retired status as specified in 16.16.12.15 NMAC.
[10-14-95; 16.16.12.7 NMAC - Rn, 16 NMAC 16.12.7, 03-15-2001, A, 03-15-2004; A 03-22-2008]

16.16.12.8 RETIREMENT OF LICENSE: Any optometrist who wishes to retire from practice shall notify the board, **in writing, prior to** the expiration date of his or her license.

A. If the licensee meets the time frame and continuing education requirements set forth in 16.16.12.8 NMAC, the license will be retired. The licensee's date of retirement will be recorded as the expiration date of that year in the minutes of the next regularly scheduled board meeting.

B. The optometrist shall be exempt from payment of the yearly renewal fees during the period of retirement.
[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.8 NMAC - Rn, 16 NMAC 16.12.8, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.12.9 PRACTICE PROHIBITED: During the period of retirement, the optometrist is prohibited from practicing optometry in the state of New Mexico.
[8-21-92; 6-24-94; 10-14-95; 16.16.12.9 NMAC - Rn, 16 NMAC 16.12.9, 03-15-2001]

16.16.12.10 NOTIFICATION OF INTENT TO REINSTATE LICENSE: Any optometrist who has retired as provided in 16.16.12.8 NMAC may, within five years from the date his/her license was retired, notify the board in writing of his/her desire to resume active practice. The applicant shall provide the following information.

- A.** The license number of the former license;
- B.** The applicant's full name;
- C.** The applicant's home address and phone number;
- D.** The date the applicant's license was originally issued; and
- E.** The date of the applicant's retirement.

[8-21-92; 6-24-94; 10-14-95; 16.16.12.10 NMAC - Rn, 16 NMAC 16.12.10, 03-15-2001]

16.16.12.11 REINSTATEMENT PROCESS: Upon receipt of the written request required in 16.16.12.10 NMAC, the board shall mail the applicant a reinstatement form stipulating the fees and the number of board-approved continuing education hours required for reactivation of his or her license.

A. The reactivation fee shall be the total of the renewal fees for each year the license was in retired status.

B. Continuing education shall be at the current requirement of board approved continuing education taken for each year during the retirement period, and the provisions set forth in Subsection A of 16.16.13.8 NMAC related to optometrists holding certification in ocular therapeutics will apply for each year in retired status.

C. Twenty-two (22) of those hours shall be taken during the year immediately preceding reactivation of the license. At least ten (10) of the twenty-two (22) hours must be in a board approved program in ocular therapeutic pharmacology.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.11 NMAC - Rn, 16 NMAC 16.12.11, 03-15-2001; A, 03-22-2008; A, 07-06-2012]

16.16.12.12 REINSTATEMENT APPLICATION REVIEW: The optometrist shall return the completed, signed, and notarized reinstatement form, the required fee, and copies of the continuing education proofs of attendance certificates to the board office.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.12 NMAC - Rn, 16 NMAC 16.12.12, 03-15-2001]

16.16.12.13 REINSTATEMENT APPROVED:

A. If the board finds the application in order and is satisfied that the applicant has fulfilled the requirements as specified, the board shall reinstate the applicant's license.

B. The retiree may not resume the practice of optometry until the reactivated license has been received from the board.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.13 NMAC - Rn, 16 NMAC 16.12.13, 03-15-2001]

16.16.12.14 INELIGIBILITY FOR REINSTATEMENT:

A. The retired optometrist will be ineligible for reinstatement if he or she is under investigation, is facing disciplinary proceedings, or has had a disciplinary action taken against his or her license in any jurisdiction while on retired status in New Mexico.

B. A retired optometrist whose application for reinstatement has been denied shall be afforded an opportunity for a hearing under Section 61-1-4 of the Uniform Licensing Act.

[8-21-92; 6-24-94; 10-14-95; 10-15-97; 16.16.12.14 NMAC - Rn, 16 NMAC 16.12.14, 03-15-2001]

16.16.12.15 TIME LIMITATIONS ON RETIREMENT STATUS: If application for reinstatement of the license is not made before the end of the five-year retirement or reinstatement period, the optometrist's New Mexico license shall Lapse. The optometrist must reapply to the board for licensure by examination. All application requirements as stated in Part 3 of 16.16 NMAC must be met.

[6-24-94; 10-14-95; 10-15-97; 16.16.12.15 NMAC - Rn, 16 NMAC 16.12.15, 03-15-2001]

HISTORY of 16.16.12 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 21, Board Rule No. 21 - Retirement And Reinstatement, filed 7-22-92.

NMBO Rule 21, Board Rule No. 21 - Retirement And Reinstatement, filed, 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.12, Retirement And Reinstatement Of Optometry License, filed 9-21-95, replaced NMBO Rule 21, Board Rule No. 21 - Retirement And Reinstatement.

16 NMAC 16.12, Retirement And Reinstatement Of Optometry License, filed 9-21-95, renumbered and reformatted to 16.16.12 NMAC, Retirement And Reinstatement Of Optometry License, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 13 CONTINUING EDUCATION

16.16.13.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 2-15-99; 16.16.13.1 NMAC - Rn, 16 NMAC 16.13.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.13.2 SCOPE: Part 13 of Chapter 16 applies to all optometrists intending to renew, reinstate, or reactivate their New Mexico license to practice optometry.
[10-14-95; 16.16.13.2 NMAC - Rn, 16 NMAC 16.13.2, 03-15-2001]

16.16.13.3 STATUTORY AUTHORITY: The authority for Part 13 of Chapter 16 is Section 61-2-12.C and Section 61-2-6.D. (2) NMSA 1978 (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.13.3 NMAC - Rn, 16 NMAC 16.13.3, 03-15-2001]

16.16.13.4 DURATION: Permanent.
[10-14-95; 16. 16.13.4 NMAC - Rn, 16 NMAC 16.13.4, 03-15-2001]

16.16.13.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...10-14-95; 10-15-97; 16.16.13.5 NMAC - Rn, 16 NMAC 16.13.5, 03-15-2001; A, 03-15-2004]

16.16.13.6 OBJECTIVE: The objective of Part13 of Chapter 16 is to set forth the requirements and procedures for the New Mexico licensed optometrist to meet the continuing education requirements for license renewal, reactivation, or reinstatement.
[10-14-95; 16.16.13.6 NMAC - Rn, 16 NMAC 16.13.6, 03-15-2001; A, 04-24-2014]

16.16.13.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.13.7 NMAC - Rn, 16 NMAC 16.13.7, 03-15-2001]

16.16.13.8 CONTINUING EDUCATION REQUIREMENTS: A minimum of 22 clock-hours of optometry related, board approved continuing education or postgraduate programs, are required for license renewal each year beginning July 1, as detailed below.

A. The continuing education shall be submitted as follows:
(1) at least 10 of the 22 hours of continuing education must be in a board approved program in clinical or ocular therapeutic pharmacology; and

(2) at least one of the 22 hours of continuing education must be in a board approved course in pain management or related topic pursuant to 16.16.15.11 NMAC. This requirement shall begin with the 2015 renewal period beginning July 2, 2014.

B. For optometrists on inactive status, a minimum of 10 hours of continuing education in a board approved program in clinical or ocular therapeutic pharmacology is required.

C. The continuing education must have been taken within the preceding renewal period (i.e. July 2 of one year through June 30 of the next).

D. The board may audit any licensee's continuing education documentation for the current licensing year and the two previous years.

E. A licensee who receives a notice of audit shall submit to the board office on or before July 1, unless otherwise specified, evidence of continuing education hours for the requested period.

F. A license will be placed on expired status if the licensee fails to meet the continuing education requirements for renewal by the expiration date stated in this rule.

G. Reactivation of license expired due to non-renewal for failure to meet the continuing education requirement. The licensee may apply for license reactivation in the same manner as provided in Part 11 of 16.16 NMAC. The continuing education and fees will be calculated based on the number of years the license was expired due to non-renewal for failure to meet the continuing education requirement.

H. Newly licensed optometrists who graduated from optometry school within the same year of licensure may submit the completed curriculum of their last year of optometry school to meet their continuing education requirement the first year of renewal.

[11-17-73; 2-6-87; 10-14-95; 10-15-97; 2-15-99; 16.16.13.8 NMAC - Rn, 16 NMAC 16.13.8, 03-15-2001; A, 03-

15-2004; A 03-22-2008; A, 07-06-2012; A, 04-24-2014; A, 03-02-2016; A, 05-29-2019]

16.16.13.9 APPROVED CONTINUING EDUCATION: All subjects of education must be directly related to optometry. The New Mexico board of optometry approves the following programs for continuing education credit, as well as those listed on the updated list available on the board's web site.

- A.** Any convention of the American optometric association (AOA).
 - B.** Any meeting of an American optometric association affiliated state or regional association meeting, or meeting of the armed forces optometric society (AFOS).
 - C.** Any session of the optometric extension program congress (OEPC).
 - D.** Any state seminar of the graduate clinic foundation of the optometric extension program.
 - E.** Courses sponsored by or given by accredited optometry schools.
 - F.** Courses sponsored by the following organizations.
 - (1) Optometric councils: mid-west, mountain west, southern, New England, southwest (SWCO).
 - (2) Optometric contact lens societies: southwest, southern, heart of America.
 - (3) Optometric congresses: southern, mountain states.
 - (4) Courses sponsored by the American academy of optometry.
 - (5) Courses approved by the council on optometric practice education (COPE) or courses approved by the New Mexico optometric association (NMOA).
 - G.** The certificates of attendance required by Subsection C of 16.16.13.8 NMAC shall be signed by the presiding officer or designee of the organization conducting or sponsoring the program and shall identify the therapeutic pharmaceutical agent (TPA) courses.
 - H.** Certificates of attendance for courses approved by COPE must have the COPE trademark and approval number.
 - I.** A maximum of six hours of internet-type course offerings, approved by COPE or any other board-approved sponsor, will be allowed for each annual renewal.
- [11-17-73; 2-6-87; 8-21-92; 10-14-95; 10-15-97; 16.16.13.9 NMAC - Rn, 16 NMAC 16.13.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012; A, 06-25-2015]

16.16.13.10 REQUESTS FOR APPROVAL OF OTHER CONTINUING EDUCATION PROGRAMS: All requests for approval of courses not covered by 16.16.13.9 NMAC shall be submitted to the board in writing by the **individual optometrist** before the program is attended.

- A.** The request shall be addressed to the board office and directed to the continuing education committee.
 - B.** Information such as the following will be required:
 - (1) The number of education hours to be completed.
 - (2) The organization sponsoring the program.
 - (3) The location and dates of the continuing education program.
 - (4) The names of the courses and the names of the instructors.
 - (5) Any other information deemed necessary.
 - C.** Approval will be determined by the continuing education committee chairman.
 - (1) If the continuing education committee chairman is uncertain of course qualification, approval or disapproval will be determined by the continuing education committee.
 - (2) The continuing education committee will make this determination in a timely manner, creating no hardships or delay to the requesting optometrist.
 - D.** If time does not permit, the approval or disapproval may be given verbally, but must always be followed by a written approval from the board.
 - E.** The board's written approval must accompany the licensee's renewal documentation at the time of renewal.
- [11-17-73; 2-6-87; 8-21-92; 10-14-95; 16.16.13.10 NMAC - Rn, 16 NMAC 16.13.10, 03-15-2001]

16.16.13.11 EXTENUATING CIRCUMSTANCES - DEFERRAL OR WAIVER CONTINUING EDUCATION REQUIREMENTS:

- A.** A licensee may request a deferral or waiver of continuing education or CPR certification requirements in writing, at least 30 days prior to the license's expiration, should any of the following occur:
 - (1) licensee experiences prolonged debilitating illness; or

(2) one of licensee's immediate family members suffers prolonged debilitating illness; or
(3) licensee is called to active duty by the national guard, any branch of the United States armed forces, or other recognized public service.

B. The written request for deferral or waiver shall contain an explanation of the underlying circumstance and shall include documentation in support of the request. At its discretion, the board may grant the request or variance.

[16.16.13.11 NMAC - N, 03-10-2005; A, 03-22-2008; A, 07-06-2012]

HISTORY of 16.16.13 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 6 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

NMBO Rule 6, Board Rule No. 6 - Continuing Education, filed 1-17-87.

NMBO Rule 7, Board Rule No. 7 - Continuing Education, filed 7-22-92.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.13, Continuing Education, filed 9-21-95, replaced that relevant portion of NMBO Rule 6, Board Rule No. 6 - Continuing Education and NMBO Rule 7, Board Rule No. 7 - Continuing Education.

16 NMAC 16.13, Continuing Education, filed 9-21-95, renumbered and reformatted to 16.16.13 NMAC, Continuing Education, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 14 DUPLICATE AND REPLACEMENT LICENSES

16.16.14.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.14.1 NMAC - Rn, 16 NMAC 16.14.1, 03-15-2001; A, 07-06-2012]

16.16.14.2 SCOPE: Part 14 of Chapter 16 applies to all New Mexico licensed optometrists requiring a duplicate or replacement license and/or certificate.
[10-14-95; 16.16.14.2 NMAC - Rn, 16 NMAC 16.14.2, 03-15-2001]

16.16.14.3 STATUTORY AUTHORITY: The authority for Part 14 of Chapter 16 is NMSA 1978, Section 61-2-6.D. (2) (1995 Repl. Pam.).
[8-21-92; 6-24-94; 10-14-95; 16.16.14.3 NMAC - Rn, 16 NMAC 16.14.3, 03-15-2001]

16.16.14.4 DURATION: Permanent.
[10-14-95; 16.16.14.4 NMAC - Rn, 16 NMAC 16.14.4, 03-15-2001]

16.16.14.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[8-21-92...10-14-95; 16.16.14.5 NMAC - Rn, 16 NMAC 16.14.5, 03-15-2001; A, 07-06-2012]

16.16.14.6 OBJECTIVE: The objective of Part 14 of Chapter 16 is to set forth the requirements and procedures for the licensee to request and receive a duplicate or replacement license and/or certificate.
[10-14-95; 16.16.14.6 NMAC - Rn, 16 NMAC 16.14.6, 03-15-2001]

16.16.14.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.14.7 NMAC - Rn, 16 NMAC 16.14.7, 03-15-2001]

16.16.14.8 LICENSE LOST OR DESTROYED: In the event a license is lost or destroyed, the Board shall issue a duplicate license upon receipt of the following:
 A. Notice of the loss; and
 B. Fee(s) in an amount provided by law or regulation (See 16.16.2.15 and 16.16.2.16 NMAC).
[8-21-92; 10-14-95; 16.16.14.8 NMAC - Rn, 16 NMAC 16.14.8, 03-15-2001]

16.16.14.9 LEGAL NAME CHANGE: If a licensee requests a new license to be compatible with a legal name change, the Board may issue a new license or certificate upon receipt of the following:
 A. The old license;
 B. Proof of name change; and
 C. Fee(s) in an amount provided by law or regulation 16.16.2.15 and 16.16.2.16 NMAC.
[8-21-92; 10-14-95; 16.16.14.9 NMAC - Rn, 16 NMAC 16.14.9, 03-15-2001]

HISTORY of 16.16.14 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 19, Board Rule No. 19 - Duplicate/Replacement Licenses Or Certificates, filed 7-22-92.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.14, Duplicate And Replacement Licenses, filed 9-21-95, replaced NMBO Rule 19, Board Rule No. 19 - Duplicate/Replacement Licenses Or Certificates.

16 NMAC 16.14, Duplicate And Replacement Licenses, filed 9-21-95, renumbered and reformatted to 16.16.14 NMAC, Duplicate And Replacement Licenses, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 15 MANAGEMENT OF PAIN WITH CONTROLLED SUBSTANCES

16.16.15.1 ISSUING AGENCY: New Mexico Board of Optometry.
[16.16.15.1 NMAC - N, 04-24-2014]

16.16.15.2 SCOPE: The provisions in Part 15 of Chapter 16 apply to all New Mexico licensed optometrists.
[16.16.15.2 NMAC - N, 04-24-2014]

16.16.15.3 STATUTORY AUTHORITY: Part 15 of Chapter 16 is promulgated pursuant to and in accordance with the Optometry Act, Section 61-2-3, NMSA 1978 and the Pain Relief Act, Sections 24-2D-1 through 24-2D-1-6, NMSA 1978.
[16.16.15.3 NMAC - N, 04-24-2014]

16.16.15.4 DURATION: Permanent.
[16.16.15.4 NMAC - N, 04-24-2014]

16.16.15.5 EFFECTIVE DATE: April 24, 2014, unless a later date is cited at the end of a section.
[16.16.15.5 NMAC - N, 04-24-2014]

16.16.15.6 OBJECTIVE: The objective of Part 15 of Chapter 16 is to set forth rules related to the prescribing and dispensing of controlled substances. It is the position of the board that optometrists have an obligation to treat pain, and that a wide variety of drugs including controlled substances may be prescribed for that purpose. When such controlled substances are used, they should be prescribed in adequate doses and for the appropriate length of time after a thorough evaluation has been completed.
[16.16.15.6 NMAC - N, 04-24-2014]

16.16.15.7 DEFINITIONS:

A. “Addiction” means a neurobehavioral syndrome with genetic and environmental influences that result in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving.

B. “Acute pain” means the normal, predicted physiological response to a noxious chemical or thermal or mechanical stimulus, typically associated with invasive procedures, trauma or disease and is generally time-limited.

C. “Chronic pain” means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. “Chronic pain” does not, for purpose of the Pain Relief Act requirements, include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.

D. “Clinical expert” means a person who, by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

E. “Drug abuser” means a person who takes drugs or controlled substances for other than legitimate purposes.

F. “Pain” means acute or chronic pain or both.

G. “Physical dependence” means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

H. “Prescription monitoring program (PMP)” means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data is used to support efforts in education, research, enforcement, and abuse prevention.

I. “Therapeutic purpose” means the use of pharmaceutical and non-pharmaceutical treatment that conforms substantially to accepted guidelines for pain management.

J. “**Tolerance**” means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time.
[16.16.15.7 NMAC - N, 04-24-2014]

16.16.15.8 GUIDELINES: The following regulations shall be used by the board to determine whether an optometrist’s prescriptive practices are consistent with the appropriate treatment of pain.

A. The treatment of pain with drugs or controlled substances is a legitimate optometric practice when accomplished in the usual course of professional practice. It does not preclude treatment of patients with addiction, physical dependence or tolerance, who have legitimate pain. However, such patients do require very close monitoring and precise documentation.

B. The prescribing, ordering, administering or dispensing of controlled substances to meet the individual needs of the patient for management of chronic pain is appropriate if prescribed, ordered, administered or dispensed in compliance with the following:

(1) An optometrist shall complete an evaluation. The medical history shall include any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of a medical indication for or contra-indication against the use of controlled substance.

(2) An optometrist shall be familiar with and employ screening tools as appropriate, as well as the spectrum of available modalities, in the evaluation and management of pain. The optometrist shall consider an integrative approach to pain management.

(3) A written treatment plan shall be developed and tailored to the individual needs of the patient, taking age, gender, culture, and ethnicity into consideration, with stated objectives by which treatment can be evaluated, e.g. by degree of pain relief, improved physical and psychological function, or other accepted measure. Such a plan shall include a statement of the need for further testing, consultation, referral or use of other treatment modalities.

(4) The optometrist shall discuss the risks and benefits of using controlled substances with the patient, his surrogate or guardian, and shall document this discussion in the record.

(5) Complete and accurate records of care provided and drugs or controlled substances prescribed shall be maintained. When controlled substances are prescribed, the name of the drug, quantity, prescribed dosage and number of refills authorized shall be recorded. Prescriptions for controlled substances shall include indications for use.

(6) The management of patients needing chronic pain control requires monitoring by the optometrist. The optometrist shall periodically review the course of treatment for chronic pain, the patient’s state of health, and any new information about the etiology of the chronic pain at least every six months. Chronic pain patients shall receive all chronic pain management prescriptions from one optometrist and one pharmacy whenever possible.

(7) In addition, an optometrist shall consult, when indicated by the patient’s condition, with health care professionals who are experienced in the area of chronic pain control; such professionals need not be those who specialize in pain control.

(8) If, in an optometrist’s opinion, a patient is seeking pain medication for reasons that are not medically justified, the optometrist is not required to prescribe controlled substances for the patient.

C. The board will evaluate the quality of care on the following basis: appropriate diagnosis and evaluation; appropriate indication for the treatment prescribed; documented change or persistence of the recognized indication; and, follow-up evaluation with appropriate continuity of care. The board will judge the validity of prescribing based on the optometrist’s treatment of the patient and on available documentation, rather than on the quantity and chronicity of prescribing. The goal is to control the patient’s pain for its duration while effectively addressing other aspects of the patient’s functioning, including physical, psychological, social, and work-related factors.

D. The board will review both over-prescription and under-prescription of pain medications using the same standard of patient protection.

E. An optometrist who appropriately prescribes controlled substances and who follows this section would be considered to be in compliance with this rule and not be subject to discipline by the board, unless there is some violation of the Optometry Act or board rules.

[16.16.15.8 NMAC - N, 04-24-2014]

16.16.15.9 OPTOMETRISTS TREATED WITH CONTROLLED SUBSTANCES: Optometrists who have chronic pain and are being treated with controlled substances shall be evaluated by a pain clinic, an M.D. or D.O. pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in practice. In addition, they must remain under the care of a physician for as long as they remain on controlled substances while continuing to practice.
[16.16.15.9 NMAC - N, 04-24-2014]

16.16.15.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS: The intent of the New Mexico (NM) board of optometry in requiring participation in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

A. Any licensed NM optometrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. A licensed NM optometrist may authorize delegate(s) to access the PMP report consistent with board of pharmacy regulation 16.19.29 NMAC and document the receipt and review of a report in the patient's medical record.

C. Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, or IV to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substances for 30 days or more, the practitioner shall review a PMP report for the patient for preceding 12 months and document the review and receipt of the reports in the patient's medical record.

D. A PMP report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, or IV for each patient and document these reports in the patient's medical record.

E. A practitioner does not have to obtain and review a PMP report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, or IV:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

F. Upon review of a PMP report for a patient, the practitioner shall identify and be aware of patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than 12 consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day; or
- (6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such

as over-utilization, requests to fill early, request for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

G. Upon recognizing any of the above conditions described in Paragraph F, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems of risks that may result in opioid misuse, abuse or overdose. These steps may involve prescription and training for naloxone.

[16.16.15.10 NMAC - N, 04-24-2014; A, 03-02-2016; A, 03-10-2017]

16.16.15.11 PAIN MANAGEMENT CONTINUING EDUCATION: This section applies to all New Mexico optometrists who hold a federal drug enforcement administration registration to prescribe controlled substances. Pursuant to the Pain Relief Act in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

A. This requirement is effective for the 2015 renewal period beginning July 2, 2014. No later than July 1, 2015 all board licensees shall have completed at least one continuing education hour in a course that shall cover topics related to pain management, pharmacology and risks of controlled substances, state and federal regulations for the prescription of controlled substances, or awareness of the problems of abuse, addiction and diversion as stated in 16.16.13.9 NMAC.

B. The continuing education courses are subject to prior board approval and shall count toward the total continuing education requirements as set forth in 16.16.13.9 NMAC.

[16.16.15.11 NMAC - N, 04-24-2014]

16.16.15.12 NOTIFICATION: In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 4, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 15 of the New Mexico optometry board rule;

- A. health care practitioners under its jurisdiction; and
- B. a health care practitioner being investigated by the board in relation to the practitioner's pain management services.

[16.16.15.12 NMAC - N, 04-24-2014]

HISTORY of 16.16.15 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 16 PRACTICE LOCATION; OWNERSHIP; PATIENT MEDICAL RECORDS RETENTION

16.16.16.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 2-15-99; A, 6-26-00; 16.16.16.1 NMAC - Rn, 16 NMAC 16.16.1, 03-15-2001; A, 07-06-2012]

16.16.16.2 SCOPE: Part 16 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.
[10-14-95; 16.16.16.2 NMAC - Rn, 16 NMAC 16.16.2, 03-15-2001]

16.16.16.3 STATUTORY AUTHORITY: The authority for Part 16 of Chapter 16 is NMSA 1978, Section 61-2-14.B. (7) and Section 61-2-6.D. (2) (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 2-15-99; 16.16.16.3 NMAC - Rn, 16 NMAC 16.16.3, 03-15-2001]

16.16.16.4 DURATION: Permanent.
[10-14-95; 16.16.16.4 NMAC - Rn, 16 NMAC 16.16.4, 03-15-2001]

16.16.16.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[6-24-94...10-14-95; 10-15-97; 16.16.16.5 NMAC - Rn, 16 NMAC 16.16.5, 03-15-2001, A, 03-15-2004]

16.16.16.6 OBJECTIVE: The objective of Part 16 of Chapter 16 is to set forth the requirements related to practice location, ownership, leasing arrangements, purchase of practice, and so forth.
[10-14-95; 16.16.16.6 NMAC - Rn, 16 NMAC 16.16.6, 03-15-2001]

16.16.16.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.16.7 NMAC - Rn, 16 NMAC 16.16.7, 03-15-2001]

16.16.16.8 LOCATION OF PRACTICE:

A. In accordance with the provisions of Section 61-2-14.B of the Optometry Act, an optometrist is prohibited from selling prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

B. For purposes of this rule, an optometrist may engage in the sale of contact lenses or prescription eyeglasses from a space located adjacent to an establishment as set out in Subsection A provided the space is separated from the commercial establishment by solid, opaque partitions or walls from floor to ceiling.

C. The space referred to in this rule shall also have a separate entrance for patient access to the optometrist's practice from a public street, hall, lobby, corridor or shopping mall, or other public thoroughfare.

D. Repealed.

E. This rule supersedes all previous rules regarding the location of an optometric practice. Existing facilities operating on June 24, 1994, the effective date of this rule shall be exempted from the provisions of Subsection B of 16.16.16.8 NMAC.
[11-17-73; 12-6-87; 8-21-92; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.16.8 NMAC - Rn, 16 NMAC 16.16.8, 03-15-2001; A, 03-15-2004; A 03-22-2008]

16.16.16.9 [RESERVED]

16.16.16.10 PURCHASE OF AN ESTABLISHED PRACTICE:

A. Upon the purchase or assumption of another optometrist's practice, the identification of the other optometrist's name with the practice shall be limited to a maximum period of four years.

B. Upon the death or permanent disability of a New Mexico licensed optometrist, the surviving spouse or estate of the optometrist may contract optometric services or employ a New Mexico licensed optometrist for a period not to exceed thirty-six (36) months from the time of death or permanent disability.

C. The surviving spouse or estate of the optometrist must file, with the New Mexico Board of Examiners in Optometry, an affidavit stating that the practice will be operated within the provisions of the Optometry Act, the Board's Rules and Regulations, and Board policies. Violations will result in the suspension of

the thirty-six month period.

[11-17-73; 6-24-94; 10-14-95; 16.16.16.10 NMAC - Rn, 16 NMAC 16.16.10, 03-15-2001]

16.16.16.11 PATIENT RECORDS MANAGEMENT:

A. Optometrists shall retain medical records they own for a period of at least five (5) years from the date of last treatment.

B. Thirty (30) days before the closing, selling, relocation or leaving of a practice an optometrist shall notify the board office and patients seen within the last five (5) years. Notices will be given pursuant to Subsection C of this section.

C. Notification shall be satisfied using any of the following methods:

(1) publication of at least one notice in a local newspaper, twice a month for a period of three months; notice should indicate how to obtain patient records and contact information for the individual with access to the patient records;

(2) written or electronic mail; or

(3) individual correspondence to the patient's last known physical or electronic mailing address.

[16.16.16.11 NMAC - N, 07-06-2012]

HISTORY of 16.16.16 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 3 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

NMBO Rule 3, Board Rule No. 3 - Location of Practice, filed 7-22-92.

NMBO Rule 9, Board Rule No. 9 - Purchase of Established Practice, filed 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.16, Practice Location; Ownership, filed 9-21-95, replaced that relevant portion of NMBO Rule 3, Board Rule No. 3 - Location of Practice, and NMBO Rule 9, Board Rule No. 9 - Purchase of Established Practice.

16 NMAC 16.16, Practice Location; Ownership, filed 9-21-95, was renumbered and reformatted to 16.16.16 NMAC, Practice Location; Ownership, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 17 ADVERTISING

16.16.17.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.17.1 NMAC - Rn, 16 NMAC 16.17.1, 03-15-2001; A, 07-06-2012]

16.16.17.2 SCOPE: Part 17 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.
[10-14-95; 16.16.17.2 NMAC - Rn, 16 NMAC 16.17.2, 03-15-2001]

16.16.17.3 STATUTORY AUTHORITY: The authority for Part 17 of Chapter 16 is NMSA 1978 Section 61-2-13; Section 61-2-14; and Section 61-2-6.D and J. (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.17.3 NMAC - Rn, 16 NMAC 16.17.3, 03-15-2001]

16.16.17.4 DURATION: Permanent.
[10-14-95; 16.16.17.4 NMAC - Rn, 16 NMAC 16.17.4, 03-15-2001]

16.16.17.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...10-14-95; 10-15-97; 16.16.17.5 NMAC - Rn, 16 NMAC 16.17.5, 03-15-2001; A, 07-06-2012]

16.16.17.6 OBJECTIVE: The objective of Part 17 of Chapter 16 is to set forth the requirements governing the advertising of optometric services, procedures, and ophthalmic materials in the State of New Mexico.
[10-14-95; 16.16.17.6 NMAC - Rn, 16 NMAC 16.17.6, 03-15-2001]

16.16.17.7 DEFINITIONS: [RESERVED]
[10-14-95; 16.16.17.7 NMAC - Rn, 16 NMAC 16.17.7, 03-15-2001]

16.16.17.8 UNPROFESSIONAL CONDUCT IN ADVERTISING: In accordance with NMSA 1978, Section 61-2-13.D and J (1995 Repl. Pamp.), the board may refuse to issue, suspend or revoke any license for advertising by means of knowingly false, misleading or deceptive statements or advertising. Any such action constitutes unprofessional conduct.

A. No optometrist shall use, participate in, or permit the use of his/her name in any form of public communication which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim related to the optometrist's examinations or professional services, eye glasses, ophthalmic lenses or frames, contact lenses, specific procedures, or ophthalmic devices.

B. Any advertisement which states the price on ophthalmic materials including, but not limited to, eyeglasses, spectacles, lenses, frames or mountings, shall affirmatively disclose whether the price includes eye examination services. All disclosures must be in type no smaller than ten (10) point type.

C. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but is not limited to, a statement or claim which:

(1) contains a misrepresentation of fact; or
(2) is likely to mislead or deceive because it fails to make full disclosure of relevant facts; or
(3) represents that professional services can or will be competently performed for a stated fee when this is not the case, or makes representations with respect to fees for professional services that do not disclose all variables affecting the fees that will, in fact, be charged; or

(4) contains other representations or implications that in reasonable probability will cause an ordinary prudent person to misunderstand or be deceived.

D. Any advertisement of the price of any ophthalmic lens which does not meet the American national standards institute specifications, or which is purchased by the optometrist from a manufacturer or wholesaler who does not warrant that the lens meets the standards of the American national standards institute and has not been tested by the optometrist or has been tested and does not meet such standards, shall contain the statement: "Does not meet the American national standards institute Specification for the first quality prescription ophthalmic lenses." This statement shall not be abbreviated in any way.

[11-17-80; 6-24-94; 10-14-95; 16.16.17.8 NMAC - Rn, 16 NMAC 16.17.8, 03-15-2001]

16.16.17.9 ADVERTISEMENTS:

A. An optometrist may place advertisements in the yellow pages of the telephone directory. The advertisement must state the following information as provided in Section 57-21-3 of the Advertisement of Health Care Services Act:

- (1) the optometrist's name;
- (2) address and telephone number of the optometrist's practice location; and
- (3) the designation of the profession in which the optometrist is licensed to practice: O.D., optometrist, doctor of optometry, or optometric physician, as provided in Subsection C of this rule.

B. The advertisement may also describe the nature of the optometrist's practice such as, but not limited to, visual analysis, refraction, and eye examination.

C. New Mexico licensed optometrists shall be allowed to use the designation of "optometric physician" in their advertisements. The advertisement may be placed under the "physicians" title in the yellow pages under the following conditions:

- (1) The optometrist identifies his professional designation in his advertisement, and
- (2) The title heading does not limit the advertisement specifically. For instance: "physicians M.D." limits the section only to M.D.s; "physicians - M.D., ophthalmologists" limits the section only to M.D.s and/or ophthalmologists.

[11-17-73; 11-7-80; 6-24-94; 10-14-95; 10-15-97; A, 6-26-00; 16.16.17.9 NMAC - Rn, 16 NMAC 16.17.9, 03-15-2001; A, 03-02-2016]

HISTORY of 16.16.17 NMAC:**Pre-NMAC History:**

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 5 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

Rule No. 5 - Advertising, filed 8-21-80.

Rule No. 13 - Advertising, Ophthalmic Materials, filed 10-8-80.

NMBO Rule 13 - Advertising, filed 5-25-94.

Rule No. 14 - Advertising, Ophthalmic Frames, Temples, Lenses And/Or Artificial Eyes, filed 10-8-80.

Rule No. 15 - Advertising, Ophthalmic Services, filed 10-8-80.

Rule No. 16 - Advertising, Contact Lenses, filed 10-8-80.

Rule No. 5 - Advertising, filed 5-22-81

NMBO Rule 5 - Advertising, filed 1-7-87.

NMBO Rule 13 - Advertising, filed 5-25-94

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.17, Advertising, filed 9-21-95, replaced that relevant portion of NMBO Rule 13, Advertising.

16 NMAC 16.17, Advertising, filed 9-21-95, was renumbered and reformatted to 16.16.17 NMAC, Advertising, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 18 IN-OFFICE MINOR SURGICAL PROCEDURES

16.16.18.1 ISSUING AGENCY: New Mexico Board of Optometry.
[16.16.18.1 NMAC - N, 03-22-2008; A, 07-06-2012]

16.16.18.2 SCOPE: Provisions of Part 18 of Chapter 16 applies to all New Mexico licensed optometric physicians practicing in New Mexico.
[16.16.18.2 NMAC - N, 03-22-2008]

16.16.18.3 STATUTORY AUTHORITY: The authority for Part 18 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-2.A (3).
[16.16.18.3 NMAC - N, 03-22-2008]

16.16.18.4 DURATION: Permanent.
[16.16.18.4 NMAC - N, 03-22-2008]

16.16.18.5 EFFECTIVE DATE: March 22, 2008, unless a later date is cited at the end of a section.
[16.16.18.5 NMAC - N, 03-22-2008]

16.16.18.6 OBJECTIVE: The objective of Part 18 of Chapter 16 is to convey which in-office minor surgical procedures New Mexico optometric physicians are authorized to perform.
[16.16.18.6 NMAC - N, 03-22-2008]

16.16.18.7 DEFINITIONS:

- A. “Board”** means the New Mexico board of optometry herein referred to as the board.
 - B. “Optometric physician”** means an optometrist who administers pharmaceutical medications in the diagnosis, treatment and management of ocular diseases as provided in 16.16.7.11 NMAC.
- [16.16.18.7 NMAC - N, 03-22-2008; A, 07-06-2012; A, 03-02-2016]

16.16.18.8 MINOR SURGICAL PROCEDURES: A New Mexico optometric physician can use surgery or injections to correct and relieve the following types of abnormalities of the human eye and its adnexa. The following types of in-office minor surgical procedures are allowed:

- A. non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;**
- B. probing, dilation, irrigation or closure of the tear drainage structures or the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;**
- C. removal of nonpenetrating foreign bodies from the cornea, conjunctiva and eyelid;**
- D. non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias; and**
- E. removal of eyelashes.**

[16.16.18.8 NMAC - N, 03-22-2008]

HISTORY of 16.16.18 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 19 CONTACT LENSES

16.16.19.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.19.1 NMAC - Rn, 16 NMAC 16.19.1, 03-15-2001; A, 07-06-2012]

16.16.19.2 SCOPE: Part 19 of Chapter 16 applies to all optometrists licensed by the Board and practicing in New Mexico.
[10-14-95; 16.16.19.2 NMAC - Rn, 16 NMAC 16.19.2, 03-15-2001]

16.16.19.3 STATUTORY AUTHORITY: The authority for Part 19 of Chapter 16 is NMSA 1978, Section 61-2-2; Section 61-2-4; Section 61-2-14; and 61-2-6.D. (2) (1995 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.19.3 NMAC - Rn, 16 NMAC 16.19.3, 03-15-2001]

16.16.19.4 DURATION: Permanent.
[10-14-95; 16.16.19.4 NMAC - Rn, 16 NMAC 16.19.4, 03-15-2001]

16.16.19.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[6-24-94...10-14-95; 16.16.19.5 NMAC - Rn, 16 NMAC 16.19.5, 03-15-2001; A, 07-06-2012]

16.16.19.6 OBJECTIVE: The objective of Part 19 of Chapter 16 is to set forth regulations on contact lens prescription release.
[10-14-95; 16.16.19.6 NMAC - Rn, 16 NMAC 16.19.6, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.7 DEFINITIONS:

A. “Replacement contact lens prescription” means a prescription prepared by a licensed optometrist containing the information specified in Section 11 of this rule and written expressly for the purpose of providing contact lenses that have already been properly fitted.

B. “Appropriate follow-up care” is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient.
[10-14-95; 16.16.19.7 NMAC - Rn, 16 NMAC 16.19.7, 03-15-2001; A, 03-15-2004]

16.16.19.8 RELEASE OF CONTACT LENS PRESCRIPTION: [RESERVED]
[6-24-94; 10-14-95; 16.16.19.8 NMAC - Rn, 16 NMAC 16.19.8, 03-15-2001; A, 6-08-01; Repealed, 03-15-2004]

16.16.19.9 CONTACT LENS EXAMINATION AND FOLLOW-UP FITTING REQUIRED:

A. No optometrist will prescribe contact lenses for a patient unless he/she has personally examined and fitted the contact lenses to the eyes of the patient at the optometrist’s place of practice.

B. A replacement contact lens prescription is deemed to be determined after a refraction, eye health examination, diagnostic contact lens fitting, instruction on care/maintenance procedures, and appropriate follow-up care (16.16.19.7.B NMAC) have been performed.

C. [RESERVED]

D. No optometrist may write a replacement contact lens prescription until the procedures in Subsections A and B of this rule have been performed (see 16.16.19.9 NMAC).

E. No optometrist may write a contact lens prescription for a patient whose eye health would be compromised through wearing contact lenses.

F. If, in the professional opinion of the optometrist, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the optometrist may terminate his/her care of that patient. The optometrist shall notify the patient in writing that the optometrist is terminating care and shall state his/her reason for doing so.

[6-24-94; 10-14-95; 16.16.19.9 NMAC - Rn, 16 NMAC 16.19.9, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.10 CONTACT LENS POLICIES AND PROCEDURES:

A. All contact lenses used in the determination of a contact lens prescription are considered to be

diagnostic lenses, and the use of such lenses by anyone other than a licensed optometrist or physician, or person under the direct supervision of a licensed optometrist or physician, shall constitute the practice of optometry.

B. Any New Mexico licensed optometrist who dispenses contact lenses will observe the following provisions:

- (1) maintain regular office hours and be physically accessible to the patient;
- (2) be actively interacting with the patient's professional care designed to detect disease, prevent infection due to patient and/or product variability;
- (3) provide eye examinations and/or contact lens related office visits; and
- (4) require a valid replacement contact lens prescription signed by the prescribing doctor.

[6-24-94; 10-14-95; 16.16.19.10 NMAC - Rn, 16 NMAC 16.19.10, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.11 REPLACEMENT CONTACT LENS PRESCRIPTION:

A. The licensed optometrist shall ensure that each replacement contact lens prescription that he/she prescribes contains all the ordering and fabrication specifications necessary for the proper duplication of the patient's current prescription; and shall include the following:

- (1) date of issue;
- (2) name and address of the patient;
- (3) name, professional designation, address, and signature of the prescribing optometrist;
- (4) all parameters including, but not limited to, lens size and type, base curve, power, diameter, brand name, materials type, required to properly duplicate or replace the contact lens supply;
- (5) a specific date of expiration, of not more than twenty-four months from the time the patient was first examined, unless, in the professional opinion of the optometrist, a shorter expiration date is in the best interest of the patient;
- (6) any limitation on refills and notification of scheduled follow-up visits and recommended lens replacement interval; and
- (7) an explicit statement that the prescription is a replacement contact lens prescription.

B. The replacement contact lens prescription may contain the following items:

- (1) a specific statement noting that any person, firm, or corporation that dispenses or sells contact lenses from the prescription should inform the patient in writing of the following:
 - (a) that the patient should return to the prescribing optometrist to ascertain the accuracy and suitability of the contact lenses; and
 - (b) that the prescribing optometrist or physician shall not be responsible for any damage or injury resulting from negligence of third parties to include, but not be limited to, negligence in packaging, manufacturing, substitution, improper care regimen or recommendations (i.e. cleaning, disinfection, and wetting) or instructions provided by the seller that lead to over-wear of the contact lenses or improper care of contact lenses that result in damage to the lenses or the visual system, or change of the parameters of the contact lens, or filling the prescription after the expiration date;
- (2) notice that the contact lens dispenser shall not adapt, substitute, or change the contact lens prescription, including brand name or specific material types, without prior authorization from the prescribing optometrist or physician, because to do so would constitute the practice of optometry;
- (3) the words "OK for contact lens", "fit with contact lenses", or similar wording, do not constitute a contact lens prescription;
- (4) a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented in the patient's records; and
- (5) wearing guidelines and/or specific instructions for use of the contact lenses by the patient.

[6-24-94, 10-14-95; A, 6-26-00; 16.16.19.11 NMAC - Rn, 16 NMAC 16.19.11, 03-15-2001; A, 6-08-01; A, 03-15-2004]

16.16.19.12 TERM OF PRESCRIPTION: An optometrist may not issue a contact lens prescription that expires before the second anniversary of the date the patient's prescription parameters were determined, unless a shorter prescription period was clinically indicated by the patient's ocular health or by potential harm to the patient's ocular health.

[16.16.19.12 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.13 SHORT-TERM PRESCRIPTION: If an optometrist writes a contact lens prescription for a

period of less than two years, the optometrist shall complete the following:

- A.** give the patient a verbal explanation, at the time of the action, of the reason for the action; and
- B.** maintain a written explanation of the reason in the patient's records.

[16.16.19.13 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.14 EXTENSION OF PRESCRIPTION: An optometrist may extend a patient's contact lens prescription expiration date without completing another eye examination if the optometrist deems it clinically indicated, and the reason shall be noted in the patient's records.

[16.16.19.14 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.15 RELEASE OF REPLACEMENT CONTACT LENS PRESCRIPTION; TIMING:

A. An optometrist who performs an eye examination and fits a patient for contact lenses shall prepare and provide the patient or anyone who is designated to act on behalf of the patient, with a replacement contact lens prescription when the patient's contact lens fitting has been completed.

B. Optometrists shall display, in a prominent location in their office(s), a sign to inform their patients that they have a right to a copy of their replacement contact lens prescription.

C. The optometrist shall provide the patient with a copy of the replacement contact lens prescription as long as the prescription is valid. The replacement copy will still show the original expiration date.

D. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

[16.16.19.15 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.16 LIMITATIONS ON, OR REFUSAL TO GIVE REPLACEMENT CONTACT LENS PRESCRIPTION:

A. An optometrist may exclude categories of contact lenses from a replacement contact lens prescription if the exclusion is clinically indicated.

B. An optometrist may refuse to provide a replacement contact lens prescription to a patient if:

- (1) the patient's ocular health presents a contraindication for contact lenses;
- (2) the refusal is warranted due to potential harm to the patient's ocular health;
- (3) the patient has a medical condition indicating that:
 - (a) the patient's ocular health would be damaged if the prescription were released to the

patient; or

- (b) further monitoring of the patient is needed;

(4) the request is made after the second anniversary of the date of the patient's last contact lens/eye examination.

C. If an optometrist refuses to give a patient his or her replacement contact lens prescription for any reason permitted under Subsection B of 16.16.19.16 NMAC, the optometrist must do the following:

- (1) give the patient a verbal explanation of the reason for the action at the time of the action; and
- (2) record and maintain, in the patient's records, a written explanation of the reasons given for

refusal.

D. Subsection B of 16.16.19.16 NMAC does not prohibit an optometrist from giving a patient the patient's replacement contact lens prescription.

[16.16.19.16 NMAC - N, 6-08-01; A, 03-15-2004]

16.16.19.17 COMPLIANCE REQUIRED; VIOLATION PENALTIES:

A. A person or entity who is not a licensed optometrist or a licensed physician cannot sell or dispense replacement contact lenses unless registered with the New Mexico board of pharmacy. Pharmacies, hospitals and clinics licensed by the board of pharmacy are exempt from this rule.

B. Failure of an optometrist to comply with the provisions of this rule, 16.16.19 NMAC, shall be considered unprofessional and unethical conduct, and shall be dealt with in accordance with the appropriate provisions of Part 21 and Part 22 of 16.16.19 NMAC.

C. Adapting, substituting, or changing the contact lens prescription, including specified material types, without prior authorization from the prescribing doctor, constitutes the practice of optometry.

D. Practicing optometry without a license is a fourth degree felony violation punishable upon conviction as provided in the Criminal Code.

E. The board of optometry may impose a civil fine or no more than one thousand (\$1,000) on a licensed optometrist who fails to provide a requested replacement contact lens prescription; or who knowingly dispenses contact lenses without a valid replacement contact lens prescription; or who otherwise fails to comply with the provisions of this rule, 16.16.19 NMAC.

[16.16.19.17 NMAC - N, 6-08-01; A, 03-15-2004; A, 03-10-2005; A, 07-06-2012]

16.16.19.18 SALE OR DISPENSING OF REPLACEMENT CONTACT LENSES: The sale of all replacement contact lenses is regulated by the federal trade commission's *Contact Lens Rule* which became effective in July 2004. Please see "a guide for prescribers and sellers" of contact lenses at <http://www.ftc.gov/bcp/edu/pubs/business/health/bus62.shtm>.

[16.16.19.18 NMAC - N, 6-08-01; A, 03-15-2004; 16.16.19.18 NMAC - N, 07-06-2012]

16.16.19.19 LIABILITY FOR USE OF PRESCRIPTION: When a patient's replacement contact lens prescription is dispensed by a person other than that licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser. Furthermore, an optometrist or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lenses prescribed.

[16.16.19.19 NMAC - N, 03-15-2004; 16.16.19.19 NMAC - Rn & A, 16.16.19.18 NMAC, 07-06-2012]

16.16.19.20 REGISTRATION REQUIRED FOR NON-LICENSEES TO SELL CONTACT LENSES:

A. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he/she is registered with the New Mexico board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement.

B. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement.

C. The board of pharmacy shall maintain a current list of all registered seller and dispensers of contact lenses.

D. A person, company, or entity that is not registered pursuant to this subsection and knowingly sells or dispenses contact lenses to a New Mexico resident is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

[16.16.19.20 NMAC - Rn, 16.16.19.19 NMAC, 07-06-2012]

HISTORY of 16.16.19 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 24, Board Rule No. 24 - Contact Lenses, filed 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.19, Contact Lenses, filed 9-21-95, replaced NMBO Rule 24, Board Rule No. 24 - Contact Lenses.

16 NMAC 16.19, Contact Lenses, filed 9-21-95, renumbered and reformatted to 16.16.19 NMAC, Contact Lenses, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 20 OPHTHALMIC LENSES

16.16.20.1 ISSUING AGENCY: New Mexico Board of Optometry.

[16.16.20.1 NMAC - N, 03-15-2004; A, 07-06-2012]

16.16.20.2 SCOPE: Part 20 of Chapter is written to provide information about the prescribing of ophthalmic lenses for eyeglasses.

[16.16.20.2 NMAC - N, 03-15-2004]

16.16.20.3 STATUTORY AUTHORITY: The authority for Part 20 of Chapter 16 is NMSA 1978, Sections 61-2-1 to 61-2-18 (2003 Repl. Pam.).

[16.16.20.3 NMAC - N, 03-15-2004]

16.16.20.4 DURATION: Permanent.

[16.16.20.4 NMAC - N, 03-15-2004]

16.16.20.5 EFFECTIVE DATE: March 15, 2004, unless a later date is cited at the end of a section.

[16.16.20.5 NMAC - N, 03-15-2004]

16.16.20.6 OBJECTIVE: The objective of Part 20 of Chapter 16 is to set forth rules related to the prescribing and dispensing of ophthalmic lenses and eyeglasses.

[16.16.20.6 NMAC - N, 03-15-2004]

16.16.20.7 DEFINITIONS:

A. “Ophthalmic lens” means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses.

B. “Eyeglasses” means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in the anomalies of human vision.

[16.16.20.7 NMAC - N, 03-15-2004]

16.16.20.8 OPHTHALMIC PRESCRIPTION:

A. A prescription written for ophthalmic lenses shall include the following:

- (1) the dioptric power of spheres, cylinders and prisms;
- (2) the axes of cylinders;
- (3) the position of the prism base;
- (4) the designation of the pupillary distance;
- (5) the name of the patient;
- (6) the date of the prescription;
- (7) the expiration date of the prescription; and
- (8) the name and address of the prescriber

B. If so desired by the prescriber, the light transmission properties and the lens curve values may be included as well.

[16.16.20.8 NMAC - N, 03-15-2004]

16.16.20.9 AUTHORITY OF PERSON WHO SELLS AND DISPENSES EYEGLASSES: A person who sells and dispenses eyeglasses upon the written prescription of an optometrist, physician, or surgeon may determine the following:

- A.** the type, form, size, and shape of the ophthalmic lens;
- B.** the placement of optical centers for distance-seeing and near-work;
- C.** the designation of type and placement of reading segments in multivision lenses;
- D.** the type and quality of frame or mounting;
- E.** the type of bridge and distance between lenses;
- F.** the type, length and angling of temples; and

G. the designation of pupillary distance.
[16.16.20.9 NMAC - N, 03-15-2004]

16.16.20.10 UNPROFESSIONAL CONDUCT RELATED TO OPHTHALMIC LENSES:

A. Refusing to provide the patient with his/her eyeglass prescription if the prescription is under a year old; or

B. Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

[16.16.20.10 NMAC - N, 03-15-2004]

History of 16.16.20 NMAC: [RESERVED]

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 21 UNPROFESSIONAL CONDUCT

16.16.21.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; A, 6-26-00; 16.16.21.1 NMAC - Rn, 16 NMAC 16.21.1, 03-15-2001; A, 07-06-2012]

16.16.21.2 SCOPE: Part 21 of Chapter 16 applies to anyone in violation of the Optometry Act NMSA 1978 Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) or the Optometry regulations 16.16 NMAC.
[10-14-95; 16.16.21.2 NMAC - Rn, 16 NMAC 16.21.2, 03-15-2001]

16.16.21.3 STATUTORY AUTHORITY: The authority for Part 21 of Chapter 16 is NMSA 1978, Section 61-2-1 to 61-2-18 (1995 Repl. Pamp.) and the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamp).
[11-17-73...10-14-95; 16.16.21.3 NMAC - Rn, 16 NMAC 16.21.3, 03-15-2001; A, 03-15-2004]

16.16.21.4 DURATION: Permanent.
[10-14-95; 16.16.21.4 NMAC - Rn 16 NMAC 16.21.4, 03-15-2001]

16.16.21.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[11-17-73...10-14-95; 16.16.21.5 NMAC - Rn, 16 NMAC 16.21.5, 03-15-2001; A, 07-06-2012]

16.16.21.6 OBJECTIVE: The objective of Part 21 of Chapter 16 is to set forth the acts or conduct that constitute violations of the Optometry Act and the Optometry regulations and the Uniform Licensing Act, and which subject the person in violation to disciplinary action by the board.
[11-17-73; 9-20-80; 6-24-94; 10-14-95; 16.16.21.6 NMAC - Rn, 16 NMAC 16.21.6, 03-15-2001; A, 03-15-2004]

16.16.21.7 DEFINITIONS:

A. “Splitting or dividing of fees” means offering, delivering, receiving, or accepting any unearned rebate, refund, commission, preference, patronage, dividend, discount, or other unearned consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, customers to any person, irrespective of any membership, proprietary interest, or co-ownership in or with any person to whom the patients, clients, or customers are referred.

B. “Professional superiority” means claiming, implying, guaranteeing, or representing that one has superior professional qualities, skills, abilities, credentials, training and professional service outcomes beyond those of similarly licensed optometrists.
[N, 6-26-00; 16.16.21.7 NMAC - Rn, 16 NMAC 16.21.7, 03-15-2001; A, 07-06-2012]

16.16.21.8 DISCIPLINARY PROCESS INITIATED: In accordance with the provisions contained within the Uniform Licensing Act, the Board may take disciplinary action if the Board determines that the applicant or the licensee has violated any provision of the Optometry Act or the regulations of the Board (16.16 NMAC).
[9-20-80; 6-24-94; 10-14-95; 16.16.21.8 NMAC - Rn, 16 NMAC 16.21.8, 03-15-2001]

16.16.21.9 ACTS OF UNPROFESSIONAL CONDUCT: The following exemplify the types of conduct or acts of omission that shall subject the licensee or applicant to disciplinary action by the board.

A. Any conduct whether an act or the omission of an act, which deceives or defrauds or tends to deceive or defraud the public.

B. Obtaining or attempting to obtain any fee by fraud, misrepresentation, deceit or any other deceptive or dishonest course of conduct.

C. Charging or attempting to charge any unusual, unreasonable, or exorbitant fee.

D. [RESERVED]

E. Splitting or dividing of fees with any person, as defined by this rule.

F. Advertising professional superiority, or advertising ophthalmic materials or services in violation of the rules of this board.

G. Breach of the confidentiality of information or knowledge about a patient obtained by the

optometrist while acting in his or her professional capacity.

H. Seeing patients while under the influence of alcohol or controlled substances not prescribed for him or her by an individual authorized by law to prescribe controlled substances. For purposes of this regulation, the term "controlled substances" shall be defined as the term is defined by the New Mexico Controlled Substance Act.

I. Sexual misconduct with a patient, including but not limited to the making of unsolicited sexual advances to a patient.

J. Violation of any order or judgment of the board.

K. Impersonating another who is licensed to practice optometry, or permitting or allowing any person to use such license.

L. Employing or inducing an unlicensed person to perform any procedure that is considered the practice of optometry as defined in NMSA Sections 61-2-1 through 61-2-18 (1995 Repl. Pam.).

M. Practicing beyond the scope of his/her optometry license as defined by state law and regulations.

N. Advertising in any manner that violates board regulations and state statutes on advertising.

O. Making false statements in any application for licensure or renewal of licensure.

P. Failing to report to the board the surrender of an optometric license or any formal disciplinary action, in another state or jurisdiction, in which there has been an adverse finding for acts or conduct which would constitute grounds for actions as defined in these rules.

Q. Failing to report to the board any criminal conviction of a felony.

R. Refusing to provide the patient with their eyeglass prescription if the prescription is under a year old.

S. Duplicating or replacing eyeglasses when the prescription is more than two years old without written authorization from the patient.

T. Failing to disclose and release patient information when requested by a patient or a health care provider upon a patient's authorization, or upon request from a health care provider when relating to the treatment of a patient, in accordance with the 1996 Health Insurance Portability and Accountability Act (HIPAA).

[11-17-73; 9-20-80; 8-21-92; 6-24-94; 10-14-95; 16.16.21.9 NMAC - Rn, 16 NMAC 16.21.9, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.21.10 UNPROFESSIONAL CONDUCT RELATED TO PHARMACEUTICALS: The following unprofessional conduct related to pharmaceutical and controlled dangerous pharmaceutical agents shall be grounds for disciplinary action by the board. Violations of Subsections of this Section may also constitute fourth degree felony violations and may be subject to conviction, imprisonment, and fines pursuant to the provisions of Section 31-18-15 NMSA 1978 (see Subsections B and C of 16.16.11.12 NMAC).

A. Practicing optometry, including the use of pharmaceutical agents without a valid, current license.

B. Administering, dispensing and prescribing diagnostic, topical, or oral pharmaceutical agents without the proper certification by the board as set forth in Part 7 of 16.16 NMAC.

C. Administering, dispensing, and prescribing controlled dangerous drugs without proper certification by the board and the required controlled substances registration with the State of New Mexico and proper DEA registration with the drug enforcement administration as set forth in Part 8 of 16.16 NMAC.

D. Administering, dispensing and prescribing dangerous drugs for purposes other than generally accepted treatment for the relief of ocular abnormalities.

E. Indiscriminately or excessively administering, dispensing, or prescribing controlled dangerous substances.

F. Administering, dispensing and prescribing controlled dangerous substances to immediate family members for purposes other than as applied in the treatment and management of ocular disease.

G. [RESERVED]

H. Administering, dispensing, and prescribing controlled dangerous substances in excess of the amount considered good optometric practice.

I. Administering, dispensing, and prescribing controlled dangerous substances without medical need in accordance with published standards.

J. Disbursing or prescribing any controlled dangerous substance for the optometrist's personal use for any other use than as applied in the treatment and management of ocular disease.

K. Delegating prescriptive signing authority for either prescriptive medications or controlled dangerous substances to another person.

[10-14-95; 16.16.21.10 NMAC - Rn, 16 NMAC 16.21.10, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.21.11 DISCIPLINARY PROCEEDINGS FOR UNLICENSED ACTIVITY: In accordance with the Uniform Licensing Act, Section 61-1-3.2, NMSA 1978 (2003 Repl. Pamph), a person who is not licensed to engage in the practice of optometry by the board is subject to disciplinary actions and proceedings by the board if it is determined that he or she has been practicing optometry in New Mexico without a valid New Mexico license.

A. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who engages in the practice of optometry without a valid New Mexico license.

B. In addition, the board may assess the person, company, firm, or entity engaging in the unlicensed practice of optometry the administrative costs, including investigative costs and the costs of conducting a hearing.

C. Reports of unlicensed practice of optometry may be reported for investigation to the board by phone, fax, mail, or e-mail.

[16.16.21.11 NMAC - N, 03-15-2004]

HISTORY of 16.16.21 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

OEB 73-1, Rule No. 4 of the Administrative Rules and Regulations of the State Board of Examiners in Optometry, filed 10-18-73.

OPT Rule No. 4, Unprofessional Conduct, filed 8-21-80.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 7-22-92.

NMBO Rule 4, Board Rule No. 4 - Unprofessional Conduct, filed 5-25-94.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.21, Unprofessional Conduct, filed 9-21-95, replaced that relevant portion of NMBO Rule 4 - Board Rule No. 4, Unprofessional Conduct.

16 NMAC 16.21, Unprofessional Conduct, filed 9-21-95, was renumbered and reformatted to 16.16.21 NMAC, Unprofessional Conduct, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 22 DISCIPLINARY PROCEEDINGS

16.16.22.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.22.1 NMAC - Rn, 16 NMAC 16.22.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.22.2 SCOPE: Part 22 of Chapter 16 applies to all license applicants or New Mexico licensed optometrists.
[10-14-95; 16.16.22.2 NMAC - Rn, 16 NMAC 16.22.2, 03-15-2001]

16.16.22.3 STATUTORY AUTHORITY: Authority for Part 22 of Chapter 16 is the Optometry Act NMSA 1978 Section 61-2-6.D, Section 61-2-13, Section 61-2-14, Section 61-2-17 (1995 Repl. Pamp.) and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through 61-1-33 (1993 Repl. Pamp.).
[11-17-73; 3-31-91; 8-21-92; 6-24-94; 10-14-95; 16.16.22.3 NMAC - Rn, 16 NMAC 16.22.3, 03-15-2001]

16.16.22.4 DURATION: Permanent.
[10-14-95; 16.16.22.4 NMAC - Rn, 16 NMAC 16.22.4, 03-15-2001]

16.16.22.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[8-21-92...10-14-95; 10-15-97; 16.16.22.5 NMAC - Rn, 16 NMAC 16.22.5, 03-15-2001; A, 03-15-2004]

16.16.22.6 OBJECTIVE: The objective of Part 22 of Chapter 16 is to set forth the policies and procedures for processing complaints submitted to the Board against licensees and for instituting disciplinary actions against applicants and licensees.
[10-14-95; 16.16.22.6 NMAC - Rn, 16 NMAC 16.22.6, 03-15-2001]

16.16.22.7 DEFINITIONS: For the purposes of this rule:

A. “Complaint” means a complaint filed with the board against an applicant for licensure or against a licensee.

B. “Complainant” means the party who files a complaint against a licensee or against an applicant for licensure.

C. “Respondent” means the licensure applicant or the licensee who is the subject of the complaint filed with the board.

D. “Hearing” means the formal process whereby the respondent is afforded the opportunity to be heard by the board or its designated hearing officer before the board takes action which might result in disciplinary action against the respondent's application for licensure or his or her license to practice optometry.

E. “Must” means required.

F. “Violation of practice” means a violation of the New Mexico Optometry Act or the rules and regulations duly adopted by the board.

G. “Notice of contemplated action” or “NCA” means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the board's intent to take action based upon the violations of practice charged in the subject complaint, and whereby the respondent is afforded the opportunity for a hearing before the board.

H. “Shall” means mandatory; a requirement.

I. “Should,” means a suggestion or recommendation; not a requirement.

J. “License revocation” means to prohibit the conduct authorized by the license.

K. “License suspension” means to prohibit, for a stated period of time, the conduct authorized by the license.

L. “License restriction” means to restrict or condition the license as to the scope of practice, place of practice, supervision of practice, duration of the licensed status, or other condition as deemed appropriate by the board as a disciplinary measure in connection with a formal disciplinary action.

M. “Redacted” means the act or process of editing or revising the complaint so that the parties that are the subject of the complaint are unknown to the board.

N. “Pre-NCA agreement” means an agreement reached between the board and the respondent as an

option to the formal NCA and hearing administrative hearing process.

O. “Mediation agreement” means an agreement reached through mediation between the board and the respondent as an option to the formal NCA and formal administrative hearing process.
[10-15-97; 16.16.22.7 NMAC - Rn, 16 NMAC 16.22.7, 03-15-2001; A, 03-15-2004]

16.16.22.8 DISCIPLINARY PROCEEDINGS: An investigation may be instituted by the board upon the receipt of a written complaint filed by any person, including any member of the board.

A. Written Complaint Required. A complaint filed with the board will be received by the board administrator who will process the complaint and determine how the complaint will be handled.

(1) In cases where it is clearly evident that the complaint does not fall within the board’s statutory authority or jurisdiction, the board administrator will not process the complaint and will inform the complainant of the reasons.

(2) If the complaint appears to contain violations of the board’s statute or its rules and regulations, or if the complaint is not a complicated one, the administrator may present the processed complaint to the entire board in a redacted form.

(3) If the complaint is lengthy, or if it is unclear or questionable as to whether there may have been violations of the board’s statute or its rules and regulations, the administrator shall refer it to the board’s standards of practice committee for review and consideration.

(4) The board may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to reply to the allegations in the complaint.

(5) The foregoing notwithstanding, the board will not be required to provide the respondent with a notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action if it is determined that disclosure may impair, impede, or compromise the efficacy or integrity of an investigation into the matter.

B. Standards of practice committee appointed. On an annual basis, the board chairperson shall appoint a member or members of the board to a standards of practice committee.

(1) The standards of practice committee shall review all documentation referred to it by the board administrator regarding a subject complaint.

(2) The standards of practice committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

(a) The standards of practice committee may be authorized by the board to employ such persons without prior approval of the full board.

(b) In such cases, the board administrator will contract for any such required services once budgetary availability is determined.

(3) Upon completion of its investigation the standards of practice committee shall present a summary of the subject complaint to the board with proposed recommendations concerning the proper disposition of the subject complaint.

(4) Upon review, the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the standards of practice committee’s recommendations.

(5) The standards of practice committee with the assistance of board counsel may draw up a pre-NCA settlement or mediation agreement proposal with the respondent as a means of resolving the complaint and enter into a proposed settlement agreement with the respondent as a means of resolving a complaint without having to go through the NCA and formal hearing process. However, final approval of the settlement or mediation agreement must be made by the full board prior to execution of the agreement.

C. Standards of practice committee recused from participation in further action: Members of the standards of practice committee who participate in the preparation of recommendations on complaints shall not participate further in any actions initiated by the board against the applicant or the licensee(s) who is the subject of the complaint.

D. Board action: In accordance with those provisions contained within the Uniform Licensing Act, the board may refuse to issue, suspend, or revoke any license upon finding, after a hearing, that the licensee or applicant for licensure has violated those provisions as set forth in Section 61-2-13 of the Optometry Act or those provisions found to constitute unprofessional conduct under Part 21 of the board rules and regulations (16.16 NMAC).

(1) If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

(2) If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

(3) The board may take any other action with regard to a complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

(4) [RESERVED]

(5) **Prehearing motions:** The board may appoint a hearing or presiding officer to decide non-dispositive motions filed prior to a hearing.

(6) [RESERVED]

(7) **Settlement agreements:** Following the issuance of a notice of contemplated action, the board may enter into a settlement or mediation agreement with the respondent as a means of resolving a complaint.

(8) **Settlement officer:** To facilitate approval of settlement agreements at times when it is not feasible to convene a full board meeting, the board may designate one of its members as a "settlement officer", and authorize that member to approve settlements in appropriate cases.

E. Costs of disciplinary proceedings: 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 61-1-3 of the Uniform Licensing Act is not taken by the board.

F. Private cause of action: Neither the action nor inaction of the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

G. License returned to the board: The wall license, renewal license, and therapeutic certificates issued by the board must be returned to the board subsequent to disciplinary revocation or suspension. The wall license, renewal license, and therapeutic certificates must be returned to the board in person or by registered mail no later than twenty (20) days after the suspension or revocation order by the board.

H. ULA protection from liability for complainant: There shall be no liability on the part of, and no action for damages against, a person who provides information to the board in good faith and without malice in the reasonable belief that such information is accurate. A licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

I. Federal fraud and abuse databank: In accordance with federal requirements imposed by the enactment of the Health Insurance Portability and Accountability Act of 1996, also known as the Kassebaum-Kennedy bill, the board shall report any final adverse actions taken against a licensee to the federal fraud and abuse databank established under that act.

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

J. National optometric database. All final adverse actions shall also be reported by the board to the association of regulatory boards of optometry (ARBO) national optometric database (NODB).

(1) The board may report to the databank disciplinary actions taken by the board that do not contain an admission or finding of guilt or liability against applicants or licensees.

(2) The board must report to the databank disciplinary actions taken by the board that do contain an admission or finding of guilt or liability against applicants or licensees.

[8-21-92; 10-14-95; A, 10-15-97; 16.16.22.8 NMAC - Rn, 16 NMAC 16.22.8, 03-15-2001; A, 03-15-2004]

HISTORY of 16.16.22 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

NMBO Rule 22, Board Rule No. 22 - Disciplinary Proceedings, filed 7-22-92.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.22, Disciplinary Proceedings, filed 9-21-95, replaced that relevant portion of NMBO Rule 22 - Board

Rule No. 22, Disciplinary Proceedings.

16 NMAC 16.22, Disciplinary Proceedings, filed 9-21-95, was renumbered and reformatted **to** 16.16.22, Disciplinary Proceedings, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 23 PARENTAL RESPONSIBILITY ACT COMPLIANCE

16.16.23.1 ISSUING AGENCY: New Mexico Board of Optometry.
[10-14-95; 16.16.23.1 NMAC - Rn, 16 NMAC 16.23.1, 03-15-2001; A, 07-06-2012]

16.16.23.2 SCOPE: Part 23 of Chapter 16 applies to all applicants for licensure and all optometrists licensed by the Board.
[10-14-95; 16.16.23.2 NMAC - Rn, 16 NMAC 16.23.2, 03-15-2001]

16.16.23.3 STATUTORY AUTHORITY: The authority for Part 23 of Chapter 16 is the Parental Responsibility Act (Ch. 25, Laws of 1995).
[10-14-95; 16.16.23.3 NMAC - Rn, 16 NMAC 16.23.3, 03-15-2001]

16.16.23.4 DURATION: Permanent.
[10-14-95; 16.16.23.4 NMAC - Rn, 16 NMAC 16.23.4, 03-15-2001]

16.16.23.5 EFFECTIVE DATE: October 14, 1995, unless a later date is cited at the end of a section.
[10-14-95; 16.16.23.5 NMAC - Rn, 16 NMAC 16.23.5, 03-15-2001; A, 07-06-2012]

16.16.23.6 OBJECTIVE: The objective of Part 23 of Chapter 16 is to set forth the policies, procedures, and disciplinary proceedings for implementation of the Parental Responsibility Act (Ch. 25, Laws of 1995).
[10-14-95; 16.16.23.6 NMAC - Rn, 16 NMAC 16.23.6, 03-15-2001]

16.16.23.7 DEFINITIONS: All terms defined in the Parental Responsibility Act shall have the same meanings in this Section. As used in this Section:

- A. “HSD”** means the New Mexico Human Services Department;
 - B. “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; and
 - C. “Statement of Non-compliance”** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and an order for support.
- [10-14-95; 16.16.23.7 NMAC - Rn, 16 NMAC 16.23.7, 03-15-2001]

16.16.23.8 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 license; and**
- C. has grounds for suspension or revocation of the license.**

[10-14-95; 16.16.23.8 NMAC - Rn, 16 NMAC 16.23.8, 03-15-2001]

16.16.23.9 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.

A. Upon the later receipt of an application for license or renewal, the Board shall match the applicant against the current certified list.

B. 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 the Board has taken in connection with such applicants and licensees.

[10-14-95; 16.16.23.9 NMAC - Rn, 16.NMAC 16.23.9, 03-15-2001]

16.16.23.10 INITIAL ACTION: Upon determination that an applicant or licensee appears on the certified list, the Board shall:

- A. commence a formal proceeding under 16.16.23.11 NMAC to take the appropriate action under 16.16.23.8 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 thirty (30) days. If the licensee fails to provide this statement, the Board shall commence a formal proceeding under 16.16.23.11 NMAC.
[10-14-95; 16.16.23.10 NMAC - Rn, 16. NMAC 16.23.10, 03-15-2001]

16.16.23.11 NOTICE OF CONTEMPLATED ACTION: Prior to taking any action specified in Part 23.8 of 16 NMAC 16, 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 (20) days after service of the notice requesting a hearing; or

(2) provides the Board, within thirty (30) 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.
[10-14-95; 16.16.23.11 NMAC - Rn, 16. NMAC 16.23.11, 03-15-2001]

16.16.23.12 EVIDENCE AND PROOF: In any hearing under this rule, 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 16.16.23.8 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 rule.

[10-14-95; 16.16.23.12 NMAC - Rn, 16. NMAC 16.23.12, 03-15-2001]

16.16.23.13 ORDER: When a disciplinary action is taken under this Section 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 conditions necessary to comply with Board requirements for reapplications or reinstatement of lapsed licenses.

[10-14-95; 16.16.23.13 NMAC - Rn, 16. NMAC 16.23.13, 03-15-2001]

16.16.23.14 PROCEDURES: Proceedings under this rule shall be governed by the Uniform Licensing Act.
[10-14-95; 16.16.23.14 NMAC - Rn, 16. NMAC 16.23.14, 03-15-2001]

HISTORY of 16.16.23 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.23, Parental Responsibility Act Compliance, filed 9-21-95, renumbered and reformatted to 16.16.23 NMAC, Parental Responsibility Act Compliance, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 24 DISCIPLINARY GUIDELINES FOR IMPAIRED PRACTITIONER

16.16.24.1 ISSUING AGENCY: New Mexico Board of Optometry.
[2-15-99; 16.16.24.1 NMAC - Rn, 16 NMAC 16.24.1, 03-15-2001; A, 03-15-2004; A, 07-06-2012]

16.16.24.2 SCOPE: The provisions in PART 24 of Chapter 16 apply to any person governed by the Optometry Act who may be subject to investigation and disciplinary action for excessive use or abuse of intoxicants or drugs.
[2-15-99; 16.16.24.2 NMAC - Rn, 16 NMAC 16.24.2, 03-15-2001]

16.16.24.3 STATUTORY AUTHORITY: PART 24 of Chapter 16 is promulgated pursuant to the Optometry Act, Section 61-2-1 through Section 61-2-18 NMSA 1978 (1997 Repl. Pam.); the Uniform Licensing Act, Section 61-1-1 through Section 61-1-33 NMSA 1978 (1996 Repl. Pam.); and the Impaired Health Care Provider Act, Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pam.).
[2-15-99; 16.16.24.3 NMAC - Rn, 16 NMAC 16.24.3, 03-15-2001]

16.16.24.4 DURATION: Permanent.
[2-15-99; 16.16.24.4 NMAC - Rn, 16 NMAC 16.24.4, 03-15-2001]

16.16.24.5 EFFECTIVE DATE: February 15, 1999, unless a later date is cited at the end of a section.
[2-15-99; 16.16.24.5 NMAC - Rn, 16 NMAC 16.24.5, 03-15-2001; A, 03-15-2004]

16.16.24.6 OBJECTIVE: The objective of PART 24 of Chapter 16 is to set forth policies and guidelines for disciplinary action when evidence or allegations of a mental disorder or illness, abuse of intoxicants or drugs by a licensed optometrist have been presented to the board.
[2-15-99; 16.16.24.6 NMAC - Rn, 16 NMAC 16.24.6, 03-15-2001; A, 03-15-2004]

16.16.24.7 DEFINITIONS: For the purposes of this rule:
A. “Impaired Health Care Provider Act” refers to Section 61-7-1 through Section 61-7-12 NMSA 1978 (1995 Repl. Pam.).
B. “Controlled Substances Act” refers to Section 30-31-1 through Section 30-31-42 NMSA 1978.
C. “Impaired practitioner” means any health care provider unable to practice with reasonable skill or safety to patients by reason of one or more of the following: mental disorder or illness; physical illness, including but not limited to deterioration through the aging process or loss of motor skill; or habitual or excessive use of alcohol or abuse of drugs, as defined in the Controlled Substances Act.
[2-15-99; 16.16.24.7 NMAC - Rn, 16 NMAC 16.24.7, 03-15-2001; A, 03-15-2004]

16.16.24.8 EXCESSIVE OR HABITUAL USE OR ABUSE OF INTOXICANTS OR DRUGS: In cases where the Board has reasonable cause to believe that a licensed optometrist has a mental disorder or illness or is engaging in the excessive or habitual use or abuse of intoxicants or drugs, as defined in the Controlled Substances Act, and that such activity may compromise the licensee’s ability to practice optometry with reasonable skill and safety to patients, the Board, shall conduct an investigation into the matter in accordance with the provisions established in the Impaired Health Care Provider Act.
[2-15-99; 16.16.24.8 NMAC - Rn, 16 NMAC 16.24.8, 03-15-2001; A, 03-15-2004]

16.16.24.9 EXAMINING COMMITTEE DESIGNATED: The board shall designate three licensed optometrists as members of an “examining committee” to examine the optometrist believed to be impaired either as a result of a mental disorder or illness or by the excessive or habitual use or abuse of intoxicants or drugs.
[2-15-99; 16.16.24.9 NMAC - Rn, 16 NMAC 16.24.9, 03-15-2001; A, 03-15-2004]

16.16.24.10 EXAMINATION CONDUCTED BY EXAMINING COMMITTEE: In accordance with the provisions in the Impaired Health Care Provider Act, the examining committee shall order and conduct an examination and may require a physical or psychiatric examination or drug test of the licensee to determine his or

her fitness to practice optometry with reasonable skill or safety to patients, either on a restricted or unrestricted basis.

[2-15-99; 16.16.24.10 NMAC - Rn, 16 NMAC 16.24.10, 03-15-2001; A, 03-15-2004]

16.16.24.11 PHYSICAL EXAM OR DRUG TEST ORDERED: A licensed professional designated by the board shall perform the physical or psychiatric examination and/or drug test ordered by the examination committee. The cost of said examination or test shall be borne by the optometrist who is the subject of the examination.

[2-15-99; 16.16.24.11 NMAC - Rn, 16 NMAC 16.24.11, 03-15-2001; A, 03-15-2004]

16.16.24.12 EXAMINING COMMITTEE REPORT:

A. The examining committee shall report its findings on the examination and make recommendation to the Board.

B. Recommendations made to the board by the examining committee shall be advisory only and shall not be binding on the Board.

[2-15-99; 16.16.24.12 NMAC - Rn, 16 NMAC 16.24.12, 03-15-2001]

16.16.24.13 RESULTS ADMISSIBLE: The results of the examining committee's findings and the physical or psychiatric exam and/or drug test shall be admissible in any subsequent review or hearing by the board, notwithstanding any claim of privilege under a contrary rule or law or statute.

[2-15-99; 16.16.24.13 NMAC - Rn, 16 NMAC 16.24.13, 03-15-2001; A, 03-15-2004]

16.16.24.14 [RESERVED]

16.16.24.15 FAILURE OR REFUSAL TO SUBMIT TO EXAMINATION: Failure or refusal by the optometrist to comply with an examining committee order to appear before it for examination, or to submit to a physical or psychiatric examination or drug test pursuant to the Impaired Health Care Provider Act, shall be grounds for immediate and summary suspension of the license by the board until further order by the board.

[2-15-99; 16.16.24.15 NMAC - Rn, 16 NMAC 16.24.15, 03-15-2001; A, 03-15-2004]

16.16.24.16 ACTION ON EXAMINATION COMMITTEE REPORT: The board may accept or reject any finding, determination, or recommendation made by the examining committee to the board regarding the licensee's ability to continue to practice with or without restriction on the license, or the board may refer the matter back to the examination committee for further examination and report, or it may decide that formal disciplinary action is immediately warranted.

[2-15-99; 16.16.24.16 NMAC - Rn, 16 NMAC 16.24.16, 03-15-2001]

16.16.24.17 [RESERVED]

16.16.24.18 ENTITLEMENT TO HEARING: Before the board can take action to restrict, suspend, or revoke the optometrist's license on the evidence reported by the examining committee, the optometrist shall be entitled to a hearing under, and in accordance with, the procedures contained in the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.18 NMAC - Rn, 16 NMAC 16.24.18, 03-15-2001]

16.16.24.19 [RESERVED]

16.16.24.20 REQUEST FOR VOLUNTARY RESTRICTION OF THE PERMIT OR LICENSE: In lieu of a formal hearing, the optometrist may voluntarily request, in writing, a restriction of the license to practice optometry.

A. The board may grant the request for restriction and shall have authority, if it deems appropriate, to attach conditions to the optometrist's license to practice within specified limitations.

B. Upon imposition of voluntary restrictions on the optometrist's license, the board shall have the authority, if it deems appropriate, to waive the commencement of any further disciplinary proceedings conducted in accordance with the Uniform Licensing Act.

[2-15-99; 16.16.24.20 NMAC - Rn, 16 NMAC 16.24.20, 03-15-2001]

16.16.24.21 PETITION FOR REMOVAL OF VOLUNTARY RESTRICTION: The optometrist shall have a right, at reasonable intervals after a year, to petition the board, in writing, for the removal of the voluntary restriction and to demonstrate that he or she is capable of resuming the competent practice of optometry with reasonable skill and safety to patients.

A. The board shall act on the petition by referring it to the examining committee, who shall conduct the necessary examination of the optometrist, and make written recommendation to the board.

B. Upon consideration of the examining committee's recommendation, the board may, in its discretion, remove the voluntary restriction on the optometrist's license.

[2-15-99; 16.16.24.21 NMAC - Rn, 16 NMAC 16.24.21, 03-15-2001]

16.16.24.22 ABSENCE OF A VOLUNTARY REQUEST FOR RESTRICTION: In the absence of a request by the optometrist for voluntary restriction of his or her license as provided in Section 20 of 16.16.24 NMAC (this rule), the board may, in its discretion, initiate proceedings for the restriction, suspension, or revocation of the optometrist's license in accordance with the Impaired Health Care Provider Act and the Uniform Licensing Act.

[2-15-99; 16.16.24.22 NMAC - Rn, 16 NMAC 16.24.22, 03-15-2001]

16.16.24.23 TEMPORARY SUSPENSION:

A. The board may temporarily suspend the optometrist's license without a hearing, simultaneously with the institution of proceedings under the Impaired Health Care Provider Act or the Uniform Licensing Act, if it finds that the evidence in support of the examining committee's determination is clear and convincing and that the optometrist's continuation in practice would constitute an imminent danger to the health and safety of the public.

B. The optometrist shall be entitled to a hearing to set aside the suspension no later than sixty days after the license is suspended.

[2-15-99; 16.16.24.23 NMAC - Rn, 16 NMAC 16.24.23, 03-15-2001]

16.16.24.24 PETITION FOR REINSTATEMENT, RESTORATION, OR MODIFICATION OF DISCIPLINARY ORDER: Subsequent to formal proceedings under the Impaired Health Care Provider Act and the Uniform Licensing Act, any optometrist who is prohibited from practicing optometry may, after a year from the date of suspension or revocation of the license, petition the board for reinstatement or restoration of his or her license to practice or for modification of the final disciplinary orders.

A. The optometrist shall make the application for reinstatement or restoration of his or her license or for the modification of the disciplinary orders in writing.

B. The optometrist shall be afforded an opportunity to demonstrate that he or she can resume the practice of optometry with reasonable skill, competence, and safety to patients and shall be required to provide verifiable proof of compliance with any stipulations in the disciplinary order.

(1) The board may require an examination by the examining committee for such reinstatement, restoration, or modification of the optometrist's license.

(2) The board may require verification that the optometrist has completed a treatment program for alcohol or chemical dependency.

(3) The board may require verifiable proof that the optometrist has remained abstinent from alcohol or chemical dependence, except for drugs prescribed by a licensed physician for a legitimate medical condition, for a minimum of at least one (1) year.

(4) The board may require verifiable proof that optometrist has maintained active and uninterrupted participation in a program of aftercare which provides for periodic monitoring and supervision by appropriately trained personnel, and which includes random and unannounced drug and/or alcohol screening of urine or blood.

(5) The board shall have the discretion to accept or reject the petition for reinstatement or restoration of the optometrist's license, or for modification of the disciplinary orders.

[2-15-99; 16.16.24.24 NMAC - Rn, 16 NMAC 16.24.24, 03-15-2001]

HISTORY of 16.16.24 NMAC:

Pre-NMAC History: None.

History of Repealed Material: [Reserved]

Other History:

16 NMAC 16.24, Disciplinary Guidelines For Impaired Practitioner, filed 2-2-99, renumbered and reformatted **to** 16.16.24 NMAC, Disciplinary Guidelines For Impaired Practitioner, effective 03-15-2001.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 16 OPTOMETRIC PRACTITIONERS
PART 25 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.16.25.1 ISSUING AGENCY: New Mexico Board of Optometry.
[16.16.25.1 NMAC - N, 04-24-2014]

16.16.25.2 SCOPE: Part 25 of Chapter 16 sets forth application procedures to expedite licensure for military service members, their spouses and veterans.
[16.16.25.2 NMAC - N, 04-24-2014]

16.16.25.3 STATUTORY AUTHORITY: Part 25 of Chapter 16 is promulgated pursuant to and in accordance with the Optometry Act, Sections 61-2-1 to -18 NMSA 1978 (specific authority to promulgate rules is 61-2-6(D)(2) and, Section 61-1-34 NMSA 1978.
[16.16.25.3 NMAC - N, 04-24-2014]

16.16.25.4 DURATION: Permanent.
[16.16.25.4 NMAC - N 04-24-2014]

16.16.25.5 EFFECTIVE DATE: April 24, 2014, unless a later date is cited at the end of a section.
[16.16.25.5 NMAC - N, 04-24-2014]

16.16.25.6 OBJECTIVE: The objective of Part 25 of Chapter 16 is to expedite licensure for military service members, their spouses and veterans pursuant to Section 61-1-34 NMSA 1978.
[16.16.25.6 NMAC - N, 04-24-2014]

16.16.25.7 DEFINITIONS:

A. “Military service member” means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. “Recent veteran” means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.
[16.16.25.7 NMAC - N, 04-24-2014]

16.16.25.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. The applicant shall provide:

- (1) a completed application and corresponding fee pursuant to 16.16.6 NMAC and 16.16.4 NMAC;
- (2) satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of armed forces of the United States, and holds a current license in good standing; the applicant further must provide satisfactory evidence that he has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for New Mexico licensees in optometry; and
- (3) proof of honorable discharge (DD214), military ID card, or accepted proof of military spouse status.

[16.16.25.8 NMAC - N, 04-24-2014]

16.16.25.9 LICENSE RENEWAL:

A. A license issued pursuant to this section shall not be renewed until the licensee satisfies the requirements for issuance of a license set forth in 16.16.6 NMAC and for the renewal of a license set forth in 16.16.10 NMAC.

B. A license issued pursuant to this section shall be valid for one year or until July 1, whichever comes first.

C. The board office mails license renewal notifications at least 45 days before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility to timely renew the license by the expiration date.

D. The renewal application will be available online at the board’s website at

www.optometrybd@state.nm.us. For an additional fee, paper applications may be requested in person or by telephoning the board office at 505-476-4622.

E. To renew a license, the licensee must submit a completed license renewal application, verification of continuing education, a current CPR certification and the applicable fee at time of renewal. The licensee shall also submit proof of passing NBEO parts I, II, and III and must pass the New Mexico optometry board exam at its next regularly scheduled examination date. All New Mexico licensed optometrists must comply with the provisions of 16.16.7 NMAC and 16.16.8 NMAC, to be certified and qualified to dispense and prescribe controlled dangerous substances, and must have first registered with the board of pharmacy and the United States drug enforcement administration to obtain the proper DEA registration.
[16.16.25.9 NMAC - N, 04-24-2014]

HISTORY OF 16.16.25 NMAC: [RESERVED]

NEW MEXICO BOARD OF OPTOMETRY

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ARTICLE 2

Optometry

61-2-1. Short title. (Repealed effective July 1, 2024.)

Chapter 61, Article 2 NMSA 1978 may be cited as the "Optometry Act".

History: 1953 Comp., § 67-1-1, enacted by Laws 1973, ch. 353, § 1; 1985, ch. 241, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers § 8.

Optometry as within statute relating to practice of medicine, 22 A.L.R. 1173.

Constitutionality of statute prescribing conditions of practicing medicine as affected by discrimination against or in favor of optometrists, 37 A.L.R. 682, 42 A.L.R. 1342, 54 A.L.R. 600.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Corporation or individual not himself licensed, right of, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Prescription, one who fills, under reciprocity arrangement with optometrist, as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

Liability of osteopath for medical malpractice, 73 A.L.R.4th 24.

Liability of chiropractors and other drugless practitioners for medical malpractice, 77 A.L.R.4th 273.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 6 to 8.

61-2-2. Definitions. (Repealed effective July 1, 2024.)

As used in the Optometry Act:

A. "practice of optometry" means:

(1) the employment of any subjective or objective means or methods, including but not limited to the use of lenses, prisms, autorefractors or other automated testing devices, and includes the prescription or administration of drugs for the purpose of diagnosing the visual defects or abnormal conditions of the human eye and its adnexa;

(2) the employing, adapting or prescribing of preventive or corrective measures, including but not limited to lenses, prisms, contact or corneal lenses or other optical appliances, ocular exercises, vision therapy, vision training and vision rehabilitation services, and includes the prescription or administration of all drugs rational for the correction, relief or referral of visual defects or abnormal conditions of the human eye and its adnexa; and

(3) does not include the use of surgery or injections in the treatment of eye diseases except for the use of the following types of in-office minor surgical procedures:

(a) non-laser removal, destruction or drainage of superficial eyelid lesions and conjunctival cysts;

(b) removal of nonperforating foreign bodies from the cornea, conjunctiva and eyelid;

(c) non-laser corneal debridement, culture, scrape or anterior puncture, not including removal of pterygium, corneal biopsy or removal of corneal neoplasias;

(d) removal of eyelashes; and

(e) probing, dilation, irrigation or closure of the tear drainage structures of the eyelid; scalpel use is to be applied only for the purpose of use on the skin surrounding the eye;

B. "ophthalmic lens" means a lens that has a spherical, cylindrical or prismatic value, is ground pursuant to a prescription and is intended to be used as eyeglasses;

C. "contact lens" means a lens to be worn on the anterior segment of the human eye;

D. "prescription" means a written order by an optometrist or a physician for an individual patient for:

(1) ophthalmic lenses;

(2) contact lenses; or

(3) a pharmaceutical agent that is regulated pursuant to the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978];

E. "eyeglasses" means an exterior optical device using ophthalmic lenses for the correction or relief of disturbances in and anomalies of human vision; and

F. "board" means the board of optometry.

History: 1953 Comp., § 67-1-2, enacted by Laws 1973, ch. 353, § 2; 1977, ch. 30, § 1; 1979, ch. 3, § 1; 1985, ch. 241, § 2; 1995, ch. 20, § 2; 2003, ch. 274, § 1; 2007, ch. 277, § 1; 2015, ch. 131, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, amended the definition of prescription in the definitions section of the Optometry Act; and in Paragraph (3) of Subsection D, after "a", deleted "topical ocular pharmaceutical agent or an oral".

The 2007 amendment, effective April 2, 2007, added Paragraph (3) of Subsection A.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, in Paragraph A(2), inserted "preventive or corrective measures, including" and "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in the first sentence, deleted "or any controlled substances" after "injections" and added the proviso at the end of the second sentence; inserted "or for an oral pharmaceutical agent as authorized in Section 61-2-10.2 NMSA 1978" and "Device" in the introductory paragraph of Subsection D; and made stylistic changes throughout the section.

"Optometry". — Optometry and the practice of optometry relate basically to the testing of the loss of eyesight and the correction thereof by the use of optical appliances or other means, not including drugs, medicines or surgery. 1958 Op. Att'y Gen. No. 58-158.

Duplicating of lens as "practice of optometry". — A person who duplicates an ophthalmic lens without a prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1954 Op. Att'y Gen. No. 54-5909.

Contact lenses. — Even though not specifically named in former Optometry Practice Act, contact lenses could be considered a lens or other optical appliance. 1958 Op. Att'y Gen. No. 58-158.

Audiometric testing should not be undertaken by optometrist because the various healing arts professions should stay within the confines of their individual professions as defined by the separate licensing acts enacted by the state legislature. 1958 Op. Att'y Gen. No. 58-158.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 8, 39, 40.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 3 to 5.

61-2-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)

The provisions of the Criminal Offender Employment Act [28-2-1 to 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Optometry Act.

History: 1953 Comp., § 67-1-2.1, enacted by Laws 1974, ch. 78, § 11.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-2-4. License required. (Repealed effective July 1, 2024.)

Unless licensed pursuant to the Optometry Act, or specifically exempted or excluded from the application of all or part of that act, a person shall not:

- A. practice optometry;
- B. represent himself or offer his services as being able to practice optometry; or
- C. duplicate or replace an ophthalmic lens.

History: 1953 Comp., § 67-1-3, enacted by Laws 1973, ch. 353, § 3; 2003, ch. 274, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For incorporation of optometrists under Professional Corporation Act, see 53-6-1 NMSA 1978 et seq.

The 2003 amendment, effective June 20, 2003, rewrote the introductory paragraph; deleted former Subsection C which read: "prescribe eyeglasses or give a prescription to a patient; or"; redesignated former Subsection D as present Subsection C; and deleted "not including contact lenses without a current prescription or without a written authorization from the patient if the prescription is not available" at the end of present Subsection C.

Retail ophthalmic dispenser may not legally fit contact or corneal lenses either independently or under the supervision of a New Mexico licensed practitioner of optometry or medicine. 1958 Op. Att'y Gen. No. 58-176.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 26, 37, 38, 132.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

What constitutes practice of "optometry", 82 A.L.R.4th 816.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 12, 14, 17, 26, 27.

61-2-5. Board created; terms; appointment; continuance; removal. (Repealed effective July 1, 2024.)

A. There is created a six-member "board of optometry". The board shall be administratively attached to the regulation and licensing department. The board consists of four persons who have resided in and have been continuously engaged in the practice of optometry in New Mexico for at least five years immediately prior to their appointment and two persons who shall represent the public. The public members of the board shall not have been licensed as optometrists, nor shall the public members have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Professional members of the board shall be appointed by the governor from a list of five names for each vacancy submitted to him by the state organization affiliated with the American optometric association. Not more than one professional board member shall maintain his place of business or reside in any one county, and professional appointments shall be made on a geographical basis to effect representation of all areas of the state. Board members shall be appointed for staggered terms of five years or less, each. The term of each board member shall be made in such a manner that the term of one board member ends on June 30 of each year. Board members shall serve until their successors have been appointed and qualified. A professional member vacancy shall be filled for the unexpired term by the appointment by the governor of a licensed optometrist from the general area of the state represented by the former member. All members of the board of optometry in office on the effective date of the Optometry Act shall serve out their unexpired terms.

C. The governor may remove a member from the board for the neglect of a duty required by law, for incompetence, for improper or unprofessional conduct as defined by board regulation or for a reason that would justify the suspension or revocation of his license to practice optometry.

D. A board member shall not serve more than two consecutive terms, and a member failing to attend, after proper notice, three consecutive meetings shall automatically be removed as a board member unless excused for reasons set forth in board regulations.

E. In the event of a vacancy for any reason, the board secretary shall immediately notify the governor, the board members and the state optometric association of the vacancy, the reason for its occurrence and the action taken by the board, so as to expedite the appointment of a new board member.

History: 1953 Comp., § 67-1-4, enacted by Laws 1973, ch. 353, § 4; 1979, ch. 12, § 1; 1991, ch. 189, § 1; 2003, ch. 408, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Compiler's notes. — The "effective date of the Optometry Act", referred to in this section, is April 3, 1973, which is the effective date of Laws 1973, ch. 353, § 18.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board consists" for "composed" following "'board of optometry'" near the beginning of Subsection A.

The 1991 amendment, effective June 14, 1991, substituted "four persons" for "five persons" and "two persons" for "one person" in the first sentence and made a related stylistic change in Subsection A; in Subsection B, deleted "commencing with 1974" at the end of the fourth sentence and deleted the former fifth sentence which read "The public board member shall be appointed by the governor upon the effective date of this 1979 act to a five-year term expiring June 30, 1984, and vacancy appointments of a public member shall be for the unexpired term"; and made minor stylistic changes in Subsections A, B and C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-2-6. Organization; meetings; compensation; powers and duties. (Repealed effective July 1, 2024.)

A. The board shall annually elect a chair, a vice chair and a secretary-treasurer; each shall serve until a successor is elected and qualified.

B. The board shall meet at least annually for the purpose of examining candidates for licensure. Special meetings may be called by the chair and shall be called upon the written request of a majority of the board members. A majority of the board members currently serving constitutes a quorum.

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

D. The board has the authority to determine what constitutes the practice of optometry in accordance with the provisions of the Optometry Act and has jurisdiction to exercise any other powers and duties pursuant to that act. The board may issue advisory opinions and declaratory rulings pursuant to that act and rules promulgated in accordance with that act, but shall not expand the scope of practice of optometry beyond the provisions of that act.

E. The board shall:

- (1) administer and enforce the provisions of the Optometry Act;
- (2) adopt, publish and file, in accordance with the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] and the State Rules Act [Chapter 14, Article 4 NMSA 1978], all rules for the implementation and enforcement of the provisions of the Optometry Act;
- (3) adopt and use a seal;
- (4) administer oaths and take testimony on matters within the board's jurisdiction;
- (5) keep an accurate record of meetings, receipts and disbursements;
- (6) keep a record of examinations held, together with the names and addresses of persons taking the examinations and the examination results. Within thirty days after an examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which the applicant is examined; providing that an applicant failing may apply for re-examination at the next scheduled examination date;

(8) keep a book of registration in which the name, address and license number of licensees shall be recorded, together with a record of license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;

(10) develop and administer qualifications for certification for the use of pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978, including minimum educational requirements and examination, as required by Section 61-2-10.2 NMSA 1978 and provide the board of pharmacy with an annual list of optometrists certified to use pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978; and

(11) provide for the suspension of an optometrist's license for sixty days upon a determination of use of pharmaceutical agents without prior certification in accordance with Section 61-2-10.2 NMSA 1978, after proper notice and an opportunity to be heard before the board.

History: 1953 Comp., § 67-1-5, enacted by Laws 1973, ch. 353, § 5; 1977, ch. 30, § 2; 1979, ch. 12, § 2; 1985, ch. 241, § 3; 1995, ch. 20, § 3; 2003, ch. 408, § 2; 2015, ch. 131, § 2.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, made changes to the statutory powers of the board of optometry; in Subsection A, after "elect a", deleted "chairman" and added "chair", after "a vice", deleted "chairman" and added "chair", and after "serve until", deleted "his" and added "a"; in Subsection B, after "called by the", deleted "chairman" and added "chair"; added new Subsection D and redesignated the succeeding subsection accordingly; in Paragraph (2) of Subsection E, after "all rules", deleted "and regulations"; in Paragraph (7) of Subsection E, after "upon which", deleted "he" and added "the applicant"; in Paragraph (10) of Subsection E, after "for the use of", deleted "topical ocular pharmaceutical agents and oral", after "Section", deleted "61-2-10" and added "61-2-10.2", and after "certified to use", deleted "topical ocular pharmaceutical agents and oral"; and in Paragraph (11) of Subsection E, after "Section", deleted "61-2-10" and added "61-2-10.2".

The 2003 amendment, effective July 1, 2003, deleted Paragraph D(12), concerning employment of agents or attorneys.

The 1995 amendment, effective July 1, 1995, in Subsection B, substituted "at least annually" for "in January and July of each year" in the first sentence, deleted former provisions relating to the time for examination of candidates for licensure and notices of meetings, and made stylistic changes; and, in Paragraph D(10), inserted "and oral pharmaceutical agents as authorized in Section 61-2-10.2 NMSA 1978" in two places.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 21 to 24.

61-2-7. Disposition of funds; optometry fund created; method of payments; bonds. (Repealed effective July 1, 2024.)

A. There is created the "optometry fund."

B. All funds received by the board and money collected under the Optometry Act shall be deposited with the state treasurer, who shall place the same to the credit of the optometry fund.

C. All payments out of the optometry fund shall be made on vouchers issued and signed by the secretary-treasurer of the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the optometry fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Optometry Act and the duties and powers imposed thereby; and

(2) the promotion of optometric education and standards in this state within the budgetary limits.

E. All funds which may have accumulated to the credit of the board under any previous law shall be transferred to the optometry fund and shall continue to be available for use by the optometry board in accordance with the provisions of the Optometry Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the optometry fund for use in accordance with the provisions of the Optometry Act.

F. The secretary-treasurer and any employee who handles money or who certifies the receipt or disbursement of money received by the board shall, within thirty days after election or employment by the board, execute a bond in accordance with the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], conditioned on the faithful performance of the duties of the office or position and on an accounting of all funds coming into his hands.

G. The secretary-treasurer shall make, at the end of each fiscal year, an itemized report to the governor of all receipts and disbursements of the board for the prior fiscal year, together with a report of the records and information required by the Optometry Act. A copy of the annual report to the governor shall be presented to the board at its first meeting in July of each year.

History: 1953 Comp., § 67-1-6, enacted by Laws 1973, ch. 353, § 6.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Withdrawals from fund. — The regulation and licensing department may not withdraw money from the optometry fund without approval from the board of optometry. 1988 Op. Att'y Gen. No. 88-63.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-2-8. Qualifications for licensure as an optometrist. (Repealed effective July 1, 2024.)

Each applicant for licensure as an optometrist shall furnish evidence satisfactory to the board that the applicant:

- A. has reached the age of majority;
- B. is of good moral character and of temperate habits;
- C. has completed at least an approved four-year high school course of study or the equivalent thereof as determined by regulations of the board;
- D. is a citizen of the United States or has taken out his first naturalization papers; and
- E. has graduated and been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board, and in the event the applicant applies for licensure by endorsement, he shall have been awarded a doctor of optometry degree from a school or college of optometry approved and accredited by the board which had a minimum course of study of four thousand clock hours of instruction leading to such degree.

History: 1953 Comp., § 67-1-7, enacted by Laws 1973, ch. 353, § 7.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see **61-2-18** NMSA 1978.

Cross references. — For the age of majority, see **28-6-1** NMSA 1978.

For the Parental Responsibility Act, see **4-5A-1** NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 51 to 62.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 19.

61-2-9. Licensure by examination; licensure by endorsement. (Repealed effective July 1, 2024.)

A. An applicant meeting the qualifications set forth in Section **61-2-8** NMSA 1978, shall:

(1) file his application under oath, on forms supplied by the board, for an examination by the board. The examination shall be confined to the subjects within the curriculum of colleges of

optometry approved and accredited by the board and shall include written tests and practical demonstrations and may include oral tests; or

(2) file his application under oath on forms supplied by the board which conform to board regulations on endorsement and furnish proof satisfactory to the board of his having been licensed by examination in another state which had qualifications equal to or exceeding those required in this state on the date of his original licensure, and satisfying the board that he holds a doctor of optometry degree from a school or college approved and accredited by the board which was obtained after the completion of a course of study with a minimum of four thousand clock hours of instruction. The applicant must have been actively engaged in the practice of optometry in the state of licensure or in federal service for seven consecutive years immediately prior to the year in which application is made. This proof shall be accepted in lieu of the written portion of the examination. Applicants for licensure without written examination shall be examined to the satisfaction of the board by practical, oral and clinical demonstration in the presence of a majority of the board and a detailed record of such examination shall be kept and made available to the applicant at his request.

B. All applicants successfully passing the examinations shall be issued a license by the board upon payment of the license fee.

History: 1953 Comp., § 67-1-8, enacted by Laws 1973, ch. 353, § 8.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For license fees, see 61-2-11 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 59, 60, 67.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 20.

61-2-9.1. License issued. (Repealed effective July 1, 2024.)

Each applicant for a license to practice optometry as provided in Chapter 61, Article 2 NMSA 1978 who successfully passes the examination for licensure, possesses the required educational qualifications and meets other requirements of the Optometry Act or regulations adopted pursuant to that act is entitled to a license that carries with it the title "doctor of optometry".

History: Laws 1995, ch. 20, § 1.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

61-2-10. Repealed.

History: 1953 Comp., § 67-1-8.1, enacted by Laws 1977, ch. 30, § 3; 1985, ch. 241, § 4; 1995, ch. 20, § 4; repealed by Laws 2015, ch. 131, § 7.

ANNOTATIONS

Repeals. — Laws 2015, ch. 131, § 7 repealed 61-2-10 NMSA 1978, as enacted by Laws 1977, ch. 30, § 3, relating to certification for use of topical ocular pharmaceutical agents, display, effective June 19, 2015. For provisions of former section, see the 2014 NMSA 1978 on *NMOneSource.com*.

61-2-10.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 20, § 10 repealed 61-2-10.1 NMSA 1978, as enacted by Laws 1986, ch. 80, § 1, relating to treatment of glaucoma or iritis, effective July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

61-2-10.2. Designation of pharmaceutical agents; certification for use of certain agents. (Repealed effective July 1, 2024.)

A. Subject to the provisions of the Optometry Act, optometrists qualified and certified by the board may prescribe or administer all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:

- (1) may prescribe hydrocodone and hydrocodone combination medications;
- (2) may administer epinephrine auto-injections to counter anaphylaxis; and
- (3) shall not prescribe any other controlled substance classified in Schedule I or II pursuant to the Controlled Substances Act [Chapter 30, Article 31 NMSA 1978].

B. The board shall issue certification for the use of pharmaceutical agents as set forth in Subsection A of this section to optometrists currently licensed by the board. To be certified, an optometrist shall submit to the board proof of having satisfactorily completed a course in pharmacology as applied to optometry, with particular emphasis on the administration of pharmaceutical agents for the purpose of examination of the human eye, and analysis of ocular functions and treatment of visual defects or abnormal conditions of the human eye and its adnexa. The course shall constitute a minimum of twenty hours of instruction in clinical pharmacology, including systemic pharmacology as applied to optometry, and shall be taught by an accredited institution approved by the board.

C. Applicants for licensure shall meet the requirements for certification in the use of pharmaceutical agents as set forth in the Optometry Act and shall successfully complete the board's examination in pharmaceutical agents prior to licensure.

D. The certification authorized by this section shall be displayed in a conspicuous place in the optometrist's principal office or place of business.

History: 1978 Comp., § 61-2-10.2, enacted by **Laws 1995, ch. 20, § 5; 1996, ch. 59, § 1; 2015, ch. 131, § 3.**

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see **61-2-18** NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided optometrists with greater prescribing powers; in the catchline, after "Designation of", deleted "oral"; in the introductory sentence of Subsection A, after "prescribe or administer", deleted the remainder of the sentence, deleted Paragraphs (1) through (5) of Subsection A and added "all pharmaceutical agents for the diagnosis and treatment of disease of the eye or adnexa; provided that an optometrist:" to the introductory sentence of Subsection A; added new Paragraphs (1) through (3) of Subsection A; in Subsection B, after "certification for the use of", deleted "oral", after "licensed by the board", deleted "who are certified for the use of topical ocular pharmaceutical agents", and after "administration of", deleted "oral"; and in Subsection C, deleted "As of July 1, 1996, all", after "certification in the use of", deleted "diagnostic, topical therapeutic and oral", and after "board's examination in", deleted "diagnostic, topical and oral".

The 1996 amendment, effective May 15, 1996, inserted "qualified and certified by the board" in the introductory language of Subsection A, inserted "currently licensed by the board" in the first sentence of Subsection B, added Subsection C, and redesignated former Subsection C as Subsection D.

61-2-10.3. Prescription for pharmaceutical agent or ophthalmic lenses; required elements; authority of a person who sells and dispenses eyeglasses. (Repealed effective July 1, 2024.)

A. A prescription written for a pharmaceutical agent shall include an order given individually for the person for whom prescribed, either directly from the prescriber to a pharmacist or indirectly by means of a written or electronic order signed by the prescriber, that bears the name and address of the prescriber, the prescriber's license classification, the name and address of the patient, the name and quantity of the agent prescribed and directions for its use and the date of issue.

B. A prescription written for ophthalmic lenses shall include:

- (1) the dioptric power of spheres, cylinders and prisms, the axes of cylinders, the position of the prism base and, if so desired by the prescriber, the light transmission properties and lens curve values;
- (2) the designation of pupillary distance; and
- (3) the name of the patient, the date of the prescription, the expiration date of the prescription and the name and address of the prescriber.

C. A person who sells and dispenses eyeglasses upon the written prescription of a physician, surgeon or optometrist may determine:

- (1) the type, form, size and shape of ophthalmic lenses;
- (2) the placement of optical centers for distance-seeing and near-work;
- (3) the designation of type and placement of reading segments in multivision lenses;
- (4) the type and quality of frame or mounting, the type of bridge and the distance between lenses and the type, length and angling of temples; and
- (5) the designation of pupillary distance.

History: Laws 2003, ch. 274, § 8; 2015, ch. 131, § 4.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2015 amendment, effective June 19, 2015, provided procedures for certain prescriptions prescribed by optometrists; in the catchline, after "Prescription for", deleted "topical ocular pharmaceutical agent, oral"; and in Subsection A, after "prescription written for", deleted "topical ocular pharmaceutical agent or for an oral", after "means of a written", added "or electronic", and after "prescriber", deleted "his" and added "the prescriber's".

61-2-10.4. Contact lens prescription; required elements; restrictions. (Repealed effective July 1, 2024.)

A. A contact lens prescription shall:

- (1) explicitly state that it is for contact lenses;
- (2) specify the lens type;
- (3) include all specifications for the ordering and fabrication of the lenses;
- (4) include the date of issue, the name and address of the patient and the name and address of the prescriber; and
- (5) indicate a specific date of expiration, which shall be twenty-four months from the date of the prescription, unless, in the professional opinion of the prescriber, a longer or shorter expiration date is in the best interests of the patient.

B. A contact lens shall be fitted to a patient at the prescriber's place of practice.

C. A prescriber may extend a patient's prescription without completing another eye examination of the patient.

D. A prescriber shall not write a contact lens prescription until he has determined all the requirements of a satisfactory fit.

E. A contact lens prescription may include a statement of caution or a disclaimer, if the statement or disclaimer is supported by appropriate findings and documented patient records.

F. The words "OK for contact or corneal lenses", "fit with contact or corneal lenses", "contact or corneal lenses may be worn" or similar wording do not constitute a contact lens prescription.

G. If, in the professional opinion of the prescriber, a patient is not adhering to an appropriate regimen of care and follow-up with regard to the use of contact lenses, the prescriber may terminate his care of that patient. The prescriber shall notify the patient in writing that the prescriber is terminating care and shall state his reasons for doing so.

History: Laws 2003, ch. 274, § 9.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-2-10.5. Replacement contact lens prescriptions. (Repealed effective July 1, 2024.)

A. As used in this section:

(1) "immediate follow-up care" is that period of contact lens fitting time required to determine a contact lens prescription that is appropriate to the documented clinical needs of the patient; and

(2) "replacement contact lens prescription" means a prescription prepared by a licensed optometrist containing the information specified in this section and written expressly for the purpose of providing lenses that have already been properly fitted.

B. A licensed optometrist shall ensure that each replacement contact lens prescription that the licensed optometrist prescribes for contact lenses:

(1) contains all the information necessary for the replacement contact lens prescription to be properly dispensed, including the:

- (a) lens manufacturer;
- (b) type of lens;
- (c) power of the lens;
- (d) base curve;

(e) lens size;

(f) name of the patient;

(g) date the prescription was given to the patient;

(h) name and office location of the licensed optometrist who writes the replacement contact lens prescription; and

(i) expiration date of the replacement contact lens prescription; and

(2) is reduced to writing and placed in the patient's permanent file.

C. After a licensed optometrist releases the patient from immediate follow-up care, the patient may request a replacement contact lens prescription from the licensed optometrist. The request shall be in writing and signed by the patient, and shall be retained in the patient's file for at least five years. If, after examination, the patient's prescription has not changed since the last examination and there are no ocular concerns, a licensed optometrist shall, upon request of the patient, provide the patient's replacement contact lens prescription to the patient without cost to the patient and without requiring the patient to purchase contact lenses.

D. In responding to a patient's request pursuant to Subsection C of this section, a licensed optometrist shall transmit the replacement contact lens prescription by mail, telephone, facsimile, e-mail or any other means of communication that will, under normal circumstances, result in the patient receiving the information within a reasonable time.

E. The replacement contact lens prescription that a licensed optometrist provides a patient:

(1) shall contain the information necessary for the proper duplication of the current prescription of the patient;

(2) shall contain, subject to the provisions of Subsection F of this section, an expiration date for the replacement contact lens prescription of not more than twenty-four months from the time the patient was first examined; and

(3) may contain wearing guidelines or specific instructions for use of the contact lenses by the patient, or both.

F. The licensed optometrist shall enter into the patient's medical record the valid clinical reasons for a shorter expiration date and shall provide the patient with a written and oral explanation of the clinical reasons for a shorter expiration date.

G. When a patient's prescription is dispensed by a person other than a licensed optometrist or a person associated directly or indirectly with the licensed optometrist, the licensed optometrist is not liable for any injury to or condition of a patient caused solely by the negligence of the dispenser.

H. A licensed optometrist who releases a replacement contact lens prescription to a patient may provide the patient with a written statement that wearing improperly fitted contact lenses may cause harm to the patient's eyes and that the patient should have an eye examination if there are any changes in the patient's vision, including pain or vision loss.

I. A licensed optometrist who fills or provides a contact lens prescription shall maintain a record of that prescription in accordance with rules promulgated by the board.

J. A person other than a licensed optometrist or physician who fills a contact lens prescription shall maintain a record of that prescription for five years.

K. The board may impose a civil fine of no more than one thousand dollars (\$1,000) on a licensed optometrist who fails to provide a replacement contact lens prescription, knowingly dispenses contact lenses without a valid and unexpired replacement contact lens prescription or who otherwise fails to comply with the provisions of this section.

L. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless the person has at the time of sale or dispensing a copy of a valid, unexpired prescription or has obtained verification of a valid, unexpired prescription in accordance with Subsection M of this section.

M. A contact lens may not be sold, dispensed or distributed to a patient in this state by a seller of contact lenses unless one of the following has occurred:

(1) the patient has given or mailed the seller an original, valid, unexpired written contact lens prescription;

(2) the prescribing licensed optometrist has given, mailed or transmitted by facsimile transmission a copy of a valid, unexpired written contact lens prescription to a seller designated in writing by the patient to act on the patient's behalf; or

(3) the prescribing licensed optometrist has orally or in writing verified the valid, unexpired prescription to a seller designated by the patient to act on his behalf.

N. A verification shall not be provided pursuant to Paragraph (3) of Subsection M of this section unless the patient has designated the contact lens seller to act on the patient's behalf. Verification by the prescribing licensed optometrist shall take place pursuant to the following procedure:

(1) a request for a verification shall be made by the seller to the prescribing licensed optometrist by facsimile, mail or telephone;

(2) if received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days of receipt;

(3) if not received between 9:00 a.m. and 5:00 p.m. on a working day, the prescribing licensed optometrist shall provide verification to the seller within three working days after 9:00 a.m. of the next working day following receipt;

(4) in any case where the existence of a valid designation by the patient of a seller to act on the patient's behalf is in question, the prescriber shall promptly contact the patient to determine if a designation is in effect. Under no circumstances shall a non-response to a verification request be deemed to authorize, validate or confirm any prescription; and

(5) as used in this subsection, "working day" means any Saturday or Sunday that the office of the prescribing licensed optometrist is open and Monday through Friday but does not include a holiday.

O. A person who knowingly violates the provisions of Subsection L of this section is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

P. A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses; provided that pharmacies, clinics and hospitals licensed by the board of pharmacy shall be exempt from this requirement. The board of pharmacy shall promulgate rules to establish the application procedures for obtaining registration and may include a requirement for payment of a fee by the applicant, but the amount of the fee shall not exceed the costs of implementing the registration requirement. The board of pharmacy shall maintain a current list of all registered sellers and dispensers of contact lenses. A person who is not registered pursuant to this subsection and knowingly sells or dispenses a contact lens to a resident of this state is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

History: Laws 2003, ch. 274, § 10.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Effective dates. — Laws 2003, ch. 274 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

61-2-11. License fees; licensure under prior law. (Repealed effective July 1, 2024.)

A. The board shall set fees for the following by rule:

- (1) application fee in an amount not to exceed five hundred dollars (\$500);
- (2) examination fee in an amount not to exceed five hundred dollars (\$500);
- (3) licensure fee in an amount not to exceed four hundred dollars (\$400); and
- (4) issuance fee for pharmaceutical certification in an amount not to exceed one hundred dollars (\$100).

B. A person licensed as an optometrist under any prior laws of this state, whose license is valid on April 3, 1973, shall be held to be licensed under the provisions of the Optometry Act and shall be entitled to the annual renewal of his license as provided in that act.

C. Prior to engaging in the active practice of optometry in this state, a licensee shall furnish the board evidence that he holds a registration number with the taxation and revenue department and has completed, as a condition of licensure by endorsement, the continuing education requirements as set by the rules of the board.

History: 1953 Comp., § 67-1-9, enacted by Laws 1973, ch. 353, § 9; 1981, ch. 50, § 1; 1995, ch. 20, § 6; 1996, ch. 59, § 2; 2003, ch. 274, § 3.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted Paragraph A(5) which read: "annual license renewal fee in an amount not to exceed three hundred dollars (\$300); and"; deleted Paragraph A(6) which read: "late renewal penalty fee in an amount not to exceed one hundred dollars (\$100)"; deleted "present" following "renewal of his" in Subsection B; and substituted "the" for "such" following "licensure by endorsement" in Subsection C.

The 1996 amendment, effective May 15, 1996, rewrote Subsection A and substituted "April 3, 1973" for "the effective date of the Optometry Act" near the beginning of Subsection B.

The 1995 amendment, effective July 1, 1995, substituted "taxation and revenue department" for "revenue division" in Subsection C and made a stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 21.

61-2-12. License; display; renewal; retirement; resumption of practice. (Repealed effective July 1, 2024.)

A. A person to whom a license as an optometrist has been issued shall display the license in a conspicuous place in the licensee's principal office or place of business.

B. A license shall be renewed annually on or before July 1. The licensee shall pay to the secretary-treasurer of the board the required fees. The board shall promulgate rules establishing additional requirements and procedures for renewal of a license. It shall also promulgate rules establishing a fee schedule for renewal of a license, but a specific fee shall not exceed five hundred dollars (\$500).

C. Failure to renew a license pursuant to this section terminates the optometrist's authority to practice optometry, and the former licensee shall fulfill all current requirements for licensing and therapeutic drug certification if application for licensing or certification is made after termination.

D. An optometrist who intends to retire from the practice of optometry shall notify the board in writing before the expiration of his license, and the secretary-treasurer of the board shall acknowledge the receipt of the notice and record it. If within a period of five years from the year of retirement the optometrist desires to resume practice, he shall notify the board in writing, and, upon giving proof of completing refresher courses prescribed by rules of the board and the payment of required fees, his license shall be restored to him in full effect.

E. Before engaging in the practice of optometry, a licensed optometrist shall notify the secretary-treasurer of the board in writing of the address at which he intends to begin practice and subsequently of any changes in his business address or location. Notices the board is required to give a licensee shall legally have been given when delivered to the latest address furnished by the licensee to the board.

History: 1953 Comp., § 67-1-10, enacted by Laws 1973, ch. 353, § 10; 1995, ch. 20, § 7; 2003, ch. 274, § 4.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see [61-2-18](#) NMSA 1978.

Cross references. — For penalties for violation of Optometry Act, see [61-2-14](#) NMSA 1978.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

The 1995 amendment, effective July 1, 1995, inserted "as an optometrist" in Subsection A; substituted "secretary-treasurer" for "secretary" throughout the section; substituted "revenue processing division of the taxation and revenue department" for "bureau of revenue" in Subsection B; inserted "to include a minimum of six credit hours of continuing education in ocular therapeutic pharmacological agents" in the first sentence of Subsection C; and made stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 11.

61-2-13. Refusal, suspension or revocation of license. (Repealed effective July 1, 2024.)

The board may refuse to issue, suspend or revoke any license, in accordance with the provisions of the Uniform Licensing Act [[61-1-1](#) to [61-1-31](#) NMSA 1978], for any of the following reasons:

- A. conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- B. malpractice or incompetence;
- C. continued practice by a person knowingly having an infectious or contagious disease;
- D. advertising by means of knowingly false, misleading or deceptive statements or advertising or attempting to practice under a name other than one's own;
- E. habitual drunkenness or addiction to the use of habit-forming drugs;
- F. aiding or abetting in the practice of optometry any person not duly licensed to practice optometry in this state;
- G. lending, leasing or in any other manner placing his certificate of license at the disposal or in the service of any person not licensed to practice optometry in this state;
- H. employing, procuring or inducing an unlicensed person to practice optometry in this state;
- I. violating any of the provisions of the Optometry Act; or
- J. committing any act defined as "unprofessional conduct" by regulation of the board filed in accordance with the State Rules Act [Chapter [14](#), Article [4](#) NMSA 1978]. Without limiting the right of the board to determine what acts on the part of a licensee constitute unprofessional conduct, the following acts shall be deemed to be unprofessional conduct:

- (1) any conduct of a character tending to deceive or defraud the public;
- (2) the obtaining of a fee by fraud or misrepresentation;
- (3) charging unusual, unreasonable or exorbitant fees;
- (4) "splitting" or dividing a fee with any person;
- (5) advertising professional superiority;
- (6) advertising by any means, or granting, a discount for professional services, prosthetic devices, eyeglasses, lenses, frames or mountings whether sold separately or as part of the professional services; or
- (7) using any type of "price advertising" which would tend to imply the furnishing of professional services without cost or at a reduced cost to the public.

History: 1953 Comp., § 67-1-11, enacted by Laws 1973, ch. 353, § 11.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Constitutional basis for prohibitions against advertising. — Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963 Op. Att'y Gen. No. 63-119 (rendered under former law).

Applicability to optometrists in state. — An optometrist doing business in New Mexico must carry on the profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

Out-of-state advertising. — The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist fell within the prohibition of the former New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 74 to 100.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

Revocability of license for fraud or other misconduct before or at time of its issuance, 165 A.L.R. 1138.

Stay pending review of judgment or order revoking or suspending license, 166 A.L.R. 575.

Validity of governmental regulation of optometry, 22 A.L.R.2d 939.

Comment note on hearsay evidence in proceedings before state administrative agencies, 36 A.L.R.3d 12.

Improper or immoral sexually related conduct toward patient as ground for disciplinary action against physician, dentist, or other licensed healer, 59 A.L.R.4th 1104.

Ophthalmological malpractice, 30 A.L.R.5th 571.

70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers §§ 35 to 42.

61-2-14. Offenses. (Repealed effective July 1, 2024.)

A. A person who commits one of the following acts is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978:

- (1) practicing or attempting to practice optometry without a valid current license issued by the board;
- (2) using or attempting to use a pharmaceutical agent that is regulated pursuant to the provisions of the New Mexico Drug, Device and Cosmetic Act [Chapter 26, Article 1 NMSA 1978] without having the certification for its use issued by the board, unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act; or
- (3) permitting a person in one's employ, supervision or control to practice optometry or use pharmaceutical agents described in Paragraph (2) of this subsection unless that person is licensed and certified in accordance with the provisions of the Optometry Act or unless the administration of pharmaceutical agents is done under the direct supervision of a licensed optometrist certified to administer the pharmaceutical agents in accordance with the provisions of the Optometry Act.

B. A person who commits one of the following acts is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978:

- (1) making a willfully false oath or affirmation where the oath or affirmation is required by the Optometry Act;
- (2) selling or using any designation, diploma or certificate tending to imply that one is a practitioner of optometry, unless one holds a license as provided by the Optometry Act;
- (3) refusing, after a request, to provide a patient a copy of the patient's eyeglasses prescription, if the prescription is not over one year old;
- (4) duplicating or replacing an ophthalmic lens without a current prescription not more than two years old or without a written authorization from the patient if the prescription is not available;
- (5) except for licensed optometrists, using any trial lenses, trial frames, graduated test cards or other appliances or instruments for the purpose of examining the eyes or rendering assistance to anyone who desires to have an examination of the eyes, but it is not the intent of this paragraph to prevent a school nurse, schoolteacher or employee in public service from ascertaining the possible need of vision services, if the person, clinic or program does not attempt to diagnose or prescribe ophthalmic lenses for the eyes or recommend any particular practitioner or system of practice;
- (6) advertising the fabricating, adapting, employing, providing, sale or duplication of eyeglasses or any part of them, but this paragraph does not preclude the use of a business name, trade name or trademark not relating to price or the use of the address, telephone number, office

hours and designation of the provider, in or at retail outlets, on business cards, eyeglass cleaners and cases or in news media or in public directories, mailings and announcements of location openings or the use of the words "doctors' prescriptions for eyeglasses filled" or "eyeglass repairs, replacements and adjustments"; or

(7) selling of prescription eyeglasses or contact lenses, frames or mountings for lenses in an establishment in which the majority of its income is not derived from being engaged in that endeavor.

History: 1953 Comp., § 67-1-12, enacted by Laws 1973, ch. 353, § 12; 1985, ch. 241, § 5; 1995, ch. 20, § 8; 1996, ch. 59, § 3; 2003, ch. 274, § 5; 2015, ch. 131, § 5.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

Cross references. — For the Criminal Code, see 30-1-1 NMSA 1978 and notes thereto.

The 2015 amendment, effective June 19, 2015, provided for a generalized "pharmaceutical agent" by removing references to certain types of pharmaceutical agents in the provision relating to violations of the Optometry Act; in Paragraph (2) of Subsection A, after "attempting to use a", deleted "topical ocular pharmaceutical agent or an oral"; in Paragraph (3) of Subsection B, after "a copy of", deleted "his" and added "the patient's"; in Paragraph (5) of Subsection B, after "paragraph to prevent", deleted "any" and added "a"; and in Paragraph (6) of Subsection B, after "eyeglasses or any part", deleted "thereof" and added "of them".

The 2003 amendment, effective June 20, 2003, rewrote the section to the extent that a detailed comparison is impracticable.

The 1996 amendment, effective May 15, 1996, added the language beginning "unless, however, the administration of pharmaceutical agents" at the end of Paragraph A(2), deleted "licensed or" following "unless that person is" in Paragraph A(3), and added the language beginning "or unless the administration of pharmaceutical agents" at the end of Paragraph A(3).

The 1995 amendment, effective July 1, 1995, added Subsection A; designated the former introductory paragraph as Subsection B and rewrote the provision; redesignated former Subsections C through F as Paragraphs B(1) through B(4); deleted former Subsection G prohibiting practicing optometry when one's license has been revoked or suspended; designated former Subsections H through J as Paragraphs B(5) through B(7); and made related and other stylistic changes throughout the section.

Constitutionality of advertising restraints. — Subsection (m) of 67-7-13, 1953 Comp., prohibiting price advertising of eyeglasses, lenses and the like, did not impose a constitutionally prohibited burden upon interstate commerce, and was not preempted by federal legislation; nor did it constitute a deprivation of property in violation of the due process clause or a violation of the privileges and immunities clause of the fourteenth amendment. *Head v. N.M. Bd. of Exam'rs*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

Freedom of speech issue not decided. — Argument that injunction against a newspaper and radio station, prohibiting the accepting or publishing within New Mexico of a Texas optometrist's advertisement, constituted an invalid restraint upon freedom of speech protected by the fourteenth amendment was neither made to the state courts nor reserved in notice of appeal, and would not be

considered by the supreme court. *Head v. N.M. Bd. of Exam'rs*, 374 U.S. 424, 83 S. Ct. 1759, 10 L. Ed. 2d 983 (1963).

Cable television system not "advertising". — Cable television system which did not sell advertising space, nor receive any compensation whatsoever from advertisers or broadcasters for the electronic service it performed, and was supported entirely by the sale of subscriptions to viewers, in return for which it performed the service of increasing the viewer's capacity to receive television signals, was not "advertising" within meaning of statute forbidding advertising of optometry and optometry services; neither did operators share a "community of purpose" with out-of-state optometrists or broadcasters sufficient to render them liable as accessories. *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Fact that one consequence of the cable television systems' activities was to expose a number of New Mexicans to price advertising inducements to which they might not otherwise have been exposed was merely an incidental effect of an otherwise lawful activity, and did not, of itself, absent intention or purpose, make the activity "advertising." *Midwest Video v. Campbell*, 1969-NMSC-034, 80 N.M. 116, 452 P.2d 185.

Stay of federal proceedings pending state construction. — Former 67-7-13(m), 1953 Comp., which forbade the advertising of prices or terms on eyeglasses, spectacles, etc., should have been exposed to state construction as to its application to the plaintiffs or limiting action before the federal courts were asked to pass on its constitutionality; therefore, proceedings challenging its validity before a three-judge federal district court would be stayed for a reasonable time pending state court interpretation of the statute. *Midwest Video Corp. v. Campbell*, 250 F. Supp. 158 (D.N.M. 1965).

Applicability to optometrists in state. — An optometrist doing business in New Mexico must carry on the profession in accordance with the laws of this state. 1969 Op. Att'y Gen. No. 69-80.

Constitutional basis for prohibitions against advertising. — Laws prohibiting price advertising and similar advertising by professional persons have as their constitutional basis the rationale that the state has such an interest in the health of its citizens that it may prevent advertising or price promulgation by professional individuals engaged in treating the human body or any part thereof. 1963 Op. Att'y Gen. No. 63-119 (rendered under former law).

Out-of-state advertising. — The placing of prohibited trade advertising with out-of-state media by a New Mexico optometrist would lie within the prohibition of the former New Mexico Optometry Act (67-7-1, 1953 Comp. et seq.). 1969 Op. Att'y Gen. No. 69-80.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 61 Am. Jur. 2d Physicians, Surgeons and Other Healers §§ 125 to 131, 135, 141, 143, 144.

Constitutionality of statute or ordinance prohibiting or regulating advertising by physician, surgeon or other person professing healing arts, 54 A.L.R. 400.

Constitutionality of statutes and validity of regulations relating to optometry, 98 A.L.R. 905, 22 A.L.R.2d 939.

Right of corporation or individual, not himself licensed, to practice optometry through licensed employee, 102 A.L.R. 343, 128 A.L.R. 585.

One who fills prescription under reciprocity arrangement with optometrist as subject to charge of practice of optometry without license, 121 A.L.R. 1455.

What constitutes practice of "optometry," 82 A.L.R.4th 816.

61-2-14.1. Contact lenses; spectacles; limitations on prescriptions; criminal penalty; civil remedy; exceptions.

A. Unless the person is licensed pursuant to the Optometry Act, the Medical Practice Act [Chapter 61, Article 6 NMSA 1978] or the Osteopathic Medicine Act [Chapter 61, Article 10 NMSA 1978], a person shall not:

(1) perform an eye examination on an individual physically located in the state at the time of the eye examination; or

(2) write a prescription for contact lenses or spectacles.

B. A person shall not write a prescription for contact lenses or spectacles unless an eye examination is performed before writing the prescription. The prescription shall take into consideration any medical findings and any refractive error determined during the eye examination.

C. A person who violates a provision of this section is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. The board of optometry, the New Mexico medical board, the board of osteopathic medicine or any other person potentially aggrieved by a violation of this section may bring a suit in a court of competent jurisdiction to enjoin a violation of a provision of this section.

E. Nothing in this section shall be construed to prohibit:

(1) a health care provider from using telehealth in accordance with the provisions of the New Mexico Telehealth Act [Chapter 24, Article 25 NMSA 1978] for ocular diseases;

(2) a vision screening performed in a school by a nurse, physician assistant, osteopathic physician assistant or another provider otherwise authorized pursuant to state law;

(3) an optician from completing a prescription for spectacles or contact lenses in accordance with the provisions of the Optometry Act;

(4) a technician from providing an eye care screening program at a health fair, not-for-profit event, not-for-profit public vision van service, public health event or other similar event;

(5) a physician assistant licensed pursuant to the Medical Practice Act, or an osteopathic physician assistant licensed pursuant to the Osteopathic Medicine Act, working under the supervision of an ophthalmologist licensed pursuant to the Medical Practice Act or the Osteopathic Medicine Act, from performing an eye examination on an individual physically located in the state at the time of the eye examination; or

(6) a vision screening performed by another provider otherwise authorized pursuant to state law.

F. As used in this section:

(1) "autorefractor" means any electronic computer or automated testing device used remotely, in person or through any other communication interface to provide an objective or subjective measurement of an individual's refractive error;

(2) "contact lens" means any lens placed directly on the surface of the eye, regardless of whether or not it is intended to correct a visual defect, including any cosmetic, therapeutic or corrective lens;

(3) "eye examination" means an in-person assessment at a physician's office or an optometrist's office, in a hospital setting or in a hospital health system setting that:

(a) is performed in accordance with the applicable standard of care;

(b) consists of an assessment of the ocular health and visual status of an individual;

(c) does not consist of solely objective or subjective refractive data or information generated by an automated testing device, including an autorefractor or kiosk, in order to establish a medical diagnosis or for the determination of refractive error; and

(d) is performed on an individual who is physically located in this state at the time of the assessment;

(4) "kiosk" means any automatic or electronic equipment, application or computer software designed to be used on a telephone, teleconference device, computer, virtual reality device or internet-based device that can be used remotely, in person or through any other communication interface to conduct an eye examination or determine refractive error;

(5) "prescription" means an optometrist's or ophthalmologist's handwritten or electronic order for spectacle lenses or contact lenses based on an eye examination that corrects refractive error; and

(6) "spectacles" means an optical instrument or device worn or used by an individual that has one or more lenses designed to correct or enhance vision addressing the visual needs of the individual wearer, commonly known as "glasses" or "eyeglasses", including spectacles that may be adjusted by the wearer to achieve different types of visual correction or enhancement. "Spectacles" does not mean:

(a) an optical instrument or device that is not intended to correct or enhance vision or that does not require consideration of the visual status of the individual who will use the optical instrument or device; or

(b) eyewear that is sold without a prescription.

History: Laws 2019, ch. 15, § 1.

ANNOTATIONS

Compiler's notes. — Laws 2019, ch. 15, § 1 was not enacted as part of the Optometry Act, but was compiled there for the convenience of the user.

Effective dates. — Laws 2019, ch. 15 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 14, 2019, 90 days after the adjournment of the legislature.

61-2-15. Exemptions. (Repealed effective July 1, 2024.)

A. Except for the provisions of Section 61-2-16 NMSA 1978 and as provided in this subsection, the Optometry Act does not apply to a licensed physician or a person, clinic or program under his responsible supervision and control, provided that the person, clinic or program under the responsible supervision and control of the licensed physician shall not use either loose or fixed trial lenses for the sole purpose of determining the prescription for eyeglasses or contact lenses.

B. Except as provided in Sections 61-2-2, 61-2-14, 61-2-16 and 61-2-17 NMSA 1978, the Optometry Act does not apply to a person selling eyeglasses who does not represent himself as being qualified to detect or correct ocular anomalies and who does not traffic upon assumed skill in adapting ophthalmic lenses to the eyes.

History: 1953 Comp., § 67-1-13, enacted by Laws 1973, ch. 353, § 13; 2003, ch. 274, § 6.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2003 amendment, effective June 20, 2003, rewrote this section to the extent that a detailed comparison is impracticable.

Person who duplicates ophthalmic lens without prescription is practicing optometry and as such must be licensed under the act or is in violation of the same. 1954 Op. Att'y Gen. No. 54-5909.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 70 C.J.S. Physicians, Surgeons, and Other Health-Care Providers § 13.

61-2-16. Freedom of choice. (Repealed effective July 1, 2024.)

A. In expending public money for any purpose involving the care of vision, any state board, commission or department created or existing by statute, including public schools or other state or municipal agencies or any of their employees, who, in the performance of their duties, are responsible for such expenditures shall not, directly or indirectly, refer the name or address of any particular ocular practitioner or system of practice to any person eligible for a vision examination or the correction of any visual or muscular anomaly, except in emergency situations.

B. Every policy of insurance or medical or health service contract providing for payment or reimbursement for any eye care service shall be construed to include payment or reimbursement for professional services rendered by a licensed optometrist, and no insurance policy or medical or health service contract shall discriminate between ocular practitioners rendering similar services.

History: 1953 Comp., § 67-1-14, enacted by Laws 1973, ch. 353, § 14; 1985, ch. 241, § 6; 2003, ch. 274, § 7.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see 61-2-18 NMSA 1978.

The 2003 amendment, effective June 20, 2003, deleted the last sentence in Subsection A which read: "For the purpose of this subsection, 'ocular practitioner' includes all validly licensed optometrists, physicians and surgeons."

61-2-17. Power to enjoin violations. (Repealed effective July 1, 2024.)

Upon conviction of any person for violation of any provision of the Optometry Act, the board or any interested person may, in addition to the penalty herein provided, petition the district court for an order restraining and enjoining said person from further or continued violation of the Optometry Act and the order may be enforced by contempt proceedings.

History: 1953 Comp., § 67-1-15, enacted by Laws 1973, ch. 353, § 15.

ANNOTATIONS

Delayed repeals. — For delayed repeal of this section, see **61-2-18** NMSA 1978.

Cross references. — For penalties for violation of the Optometry Act, see **61-2-14** NMSA 1978.

Severability. — Laws 1973, ch. 353, § 16, provided for the severability of the Optometry Act if any part or application thereof is found invalid.

61-2-18. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The board of optometry is terminated on July 1, 2023 pursuant to the Sunset Act [**12-9-11** to **12-9-21** NMSA 1978]. The board shall continue to operate according to the provisions of the Optometry Act until July 1, 2024. Effective July 1, 2024, the Optometry Act is repealed.

History: 1978 Comp., § 61-2-18, enacted by Laws 1979, ch. 12, § 3; 1981, ch. 241, § 16; 1985, ch. 87, § 1; 1991, ch. 189, § 2; **1997, ch. 46, § 2; 2003, ch. 428, § 1; 2009, ch. 96, § 2; 2015, ch. 119, § 2.**

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, extended the termination date for the board of optometry to July 1, 2023, and the repeal date to July 1, 2024.

The 2009 amendment, effective July 1, 2009, extended the termination date to July 1, 2015 and the repeal date to July 1, 2016.

The 2003 amendment, effective July 1, 2003, substituted "the Optometry Act" for "Chapter **61**, Article **2** NMSA 1978" throughout the section, and in the first sentence substituted "2009" for "2003" and in the second and third sentences substituted "2010" for "2004".

The 1997 amendment, effective June 20, 1997, substituted "2003" for "1997", substituted "2004" for "1998" and substituted "July 1, 2004, Chapter **61**, Article **2** NMSA 1978" for "July 1, 1998, Article

2 of Chapter 61, NMSA 1978".

The 1991 amendment, effective June 14, 1991, substituted "July 1, 1997" for "July 1, 1991" in the first sentence and "July 1, 1998" for "July 1, 1992" in the first and third sentences.