

**61-14-1. Short title. (Repealed effective July 1, 2024.)**

Chapter 61, Article 14 NMSA 1978 may be cited as the "Veterinary Practice Act".

History: 1953 Comp., § 67-11-12, enacted by Laws 1967, ch. 62, § 1; 2011, ch. 30, § 2.

**61-14-2. Definitions. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)**

*As used in the Veterinary Practice Act:*

- A. *"animal" means any animal other than man;*
- B. *"animal shelter":*
- (1) *means:*
    - (a) *a county or municipal facility that provides shelter to animals on a regular basis, including a small animal impound facility; and*
    - (b) *a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and*
  - (2) *does not include a municipal zoological park;*
- C. *"euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;*
- D. *"euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a small animal impound facility, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;*
- E. *"practice of veterinary medicine" means:*
- (1) *the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any procedure for artificial insemination, testing for pregnancy, diagnosing and treating sterility or infertility or rendering advice with regard to any of these;*
  - (2) *the representation, directly or indirectly, publicly or privately, of an ability and willingness to do any act mentioned in Paragraph (1) of this subsection; or*
  - (3) *the use of any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act mentioned in Paragraph (1) of this subsection;*
- F. *"veterinarian" means a person having the degree of doctor of veterinary medicine or its equivalent from a veterinary school or a person who has received a medical education in veterinary medicine in a foreign country and has thereafter entered the United States and fulfilled the requirements and standards set forth by the American veterinary medical association and has passed all examinations required by the board prior to being issued any license to practice veterinary medicine in this state;*
- G. *"licensed veterinarian" means a person licensed to practice veterinary medicine in this state;*
- H. *"veterinary school" means any veterinary college or any division of a university or college that is approved for accreditation by the American veterinary medical association;*
- I. *"board" means the board of veterinary medicine;*
- J. *"veterinary technician" means a skilled person certified by the board as being qualified by academic and practical training to provide veterinary services under the supervision and direction of the licensed veterinarian who is responsible for the performance of that technician;*
- K. *"committee" means the veterinary technician examining committee;*
- L. *"direct supervision" means the treatment of animals on the direction, order or prescription of a licensed veterinarian who is available on the premises and who has established a valid veterinarian-client-patient relationship;*
- M. *"sheltering committee" means the animal sheltering committee;*
- N. *"valid veterinarian-client-patient relationship" means:*

- (1) *the veterinarian has assumed responsibility for making medical judgments regarding the health of an animal being treated and the need for and the course of the animal's medical treatment;*
- (2) *the client has agreed to follow the instructions of the veterinarian;*
- (3) *the veterinarian is sufficiently acquainted with an animal being treated, whether through examination of the animal or timely visits to the animal's habitat for purposes of assessing the condition in which the animal is kept, to be capable of making a preliminary or general diagnosis of the medical condition of the animal being treated; and*
- (4) *the veterinarian is reasonably available for follow-up treatment; and*

O. *"veterinary medicine" means veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine.*

*History: 1953 Comp., § 67-11-13, enacted by Laws 1967, ch. 62, § 2; 1975, ch. 96, § 1; 1977, ch. 236, § 1; 1993, ch. 163, § 1; 2017, ch. 44, § 1.*

**61-14-3. Criminal offender's character evaluation. (Repealed effective July 1, 2024.)**

The provisions of the Criminal Offender Employment Act [28-2-1 through 28-2-6 NMSA 1978] shall govern any consideration of criminal records required or permitted by the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-13.1, enacted by Laws 1974, ch. 78, § 19.

**61-14-4. Board created; terms; compensation; finance. (Repealed effective July 1, 2024.)**

A. The "board of veterinary medicine" is created. The board shall consist of seven members who are citizens of the United States and residents of New Mexico. Veterinary members shall have been licensed to practice veterinary medicine in the state for five years preceding their appointment to the board.

B. Members of the board and their successors shall be appointed by the governor. Five of the members shall be licensed veterinarians, and these appointments may be made from a list of five names for each professional vacancy, submitted to the governor by the New Mexico veterinary medical association. Two members shall represent the public and shall not have been licensed as veterinarians or have any significant financial interest, whether direct or indirect, in the occupation regulated.

C. Members shall be appointed to staggered terms of four years each. Appointments shall be made in such manner that the terms of no more than two board members expire on July 1 of each year. All board members shall hold office until their successors are appointed and qualified. Appointments to vacancies shall be for the unexpired terms. Board members shall not serve more than two consecutive four-year terms.

D. A majority of the members of the board constitutes a quorum for the transaction of business, except that the vote of four members is required for suspension or revocation of a license. The board shall elect a chairman and other necessary officers prescribed by regulation of the board.

E. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [~~10-8-1~~ through ~~10-8-8~~ NMSA 1978] and shall receive no other compensation, perquisite or allowance. This reimbursement and all other expenses involved in carrying out the Veterinary Practice Act shall be paid exclusively from fees received pursuant to provisions of the Veterinary Practice Act. The board shall deposit all fees received pursuant to provisions of the Veterinary Practice Act with the state treasurer for the exclusive use of the board, and money shall be expended only upon vouchers certified by a majority of the board.

F. Any board member failing to attend, after proper notice, three consecutive meetings, either regular or special, shall automatically be removed as a member of the board.

**History:** 1953 Comp., § 67-11-14, enacted by Laws 1967, ch. 62, § 3; 1975, ch. 96, § 2; 1979, ch. 76, § 1; 1991, ch. 189, § 21; 1993, ch. 163, § 2; 1995, ch. 154, § 1.

**61-14-4.1. Protected actions; communication. (Repealed effective July 1, 2024.)**

A. No current or former member of the board, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness or any other person serving or having served the board shall bear liability or be subject to civil damages or criminal prosecutions for any action or omission undertaken or performed within the scope of the board's duties.

B. All written and oral communications made by any person to the board relating to actual or potential disciplinary action shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978]. All data, communications and information acquired by the board relating to actual or potential disciplinary action shall not be disclosed except to the extent necessary to carry out the board's purposes or in a judicial appeal from the board's actions.

C. The board shall make available to interested members of the public information about a disciplinary action taken by the board pursuant to Section 61-14-13 NMSA 1978, including the name of the licensee, the nature of the violation of the Veterinary Practice Act and the disciplinary action taken.

D. No person or legal entity providing information to the board, whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

**History:** Laws 1999, ch. 243, § 6.

**61-14-5. Board; duties. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)**

The board shall:

- A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;
  - B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;
  - C. establish a schedule of license and permit fees based on the board's financial requirements for the ensuing year;
  - D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;
  - E. employ personnel necessary to carry out its duties;
  - F. promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all rules promulgated by the board;
  - G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;
  - H. establish a five-member veterinary technician examining committee;
  - I. adopt rules establishing continuing education requirements as a condition for license renewal;
  - J. regulate the operation of veterinary facilities, including:
    - (1) establishing requirements for operation of a veterinary facility in accordance with recognized standards for the practice of veterinary medicine;
    - (2) issuing permits to qualified veterinary facilities; and
    - (3) adopting standards for inspection of veterinary facilities.
- For purposes of this subsection, "veterinary facility" means a building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided;
- K. perform the duties imposed on the board pursuant to the Animal Sheltering Act; and
  - L. establish a five-member sheltering committee.

History: 1953 Comp., § 67-11-15, enacted by Laws 1967, ch. 62, § 4; 1975, ch. 96, § 3; 1977, ch. 167, § 1; 1993, ch. 163, § 3; 1995, ch. 154, § 2; 1999, ch. 243, § 1; 2017, ch. 44, § 2.

**61-14-5.1. Impaired veterinarian. (Repealed effective July 1, 2024.)**

A. The board may appoint an impaired-veterinarian committee to organize and administer a program that will:

- (1) serve as a diversion program to which the board may refer licensees in lieu of or in addition to other disciplinary action under terms set by the board; and
- (2) be a confidential source of treatment or referral for veterinarians who, on a voluntary basis and without the knowledge of the board, desire to avail themselves of treatment for emotionally based or chemical-dependence impairments.

B. The impaired-veterinarian committee shall:

- (1) provide evaluations for veterinarians who request participation in the diversion program;
- (2) review and designate treatment facilities and services to which veterinarians in the diversion program may be referred;
- (3) receive and review information concerning the status and progress of participants in the diversion program;
- (4) publicize the diversion program in coordination with veterinary professional associations; and
- (5) prepare and provide reports at least annually to the board.

C. Each veterinarian referred to the diversion program by the board shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of diversion program participation; termination of diversion program participation shall be reported to the board by the impaired-veterinarian committee. Participation in the diversion program shall not be a defense against, but may be considered in mitigating, any disciplinary action taken by the board. The board is not precluded from commencing a disciplinary action against a veterinarian who is participating in the diversion program or has been terminated.

D. No member of the board or the impaired-veterinarian committee shall be liable for civil damages because of acts or omissions that occur in administering the provisions of this section.

**History:** Laws 1993, ch. 163, § 11.

**61-14-6. Veterinary technician examining committee; membership; terms; compensation. (Repealed effective July 1, 2024.)**

A. The "veterinary technician examining committee" shall consist of five members appointed by the board of veterinary medicine. The committee shall consist of two licensed veterinarians, one member of the board and two registered veterinary technicians.

B. Committee members shall serve for terms of four years except the board member on the committee shall be appointed for one year. With the exception of the board member on the committee, the terms of committee members shall be staggered by one year. Committee members shall serve until their successors have been appointed and qualified. Any vacancy shall be filled by appointment by the board of veterinary medicine for the remainder of the unexpired term.

C. Members of the committee shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 through 10-8-8 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History:** 1953 Comp., § 67-11-15.1, enacted by Laws 1975, ch. 96, § 4; 1993, ch. 163, § 4.

**61-14-7. Duties of the veterinary technician examining committee. (Repealed effective July 1, 2024.)**

A. The committee shall evaluate qualifications of education, skill and experience for certification of a person as a veterinary technician and provide forms and procedures for the board for certificates of qualification and for annual registration of employment.

B. The committee shall assist the board in the examination of applicants for veterinary technician certification. Such examination shall be held at least once a year at the times and places designated by the board.

**History:** 1953 Comp., § 67-11-15.2, enacted by Laws 1975, ch. 96, § 5.

***61-14-7.1. Animal sheltering committee; duties. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)***

*The sheltering committee shall:*

*A. develop a voluntary statewide dog and cat spay and neuter program in conjunction with animal shelters and euthanasia agencies;*

*B. develop criteria for individuals, nonprofit organizations, animal shelters and euthanasia agencies to receive assistance for dog and cat sterilization from the animal care and facility fund; and*

*C. recommend to the board the disbursements of money from the animal care and facility fund to qualifying individuals, nonprofit organizations, animal shelters and euthanasia agencies.*

*History: Laws 2017, ch. 44, § 3.*

**61-14-8. Application for license. (Repealed effective July 1, 2024.)**

A. Any person desiring a license to practice veterinary medicine in this state may make written application to the board showing that he:

- (1) has reached the age of majority; and
- (2) is a person of good moral character.

The application shall contain other information and proof as required by regulation of the board and shall be accompanied by an application fee established by the board.

B. If the board finds that the applicant possesses the proper qualifications, it shall admit him to the next examination. If an applicant is found unqualified to take the examination, the board shall immediately notify the applicant in writing of its findings and the grounds for them.

**History:** 1953 Comp., § 67-11-16, enacted by Laws 1967, ch. 62, § 5; 1973, ch. 49, § 1; 1993, ch. 163, § 5.

**61-14-9. Examination. (Repealed effective July 1, 2024.)**

The board shall conduct at least one examination each calendar year following public notice of the time and place. Examinations shall be prepared and conducted under regulations promulgated by the board, and shall be designed to test the applicant's knowledge and proficiency in the practice of veterinary medicine. Immediately after the results of each examination are determined, the board shall notify each applicant of the results of his examination and issue a license to those applicants successfully completing it. Any applicant failing an examination shall be admitted to any subsequent examination upon payment of another application fee.

**History:** 1953 Comp., § 67-11-17, enacted by Laws 1967, ch. 62, § 6.

**61-14-10. License by endorsement. (Repealed effective July 1, 2024.)**

A. Pursuant to its regulations, the board may issue a license without written examination, except an examination on state laws and other state and federal regulations related to the practice of veterinary medicine, to any qualified applicant who furnishes satisfactory evidence that he is a veterinarian and has for the five years next prior to filing his application, been a practicing veterinarian and licensed in a state, territory or district of the United States having license requirements at the time the applicant was first licensed that were substantially equivalent to the requirements of the Veterinary Practice Act.

B. Pursuant to its regulations, the board may issue, with examination, a limited practice license in veterinary medicine, which limited practice license shall describe adequately that area of veterinary medicine that the licensee is entitled to practice.

C. At its discretion, the board may examine, orally or practically, any person qualifying for a license under this section.

D. The board may issue without examination a temporary permit to practice veterinary medicine to:

(1) a qualified applicant for a license pending examination, provided the applicant is a graduate veterinarian and employed by and working under the direct supervision of a licensed veterinarian provided:

(a) the temporary permit shall expire the day after the notice of results of the first examination given after the permit is issued;

(b) a qualified applicant for a license pending examination may, at the board's discretion, be exempted from the requirement of working under the direct supervision of a licensed veterinarian, provided the applicant submits a written request for such exemption; and

(c) no additional temporary permit shall be issued to an applicant who has failed the required components of the New Mexico examination in this or any other state or any other territory, district or commonwealth of the United States; or

(2) a nonresident veterinarian validly licensed and in good standing with the licensing authority in another state, territory, district or commonwealth of the United States; provided that the temporary permit shall be issued for a period lasting no more than sixty days and that not more than one permit shall be issued to such a person during each calendar year. No more than two temporary permits shall be issued to any one individual.

E. A temporary permit to practice veterinary medicine may be summarily revoked by a majority vote of the board without a hearing.

**History:** 1953 Comp., § 67-11-18, enacted by Laws 1967, ch. 62, § 7; 1975, ch. 96, § 6; 1993, ch. 163, § 6; 1995, ch. 154, § 3.

**61-14-11. Certification as veterinary technician; annual registration of employment; employment change; fees. (Repealed effective July 1, 2024.)**

A. No person shall perform or attempt to perform as a veterinary technician without first applying for and obtaining a certificate of qualification from the board of veterinary medicine as a veterinary technician and having his employment registered in accordance with board regulation.

B. A veterinary technician shall perform only those acts and duties assigned him by a supervising licensed veterinarian that are within the scope of practice of such supervising veterinarian, not to include diagnosis, prescription or surgery.

C. An applicant for a certificate of qualification as a veterinary technician shall complete application forms as supplied by the board of veterinary medicine, successfully complete an examination conducted by the board and pay a fee to defray the cost of processing the application and administering the examination, which fee is not returnable.

D. Each certified veterinary technician shall annually register his employment with the board of veterinary medicine, stating his name and current address, the name and office address of both his employer and supervising licensed veterinarian and such additional information as the board deems necessary. Upon any change of employment as a veterinary technician, such registration shall automatically be void. Each annual registration or registration of new employment shall be accompanied by fees set by the board for use by the board in defraying the cost of administering the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-18.1, enacted by Laws 1975, ch. 96, § 7; 1993, ch. 163, § 7.

**61-14-12. License, permit and registration renewal. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)**

A. All licenses, permits and registrations issued pursuant to the Veterinary Practice Act may be renewed by payment of the renewal fee and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Except as provided in Subsections C and D of this section, a person may reinstate an expired license, registration or permit, issued pursuant to the Veterinary Practice Act, within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder shall apply for a new license, registration or permit and take the required examination.

C. A person shall not have the person's license, issued pursuant to the Veterinary Practice Act, reinstated in New Mexico if, during the time period in which the person's license lapsed, the person's license in another state or jurisdiction was suspended or revoked for reasons for which the license would have been subject to suspension or revocation in New Mexico.

D. A person who, during the time period in which the person's license, issued pursuant to the Veterinary Practice Act, lapsed, was subject to any disciplinary proceedings resulting in action less than suspension or revocation in another state or jurisdiction, may, at the discretion of the board, have the person's license to practice in New Mexico reinstated on a probationary status for up to two years. Upon request by the applicant for reinstatement, the board shall determine under what circumstances the probationary status shall be continued or removed or the application for reinstatement denied.

E. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when the veterinarian is on active duty with any branch of the armed services of the United States for the duration of a national emergency.

History: 1953 Comp., § 67-11-19, enacted by Laws 1967, ch. 62, § 8; 1975, ch. 96, § 8; 1977, ch. 167, § 2; 1993, ch. 163, § 8; 1995, ch. 154, § 4; 2017, ch. 44, § 4.

**61-14-13. Denial, suspension or revocation of license. (Repealed effective July 1, 2024.)**

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 through 61-1-31 NMSA 1978], the board may deny, suspend for a definite period or revoke a license, certificate or permit held or applied for under the Veterinary Practice Act, or may reprimand, place on probation, enter a stipulation with or impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) on a holder of a license, certificate or permit, upon a finding by the board that the licensee, certificate or permit holder, or applicant:

- (1) has committed an act of fraud, misrepresentation or deception in obtaining a license or permit;
- (2) has been adjudicated insane or manifestly incapacitated;
- (3) has used advertising or solicitation that is false, misleading or is otherwise deemed unprofessional under rules promulgated by the board;
- (4) has been convicted of a felony or other crime involving moral turpitude;
- (5) is guilty of dishonesty, incompetence, gross negligence or other malpractice in the practice of veterinary medicine;
- (6) has a professional association with or employs any person practicing veterinary medicine unlawfully;
- (7) is guilty of fraud or dishonesty in the application or reporting of any test for disease in animals;
- (8) has failed to maintain his professional premises and equipment in a clean and sanitary condition in compliance with facility permit rules promulgated by the board;
- (9) is guilty of habitual or excessive use of intoxicants or drugs;
- (10) is guilty of cruelty to animals;
- (11) has had his license to practice veterinary medicine revoked by another state, territory or district of the United States on grounds other than nonpayment of license or permit fees;
- (12) is guilty of unprofessional conduct by violation of a rule promulgated by the board pursuant to provisions of the Veterinary Practice Act;
- (13) has failed to perform as a veterinary technician under the direct supervision of a licensed veterinarian;
- (14) has failed as a licensed veterinarian to reasonably exercise direct supervision with respect to a veterinary technician;
- (15) is guilty of aiding or abetting the practice of veterinary medicine by a person not licensed, certified or permitted by the board;
- (16) has used any controlled drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event;
- (17) has willfully or negligently administered a drug or substance that will adulterate meat, milk, poultry, fish or eggs;
- (18) has failed to maintain required logs and records;
- (19) has used a prescription or has sold any prescription drug or prescribed extra-label use of any over-the-counter drug in the absence of a valid veterinarian-client-patient relationship;
- (20) has failed to report, as required by law, or has made a false report of any contagious or infectious disease;
- (21) has engaged in an unfair or deceptive practice; or
- (22) has engaged in the practice of veterinary medicine on any animal or group of animals in the absence of a valid veterinarian-client-patient relationship.

B. Disciplinary proceedings may be instituted by sworn complaint by any person and shall conform with the provisions of the Uniform Licensing Act.

C. Any person whose license, certificate or permit is suspended or revoked by the board pursuant to provisions of this section may, at the discretion of the board, be relicensed or reinstated by the board at any time without examination upon written application to the board showing cause to justify relicensing or reinstatement.

**History:** 1953 Comp., § 67-11-20, enacted by Laws 1967, ch. 62, § 9; 1975, ch. 96, § 9; 1993, ch. 163, § 9; 1995, ch. 154, § 5; 1998, ch. 55, § 75; 1999, ch. 243, § 2.

**61-14-14. Exemptions. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)**

*Provisions of the Veterinary Practice Act do not apply to:*

- A. employees of federal or state governments performing official duties;*
- B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;*
- C. reciprocal aid of neighbors in performing routine accepted livestock management practices;*
- D. a veterinarian licensed in a foreign jurisdiction consulting with a licensed veterinarian;*
- E. a merchant or manufacturer selling at the merchant's or manufacturer's regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;*
- F. the owner of an animal and the owner's consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;*
- G. a member of the faculty of a veterinary school performing the member's regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;*
- H. a person selling or applying any pesticide, insecticide or herbicide; or*
- I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals.*

*History: 1953 Comp., § 67-11-21, enacted by Laws 1967, ch. 62, § 10; 1975, ch. 96, § 10; 1993, ch. 163, § 10; 1999, ch. 243, § 3; 2017, ch. 44, § 5.*

**61-14-15. Persons previously licensed. (Repealed effective July 1, 2024.)**

The board shall issue a license to any person holding a valid license to practice veterinary medicine in this state on the effective date of the Veterinary Practice Act.

**History:** 1953 Comp., § 67-11-22, enacted by Laws 1967, ch. 62, § 11.

**61-14-16. Responsibility. (Repealed effective July 1, 2024.)**

Every veterinarian using, supervising or employing a registered veterinary technician shall be individually responsible and liable for the performance of the acts and omissions delegated to the veterinary technician. Nothing in this section shall be construed to relieve the veterinary technician of any responsibility and liability for any of his own acts and omissions.

**History:** 1953 Comp., § 67-11-22.1, enacted by Laws 1975, ch. 96, § 11; 1995, ch. 154, § 6.

**61-14-17. Inoculation records; confidentiality. (Repealed effective July 1, 2024.)**

Animal inoculation records maintained by any state or local public agency may be used only in protecting the public health and welfare or by any other government agency and are not public records open to inspection or duplication. Upon request, the agency shall verify, or deny, as the case may be, that the records reflect that a particular animal has received inoculations within the next preceding twelve months.

**History:** 1978 Comp., § 61-14-17, enacted by Laws 1995, ch. 154, § 7.

**61-14-18. Practicing without license; penalty. (Effective July 1, 2018.)(Repealed effective July 1, 2024.)**

A. *It is a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978 for a person to practice veterinary medicine without complying with the provisions of the Veterinary Practice Act and without being the holder of a license entitling the person to practice veterinary medicine in New Mexico.*

B. *If the board finds that a person or entity has practiced veterinary medicine without a license, the board may:*

*(1) impose a fine not to exceed five thousand dollars (\$5,000);*

*(2) assess the person or entity for administrative costs, including investigative costs and the cost of conducting a hearing; and*

*(3) impose any other sanction as provided pursuant to board rules.*

*History: 1953 Comp., § 67-11-24, enacted by Laws 1967, ch. 62, § 13; 1999, ch. 243, § 4; 2017, ch. 44, § 6.*

**61-14-19. Injunction. (Repealed effective July 1, 2024.)**

The board or any person may bring an action in the district court to enjoin any person who is not a licensed veterinarian from engaging in the practice of veterinary medicine. If the court finds that the defendant is violating or threatening to violate the Veterinary Practice Act, it shall enter an order restraining him from the violation. Any person so enjoined who violates the injunction may be punished for contempt of court. This remedy by injunction shall be in addition to any remedy provided for criminal prosecution of the offender.

**History:** 1953 Comp., § 67-11-25, enacted by Laws 1967, ch. 62, § 14; 1999, ch. 243, § 5.

**61-14-20. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)**

The board of veterinary medicine is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 are repealed.

History: 1978 Comp., § 61-14-20, enacted by Laws 1979, ch. 76, § 2; 1981, ch. 241, § 27; 1985, ch. 87, § 12; 1991, ch. 189, § 22; 1993, ch. 163, § 12; 1997, ch. 46, § 16; 2005, ch. 208, § 10; 2011, ch. 30, § 3; 2017, ch. 44, § 7.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 1 GENERAL PROVISIONS**

**16.25.1.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.  
[16.25.1.1 NMAC - Rp, 16.25.1.1 NMAC, 01-17-2014]

**16.25.1.2 SCOPE:** These rules apply to all veterinarians, veterinary technicians, bovine artificial insemination technicians, bovine pregnancy diagnosis technicians, and veterinary facilities.  
[16.25.1.2 NMAC - Rp, 16.25.1.2 NMAC, 01-17-2014]

**16.25.1.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5 (F), directs the board of veterinary medicine to adopt, regularly review and revise rules necessary to carry out the provisions of the Veterinary Practice Act after a hearing open to the public.  
[16.25.1.3 NMAC - Rp, 16.25.1.3 NMAC, 01-17-2014]

**16.25.1.4 DURATION:** Permanent.  
[16.25.1.4 NMAC - Rp, 16.25.1.4 NMAC, 01-17-2014]

**16.25.1.5 EFFECTIVE DATE:** 01-17, 2014 unless a later date is cited at the end of a section.  
[16.25.1.5 NMAC - Rp, 16.25.1.5 NMAC, 01-17-2014]

**16.25.1.6 OBJECTIVE:** To promote, preserve and protect the public health, safety and welfare by regulating the practice of veterinarians, veterinary technicians, bovine artificial insemination technicians, and bovine pregnancy diagnosis technicians; to establish the authority to take action against any licensee or permittee for failure to meet set minimum standards for licensure or permit certification as promulgated by the board; and to inspect and regulate veterinary facilities to further protect the public.  
[16.25.1.6 NMAC - Rp, 16.25.1.6 NMAC, 01-17-2014]

**16.25.1.7 DEFINITIONS:**

A. "Aseptic surgery" means procedures performed under conditions free of pathogenic micro-organisms.

B. "Board" means the New Mexico board of veterinary medicine.

C. "Bovine AI/PD examiner" means the individual the board has designated to prepare and administer the bovine AI and bovine PD examinations and who recommends to the board those individuals who qualify for bovine AI and bovine PD permits.

D. "Bovine artificial insemination (AI) technician" means an individual who has met the requirements for and has been granted by the New Mexico board of veterinary medicine a permit to perform artificial insemination on cattle.

E. "Bovine pregnancy diagnosis (PD) technician" means an individual who has met the requirements for and has been granted by the New Mexico board of veterinary medicine a permit to perform pregnancy diagnosis on cattle.

F. "Clean surgery" means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

G. "Disinfection" means the destruction of pathogenic microorganisms.

H. "Facility" means a building, kennel, mobile practice unit vehicle, animal shelter, pet shop, animal supply store, fixed facility, fixed mobile facility, mobile facility, and vaccination clinic where "the practice of veterinary medicine" including aseptic surgery regularly occurs as defined in NMSA 1978, Section 61-14-2.B (1), (2), and (3), to include regularly scheduled vaccination clinics or any other veterinary services.

(1) "Animal shelter" means a state, city, county, or private facility where a veterinary clinic operates.

(2) "Pet shop" means a store that sells animals and has an operating veterinary clinic.

(3) "Animal supply store" means a store that sells animal supplies and has an operating veterinary clinic.

(4) "Fixed facility" means a building where the practice of veterinary medicine regularly occurs.

(5) "Fixed mobile facility" means the primary place of operation is a fixed building from where mobile services are directed.

(6) "Mobile veterinary practice" means providing a wide range of medical or surgical services in a movable trailer, pickup truck, motor home, or other vehicle designed or modified to function as a veterinary practice facility.

(7) "Vaccination clinic" means vaccinations are administered outside of a house call setting and do not use a mobile vehicle.

I. "Graduate of a non-AVMA accredited school" or "foreign veterinary graduate" means a person who has graduated from a school of veterinary medicine which is not accredited by the American veterinary medical association (AVMA).

J. "Graduate veterinarian" means a person who has a degree of doctor of veterinary medicine or its equivalent.

K. "Infectious waste" means those solid wastes contaminated with organisms which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms or may pose a threat or potential hazard to human health. In terms of veterinary medicine, this includes but is not limited to the following: animal tissue, bedding and other wastes from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

L. "Practice of veterinary medicine" means the diagnosis and treatment of animal diseases by traditional methods which include but are not limited to prescribing drugs and medication, administering techniques and procedures including surgical procedures, and other methods which include but are not limited to chiropractic, physical therapy, acupuncture, acupressure, homeopathy, therapeutic massage, dentistry, and embryo transfer.

M. "Sharps" means any discarded article that may cause punctures or cuts. Such wastes may include but are not limited to needles, scalpel blades, glass slides, glassware, suture needles, and trocars.

N. "Small animal mobile facility" means a trailer or mobile unit established to function as a veterinary site which concentrates in providing veterinary services to common domestic household pets.

O. "Sterilization" means the complete destruction of microorganisms by heat, bactericidal chemical compound, radiation or desiccation.

[16.25.1.7 NMAC - Rp, 16.25.1.7 NMAC, 01-17-2014]

#### **16.25.1.8 MEETINGS:**

A. The chairman of the board shall preside at all meetings, preserve order, appoint committees and decide all questions of order subject to appeal to the board. In the absence of the chairman, the vice-chairman or a member of the board shall preside.

B. Examinations shall be administered at a location specified by the board.

[16.25.1.8 NMAC - Rp, 16.25.1.8 NMAC, 01-17-2014]

#### **16.25.1.9 BOARD MEETING TELEPHONIC ATTENDANCE:**

A. Pursuant to the provisions of the Open Meetings Act, NMSA 1978, Section 10-15-1(C), as amended, board members may participate in a meeting of the board by means of a conference telephone or similar communications equipment. Telephonic participation may occur only when it is difficult or impossible for the board member to be physically present; that is, when there are circumstances which make attendance in person extremely burdensome.

B. Each board member participating telephonically must be identified when speaking and all participants must be able to hear all other participants.

C. Members of the public attending the meeting must be able to hear all members of the board and members of the public who speak during the meeting.

[16.25.1.9 NMAC - Rp, 16.25.1.9 NMAC, 01-17-2014]

#### **16.25.1.10 EXECUTIVE DIRECTOR:**

A. The executive director may be a "licensed veterinarian" or any other person deemed by the board qualified to perform the required duties and responsibilities.

B. The duties and responsibilities of the executive director are those detailed in the job description filed in the personnel files of the New Mexico board of veterinary medicine.

C. The position of executive director is an exempt position.

[16.25.1.10 NMAC - Rp, 16.25.1.10 NMAC, 01-17-2014]

**16.25.1.11 INVESTIGATORS AND INSPECTORS:**

A. The board hires licensed veterinarians to conduct its investigations of complaints filed with the board and to conduct inspections of veterinary facilities.

B. The duties and responsibilities of the investigator(s) and inspector(s) shall be those detailed in the contracts entered into with the board. The contracts will be maintained in the board office.

[16.25.1.11 NMAC - Rp, 16.25.1.11 NMAC, 01-17-2014]

**16.25.1.12 CLASSIFIED EMPLOYEE(S):** The duties of the classified employee(s) of this board are those which are detailed in the job description(s) filed with the state personnel office.

[16.25.1.12 NMAC - Rp, 16.25.1.12 NMAC, 01-17-2014]

**16.25.1.13 ELECTIONS OF BOARD OFFICERS:** The board of veterinary medicine elects a chairman, vice-chairman, and secretary. Elections are held annually. Officers may be re-elected. Any member of the board may serve as an officer.

[16.25.1.13 NMAC - Rp, 16.25.1.13 NMAC, 01-17-2014]

**HISTORY OF 16.25.1 NMAC:**

**Pre-NMAC History:**

BVE 93-9, Rules Governing Executive Director, 11-18-1994

**History of the Repealed Material:**

16 NMAC 25.1, General Provisions - Repealed effective 10-12-2000.

16.25.1 NMAC, General Provisions - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS  
PART 2 EXAMINATION AND LICENSURE - VETERINARIANS**

**16.25.2.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine  
[16.25.2.1 NMAC - Rp, 16.25.2.1 NMAC, 01-17-2014]

**16.25.2.2 SCOPE:** Applies to all veterinarians licensed to practice in the state of New Mexico and individuals applying for a license to practice veterinary medicine in the state of New Mexico.  
[16.25.2.2 NMAC - Rp, 16.25.2.2 NMAC, 01-17-2014]

**16.25.2.3 STATUTORY AUTHORITY:** Section 61-14-4; Section 61-14-5; Section 61-14-8; Section 61-14-9; Section 61-14-10; Section 61-14-12; Section 61-14-13; Section 61-14-14 and Section 61-14-15 NMSA 1978.  
[16.25.2.3 NMAC - Rp, 16.25.2.3 NMAC, 01-17-2014]

**16.25.2.4 DURATION:** Permanent.  
[16.25.2.4 NMAC - Rp, 16.25.2.4 NMAC, 01-17-2014]

**16.25.2.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.2.5 NMAC - Rp, 16.25.2.5 NMAC, 01-17-2014]

**16.25.2.6 OBJECTIVE:** To set out the requirements for obtaining a license to practice veterinary medicine in the state of New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.  
[16.25.2.6 NMAC - Rp, 16.25.2.6 NMAC, 01-17-2014]

**16.25.2.7 DEFINITIONS:** [RESERVED]  
[16.25.2.7 NMAC - Rp, 16.25.2.7 NMAC, 01-17-2014]

**16.25.2.8 GENERAL ELIGIBILITY FOR LICENSURE:** A license to practice veterinary medicine in the state of New Mexico is granted only to an applicant who fulfills all of the requirements specified in this part. The mere filing of an application shall not entitle the applicant to a license to practice veterinary medicine. Each applicant shall have the burden of demonstrating, to the satisfaction of the board of veterinary medicine, that he:

- A. has reached the age of majority as recognized by the state of New Mexico;
- B. is a person of good moral character, physically and mentally fit to practice veterinary medicine;
- C. is in good standing in any other state(s) in which he is, or has been, licensed to practice veterinary medicine. If the applicant has had disciplinary proceedings instituted against him which have resulted in suspension or revocation of a license on any grounds other than nonpayment of a licensee fee, or he has voluntarily surrendered a license to practice veterinary medicine, the board will review the prior action(s) on a case by case basis prior to licensure;
- D. is professionally qualified for a license to practice veterinary medicine in the state of New Mexico by taking and passing the written examinations as defined in these rules, except as provided in Section 61-14-10 NMSA 1978;
- E. is a graduate veterinarian as defined by Subsection B of Section 61-14-2 NMSA 1978;
- F. has not had a United States drug enforcement administration (DEA) license, a state level controlled substances registration, or federal accreditation privileges through the United States department of agriculture (USDA) animal and plant health inspection service (APHIS) restricted or revoked, or surrendered such license or privilege while under investigation or in connection with any disciplinary action or pending disciplinary action. If applicant has had any of these actions taken against him, the board will review such actions on a case by case basis prior to licensure; and
- G. understands with regard to any of the above provisions, the final authority to grant a license rests with the board. Determinations will be made on a case by case basis.

[16.25.2.8 NMAC - Rp, 16.25.2.8 NMAC, 01-17-2014]

**16.25.2.9 REQUIREMENT THAT A PRACTICING VETERINARIAN BE LICENSED:**

A. With only those exemptions specified in Section 61-14-14 NMSA 1978, a graduate veterinarian must be licensed by the board to lawfully practice veterinary medicine in New Mexico as defined in Subsection B of Section 61-14-2 NMSA 1978.

B. Only veterinarians licensed by the state of New Mexico may practice veterinary medicine in New Mexico; working under the supervision of a licensed veterinarian does not waive the requirement to hold a license.

C. The requirement for direct supervision of non-veterinarians who treat animals is described in 16.25.9.20 NMAC.

[16.25.2.9 NMAC - Rp, 16.25.2.9 NMAC, 01-17-2014]

**16.25.2.10 BASIC LICENSURE REQUIREMENTS:** Except as noted, an applicant for a regular license to practice veterinary medicine in New Mexico must:

A. Submit a completed, signed, and notarized *application for licensure-DVM*. The application must:

- (1) be submitted 30 days before the applicant's selected date to take the state examination;
- (2) include the application/examination fee; and
- (3) have attached a color passport-type head and shoulders photograph of the applicant.

B. Take and pass with a minimum score of seventy-five percent, the New Mexico veterinary licensing examination. Exceptions for endorsement applicants are set out in 16.25.2.10 NMAC.

C. Submit all of the following documents within 12 months after passing the state examination. An applicant who fails to provide required documents within 12 months must reapply for licensure.

(1) notarized copy of the applicant's diploma from a veterinary school accredited by the American veterinary medical association (AVMA). Exception for new graduates is set out in 16.25.2.12 NMAC;

(2) official veterinary school transcript bearing the seal of the institution;

(3) verifications of licensure from any and all state(s) in which the applicant is or has been licensed to practice veterinary medicine;

(4) one personal and one professional recommendation; and

(5) the applicant's scores on the national licensing examination for veterinarians.

(a) New Mexico's national examination score requirements are set out in 16.25. 2.16 NMAC.

(b) Exceptions for endorsement applicants are set out in Subsection B of 16.25.2.11 NMAC

(c) Applicants for a temporary permit shall comply with requirements of Subsection A of 16.25.2.10 NMAC only.

[16.25.2.10 NMAC - Rp, 16.25.2.10 NMAC, 01-17-2014]

**16.25.2.11 LICENSURE BY ENDORSEMENT:** A veterinarian who has been licensed in another state and has performed at least five years of clinical veterinary practice with at least 6,000 hours immediately preceding application for a New Mexico license, may qualify for licensure by endorsement. A qualified endorsement applicant:

A. Does not need to provide his score from the national licensing examination.

B. May take the jurisprudence examination for the standard endorsement fee at a special time, arranged through the executive director, rather than at one of the board set regularly scheduled examination times.

C. Applicant must report criminal convictions and disciplinary actions taken in all jurisdictions.

[16.25.2.11 NMAC – Rp, 16.25.2.11 NMAC, 01-17-2014; A, 07/01/18]

**16.25.2.12 SENIOR STUDENTS AND NEW GRADUATES:** If a senior student or new graduate's veterinary school has not yet provided the diploma by the applicant's examination date, a properly authenticated document such as a letter from the veterinary school dean evidencing graduation or impending graduation may temporarily substitute for the diploma. This provision is only for the purpose of taking the examination; the notarized diploma must be provided the soonest time it becomes available. The applicant cannot become licensed until all required documents, including the notarized copy of the diploma and the official transcript are received by the board.

[16.25.2.12 NMAC - Rp, 16.25.2.12 NMAC, 01-17-2014]

**16.25.2.13 GRADUATES OF NON-AVMA ACCREDITED VETERINARY SCHOOLS:** A graduate of a veterinary school not accredited by the American veterinary medical association (AVMA) must furnish certification of completion of the educational commission for foreign veterinary graduates (ECFVG) program. This

certification is in addition to all other licensing requirements as specified in 16.25.2.10 NMAC. Requirements for graduates of non-AVMA accredited schools are also set out in 16.25.5 NMAC.

[16.25.2.13 NMAC - Rp, 16.25.2.13 NMAC, 01-17-2014]

**16.25.2.14 60-DAY TEMPORARY PERMIT:**

A. Purpose. The temporary permit, good for a period of no more than 60-calendar days, is intended for experienced, licensed veterinarians who wish to practice in New Mexico for a brief period. The temporary permit is not granted to a new graduate or experienced veterinarian who has not yet taken the state licensing examination or met all other licensing requirements.

B. To qualify for a temporary permit, an applicant must:

- (1) be currently licensed in and currently practice in another state, territory, or district of the United States;
- (2) be in good standing in all jurisdictions in which he is or has been licensed;
- (3) submit the completed, signed, and notarized *application for licensure-DVM* form along with a color passport-type, head and shoulders photograph and the temporary permit fee; and
- (4) provide a verification of licensure from the state where the applicant currently practices veterinary medicine and holds licensure.

C. An applicant for a temporary permit does not need to take the state examination or provide national examination scores.

D. A temporary permit may not be renewed within a 12 month period from issuance without approval from the board.

[16.25.2.14 NMAC - Rp, 16.25.2.14 NMAC, 01-17-2014]

**16.25.2.15 STATE EXAMINATION:**

A. The board sets the state licensing examination for veterinarians on a regularly scheduled basis twice annually at a reduced fee. Applicants who wish to obtain their licenses sooner than the board set examination dates can take the examination at the higher fee of \$500. The examination is administered at the board office; arrangements for this type of examination are made with the executive director.

B. The state examination may be taken by senior year veterinary school students as well as graduate veterinarians.

C. The state examination is graded by individuals selected by the board of veterinary medicine. The minimum passing grade for the state examination is seventy-five percent.

D. Applicants will be notified by mail within two weeks after the examination of the results. Grades will be provided to applicants upon request.

E. An applicant who fails the examination can review the examination and his answer sheet at the board office 20 days from receipt of notification of examination results. Prior arrangement will be made with the executive director to designate a time for the review. Only the applicant and a member of the board or executive director may be present. Copying or removing examination questions or answers will result in license denial.

F. An applicant who has failed the state examination must retake it within 30 days. Applicant must pay an additional examination fee of \$500 to retake the examination.

G. Limitations. Once the application/examination fee has been submitted to the board it cannot be refunded. The state examination must be taken within one year from date of application submittal.

(1) If an applicant has applied to take the examination on a board set date and is unable to do so, the examination may be rescheduled on one of the subsequent board set dates within one year without reapplication or the payment of an additional fee.

(2) If an applicant has applied to take the examination on a specific date and is unable to do so, the examination may be rescheduled within one year without reapplication or payment of an additional fee.

[16.25.2.15 NMAC - Rp, 16.25.2.16 NMAC, 01-17-2014]

**16.25.2.16 NATIONAL EXAMINATION SCORES:** The board accepts, as sufficient to meet state requirements, the minimum passing grade for the national examination for veterinarians. This applies whether the applicant has taken the national board examination (NBE) or the North American veterinary licensing examination (NAVLE). In accordance with the national board of veterinary medical examiners (NBVME), candidates shall not be approved to take the North American veterinary licensing examination (NAVLE) more than five times and shall not be allowed to sit for the examination at a date that is later than five years after the initial attempt. Each of the final two attempts must be at least one year from the previous attempt.

[16.25.2.16 NMAC - Rp, 16.25.2.17 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.2.17 LICENSE RENEWAL:**

A. A veterinarian's license expires and is due for renewal each year on the last day of his birth month.  
B. A license is lapsed if the license renewal is not postal postmarked on or before the expiration date. Practicing veterinary medicine with a lapsed license is the same as practicing without a license. Anyone practicing veterinary medicine in New Mexico on a lapsed license is subject to penalties and disciplinary action as provided in Section 61-14-18 NMSA 1978.

C. Licensee shall display at the business location in full view of the public, his original license certificate signed by the board and the current year renewal license. If licensee is providing veterinary services in a relief capacity, current year license renewal must be easily accessible.

[16.25.2.17 NMAC - Rp, 16.25.2.18 NMAC, 01-17-2014]

**16.25.2.18 LICENSE REINSTATEMENT:** The board has no additional policies beyond what is stated in Section 61-14-12 NMSA 1978.

[16.25.2.18 NMAC - Rp, 16.25.2.19 NMAC, 01-17-2014]

**16.25.2.19 EXAMINATION AND LICENSURE FEES:** The list of all fees relating to examination, licensure and permit fees is as follows and is posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

- A. State jurisprudence examination.  
(1) bi-annual board set dates, January and May - \$300;  
(2) applicant selected date - \$500; and  
(3) licensure by endorsement - \$500.
- B. License and permit fees.  
(1) initial license fee is prorated from date of license issue to last day of licensee's birth month;  
(2) annual DVM license renewal - \$200;  
(3) 60-day temporary permit - \$250;  
(4) inactive status - \$100. Annual continuing education requirement must be fulfilled and reported; and  
(5) license reactivation - \$150 along with completed application for reactivation and verification of required annual 15 continuing education hours while license in inactive status.
- C. Late renewal penalties.  
(1) postal postmarked no later than 30 days past expiration date - \$100; or  
(2) postal postmarked more than 30 days after expiration date - \$100 plus \$10 per day not to exceed \$3000.
- D. The board may waive payment of a renewal fee and annual continuing education requirement of a licensee while on active duty with the armed services of the United States. Renewal fee and continuing education requirement will be waived for the duration of licensee's overseas deployment or a declared national emergency. Requests for waivers will be addressed to the executive director of the board of veterinary medicine.

[16.25.2.19 NMAC - Rp, 16.25.2.20 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.2.20 ADDRESS CHANGE NOTIFICATION:** Throughout his period of licensure, every licensee must notify the board in writing within 30 days of a change of address. *Notice of change of address-DVM, RVT* form is available at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

[16.25.2.20 NMAC - Rp, 16.25.2.21 NMAC, 01-17-2014]

**HISTORY OF 16.25.2 NMAC:**

**Pre-NMAC History:**

- BVE 75-1, Rules Governing the Examination and Licensing of Veterinarians, 12-5-75.  
BVE 79-1, Rules Governing the Examination and Licensing of Veterinarians, 9-21-79.  
BVE 88-1, Rules Governing the Examination and Licensing of Veterinarians, 10-14-88.  
BVE 92-1, Rules Governing the Examination and Licensing of Veterinarians, 5-22-92.  
BVE 93-1, Rules Governing the Examination and Licensing of Veterinarians, 6-3-93.

**History of Repealed Material:**

16 NMAC 25.2, Examination and Licensure - Repealed effective 7-25-01.  
16.25.2 NMAC Examination and Licensure - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 3 PROFESSIONAL CONDUCT**

**16.25.3.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine  
[16.25.3.1 NMAC - Rp, 16.25.3.1 NMAC, 01-17-2014]

**16.25.3.2 SCOPE:** Applies to all persons licensed to practice veterinary medicine in the state of New Mexico.  
[16.25.3.2 NMAC - Rp, 16.25.3.2 NMAC, 01-17-2014]

**16.25.3.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-13 and Section 61-14-19.  
[16.25.3.3 NMAC - Rp, 16.25.3.3 NMAC, 01-17-2014]

**16.25.3.4 DURATION:** Permanent.  
[16.25.3.4 NMAC - Rp, 16.25.3.4 NMAC, 01-17-2014]

**16.25.3.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.3.5 NMAC - Rp, 16.25.3.5 NMAC, 01-17-2014]

**16.25.3.6 OBJECTIVE:** To govern the professional conduct of any person licensed or permitted by the board to engage in the veterinary profession in the state of New Mexico. Violations of any of these rules are grounds for action against a licensee.  
[16.25.3.6 NMAC - Rp, 16.25.3.6 NMAC, 01-17-2014]

**16.25.3.7 DEFINITIONS: [RESERVED]**  
[16.25.3.7 NMAC - Rp, 16.25.3.7 NMAC, 01-17-2014]

**16.25.3.8 CONDUCT:** All professionals licensed by the board of veterinary medicine are subject to the Veterinary Practice Act and rules promulgated by the board.

A. Violations of the Veterinary Practice Act or rules promulgated by the board are subject to the complaint process as governed by the Uniform Licensing Act. Failure to comply with a board request for records or information pertinent to a complaint investigation will be considered a violation of this rule.

B. Complaints are reviewed by the board on a case by case basis to determine if disciplinary action is necessary. Unprofessional conduct by a licensee in a complaint determined by the board includes but is not limited to noncompliance with terms of a settlement agreement entered into with the board by a licensee to resolve a complaint.

C. A licensee shall not represent conflicting interests except by express consent of all concerned subsequent to a full disclosure of the facts.

D. It is the right of any licensee, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful services.

E. A licensee shall expose, without fear or favor, before the proper tribunal or the New Mexico board of veterinary medicine, corrupt or dishonest conduct in the profession.

F. A veterinarian must decide what professional employment will be accepted and what course of treatment will be followed once employed. The responsibility for advising questionable or unusual treatment rests upon the veterinarian. If a licensee is asked to perform a treatment that is questionable or unusual, the licensee must use his own professional judgment about whether he will perform this treatment.

G. No licensee shall render any service or advice contrary to the law. A veterinarian must also observe and advise clients to observe applicable laws and regulations.

H. A licensee shall not render any service or advice directed toward the corruption of any person or persons exercising a public office or private trust; or the deception or betrayal of the public.

I. In the formation of partnerships, professional associations or any other association for the practice of veterinary medicine, no person shall be held out as a practitioner of veterinary medicine or as a veterinary technician unless licensed to practice in this state. In selection and use of a firm name, no false or misleading name shall be used.

J. The professional services of a veterinarian shall not be controlled or exploited by any lay, personal or corporate agency which intervenes between the client and the veterinarian. A veterinarian's responsibilities and qualifications are individual. A veterinarian's responsibilities for medical judgments shall be directly to the client or authorized agent.

K. Each veterinarian shall display at the business location, in full view of the public, his original license certificate signed by the board along with the current year renewal license. If licensee is providing veterinary services in a relief capacity, the current year renewal license must be easily accessible.

L. Veterinarians shall exercise the same degree of care, skill and diligence in treating patients as are ordinarily used in the same or similar circumstances by reasonably prudent members of the veterinary medical profession in good standing in the state of New Mexico.

M. A licensed veterinarian shall not use or display any unearned certificate, college degree, or title.

N. A licensed veterinarian shall not promote, aid, or abet any illegal or unethical act on the part of any veterinarian or in the practice of veterinary medicine by an unlicensed person except as permitted by the Veterinary Practice Act.

O. A licensed veterinarian in this state shall not issue a certificate of health for an animal unless aware by way of actual inspection and appropriate tests, that said animal meets the requirements for the issuance of such certificate.

P. A licensed veterinarian shall not guarantee a cure. A licensed veterinarian must avoid bold and confident assurances to clients especially where employment may depend upon such assurances.

Q. A licensed veterinarian shall treat all animals entrusted by clients in keeping with the professional standard of humane treatment and care.

R. A licensed veterinarian shall conduct the practice of veterinary medicine on the highest plane of honesty, integrity and fair dealing with clients in time and services rendered, and in the amount charged for service, facilities, appliances and drugs.

S. A licensed veterinarian shall not violate the confidential relationship with his client.

T. The reporting of cruelty or illegal action is not a violation of confidentiality.

U. A licensed veterinarian or veterinary technician shall not use or participate in the use of any form of representation, advertising or solicitation which contains false, deceptive or misleading statement(s) or claim(s). False, deceptive or misleading statements or claims are those which:

(1) advertise or represent that a service or product is free, or similar language, coupled with any required service or product for which a fee is charged;

(2) contains a prediction of future success or guarantee that satisfaction or cure will result from the performance of a professional service;

(3) refer to secret methods of treatment or special services;

(4) concern illegal transactions;

(5) imply that a licensed veterinarian is a specialist unless the veterinarian is a diplomate of an AVMA board certified specialty.

(6) imply that a licensed veterinarian is certified unless he is certified in a nationally recognized specialty whose certification process has been evaluated and approved by the board. The following complementary, alternative or integrative therapies may be considered, but are not limited to:

(a) acupuncture;

(b) acutherapy;

(c) acupressure;

(d) homeopathy;

(e) manual or manipulative therapy i.e, therapies based on techniques practiced in osteopathy, chiropractic medicine, or physical medicine and therapy;

(f) massage;

(g) naturopathy;

(h) physical rehabilitation;

(i) nutraceutical therapy;

(j) phytotherapy.

(7) are intended or are likely to create an inflated or unjustified expectation;

(8) contains an expressed or implied material misrepresentation of the fact;

(9) fail to state any material fact necessary to make the statement or claim not misleading in the circumstances under which it is made;

(10) would result in the violation of any law or regulation or a contractual or other obligation of any person with whom the licensed veterinarian seeks to communicate;

(11) contain a representation or implication that is likely to cause an ordinary prudent layperson to misunderstand or be deceived, or fail to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;

(12) relate to professional fees other than:

(a) the fixed fee charged for a specific professional service provided that the description of such service would not be deceptive and that the statement indicates whether additional fees may be required in individual cases; or

(b) the range of fees for specifically described professional services provided there is reasonable disclosure of all relevant and variable considerations affecting the fees, so that the statement would not be misunderstood or be deceptive including without limitation, an indication whether additional fees may be incurred for related professional services which may be required in individual cases.

V. A licensed veterinarian or veterinary technician shall not use or display any college degree, certificate or title granted by any institution not approved by the New Mexico board of veterinary medicine.

W. A licensed veterinarian shall not use present or past position(s) or office(s) of trust deliberately to create any individual professional advantage, or to coerce or deceive the public.

X. All licensed professionals are subject to the Veterinary Practice Act and rules promulgated by the board.

Y. Violations of the Veterinary Practice Act or rules promulgated by the board are subject to the complaint process as governed by the Uniform Licensing Act.

Z. The licensee is required to abide by all statutes and rules of any board, commission, and agency including county or city ordinances governing any aspect of the practice of veterinary medicine.

AA. Dishonesty in the practice of veterinary medicine is prohibited.

BB. Habitual or excessive use of intoxicants or drugs is prohibited.

CC. The use of any controlled or legend drug or substance on any animal for the purpose of illegally influencing the outcome of a competitive event is prohibited.

DD. Failure to maintain required radiological records 20.3.1.108 NMAC or controlled substance logs and medical records is prohibited.

EE. Failure to report as required by law or making a false report of any contagious or infectious disease is prohibited.

FF. Unfair or deceptive practices in the conduct of the profession are prohibited.

GG. Violation of the Veterinary Practice Act or of any rule adopted by the board is prohibited. See Uniform Licensing Act.

HH. Failure of a licensed veterinarian or facility to refer a client, upon the client's request, to another licensed veterinarian is prohibited.

[16.25.3.8 NMAC - Rp, 16.25.3.8 NMAC, 01-17-2014; A, 05-08-2016]

#### **HISTORY OF 16.25.3 NMAC:**

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

BVE Rule No. 75-2, Rules Governing the Professional Conduct of Veterinarians, 12-5-75.

BVE Rule No. 75-2, Pertaining to the Rules Governing the Professional Conduct of Veterinarians, 4-7-78.

BVE Rule 79-2, Rules Governing the Professional Conduct of Veterinarians, 9-21-79.

BVE Rule 82-1, Rules Governing the Professional Conduct of Veterinarians, 3-2-82.

BVE 88-2, Rules Governing the Professional Conduct of Veterinarians, 10-14-88.

BVE 92-2, Rules Governing the Professional Conduct of Veterinarians, 5-22-92.

BVE 92-2, Rules Governing the Professional Conduct of Veterinarians, 6-3-93.

#### **History of Repealed Material:**

16 NMAC 25.3, Professional Conduct – Repealed effective, 07/03/93.

16.25.3 NMAC, Professional Conduct - Repealed effective, 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 4 CONTINUING EDUCATION REQUIREMENTS -VETERINARIANS**

**16.25.4.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine  
[16.25.4.1 NMAC - Rp, 16.25.4.1 NMAC, 01-17-2014]

**16.25.4.2 SCOPE:** Applies to all veterinarians licensed to practice in the [State] state of New Mexico.  
[16.25.4.2 NMAC - Rp, 16.25.4.2 NMAC, 01-17-2014]

**16.25.4.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 61-14-5(F) and (I) and 61-14-12.  
[16.25.4.3 NMAC - Rp, 16.25.4.3 NMAC, 01-17-2014]

**16.25.4.4 DURATION:** Permanent.  
[16.25.4.4 NMAC - Rp, 16.25.4.4 NMAC, 01-17-2014]

**16.25.4.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.4.5 NMAC - Rp, 16.25.4.5 NMAC, 01-17-2014]

**16.25.4.6 OBJECTIVE:** To establish requirements for continuing education (CE) necessary for veterinary license annual renewal.  
[16.25.4.6 NMAC - Rp, 16.25.4.6 NMAC, 01-17-2014]

**16.25.4.7 DEFINITIONS:** [RESERVED]  
[16.25.4.7 NMAC - Rp, 16.25.4.7 NMAC, 01-17-2014]

**16.25.4.8 GENERAL REQUIREMENTS:**

A. Each veterinarian licensed to practice in New Mexico must obtain, each year of licensure, a total of 15 instructional hours derived from seminars, short courses, or scientific programs approved by the registry of approved CE (RACE), AVMA, or by the board; or sponsored by a veterinary medical association, organization, or university.

(1) In general, CE must be in the form of contact hours. Credit for non-contact forms of instruction, including online training or articles in printed professional periodicals, is accepted. Non-contact hours may comprise no more than half of the annual requirement of 15 CE hours.

(2) Instruction in aspects of facility management, records management or the complaint process may count for credit. These hours may comprise no more than five CE credit hours per year.

(3) Instruction in alternative, non-western medicine must be specifically applicable to veterinary medicine and approved by RACE, AVMA, or sponsored by a veterinary organization or university, or by the board. CE credit cannot exceed 75% or 11.25 of the 15.00 instructional hours required annually.

B. There are no exceptions for age, retirees or other non-practicing veterinarians who want to maintain their New Mexico license. Pursuant to NMSA 1978, Section 61-14-12(E) the board may provide a waiver of the CE requirement to a licensed veterinarian during any period when he is on active duty with any branch of the armed services of the United States or for the duration of a national emergency.

C. CE hours are accumulated on an annual basis for the 12 months preceding individual veterinarian's license expiration date.

D. A new licensee must comply with the continuing education requirement beginning the next full licensing year after the licensee receives his initial New Mexico license.

E. A maximum of 15 credit hours may be accrued as excess and carried forward to the next licensing year.

F. The month before a veterinarian's annual license renewal is due, a license renewal form will be provided on which the veterinarian must record the CE taken during the previous licensing year.

G. The burden of proving the validity of the reported CE hours lies solely with the licensed veterinarian reporting. The board may conduct audits on CE reporting; photocopies of seminar registrations or completion certificates shall be submitted by the licensee upon request.

H. Beginning with the effective date of this part, each licensee should retain proof of his CE completion for a minimum of four years.

[16.25.4.8 NMAC - Rp, 16.25.4.8 NMAC, 01-17-2014]

**16.25.4.9 CONTINUING EDUCATION REQUESTS:** A licensee in doubt about whether a particular course, class, or seminar will be approved for credit may submit to the board, in writing, a course description with course outline and the number of contact hours. The *approval request* form is available at the board's web site or by calling the board office. The board will make a determination at its next meeting.

[16.25.4.9 NMAC - Rp, 16.25.4.9 NMAC, 01-17-2014]

**16.25.4.10 CONTINUING EDUCATION EXTENSIONS:**

A. The board may grant an extension of time to complete the annual CE requirement for a given licensing year upon licensee's written request.

(1) A licensee who is granted a CE extension must obtain the CE hours lacking within six months following the licensee's birth month to avoid being placed on suspended status. During the suspension period, the licensee may not lawfully practice veterinary medicine in New Mexico.

(2) A licensee may be granted only two consecutive CE extensions i.e. for two separate licensing years and a maximum of four extensions during his entire career practicing veterinary medicine in New Mexico.

B. The board does not automatically grant requests for CE extensions.

(1) The licensee's request must be in the form of a letter stating the reason the required CE cannot be completed for the year.

(2) A licensee's first request for a CE extension may be approved administratively by the executive director, assuming the licensee is in good standing with the board.

(3) All CE extension requests are presented at the next board meeting for the board's determination. CE extension requests approved by the executive director, as described in (2) above, are presented for board confirmation at the next board meeting.

(4) Should a licensee fail to meet the CE requirement when applying for license renewal and does not request an extension, his name shall be presented at the next board meeting for the board's determination of possible disciplinary action.

C. In cases of extreme hardship involving physical health or family crisis concerns, special consideration for CE may be granted by the board on the merits of the individual case.

[16.25.4.10 NMAC - Rp, 16.25.4.10 NMAC, 01-17-2014]

**HISTORY OF 16.25.4 NMAC:**

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

BVE 78-1, Pertaining to Continuing Education Requirements for Relicensure, filed 1-20-78.

BVE 79-3, Rules Governing Continuing Education Requirements for Veterinary Relicensure, filed 9-21-79.

BVE 88-3, Rules Governing Continuing Education Requirements for Veterinary Relicensure, filed 10-14-88.

BVE 92-3, Rules Governing Continuing Education Requirements for Veterinary Relicensure, filed 5-22-92.

BVE 93-3, Rules Governing Continuing Education Requirements for Veterinary Relicensure, filed 6-3-93.

**History of the Repealed Material:**

16 NMAC 25.4, Continued Education Requirements, filed 5-17-96 - Repealed effective 9-1-00.

16.25.4 NMAC, Continuing Education Requirements for Veterinarians, filed 8-2-00 - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICAL PRACTITIONERS**  
**PART 5 GRADUATES OF NON-AVMA ACCREDITED VETERINARY SCHOOLS**  
**AND GRADUATES OF FOREIGN VETERINARY SCHOOLS**

**16.25.5.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.  
[16.25.5.1 NMAC - Rp, 16.25.5.1 NMAC, 01-17-2014]

**16.25.5.2 SCOPE:** All veterinarians licensed to practice in the state of New Mexico and all graduates of non-AVMA accredited schools who are applying for a license to practice veterinary medicine in the state of New Mexico.  
[16.25.5.2 NMAC - Rp, 16.25.5.2 NMAC, 01-17-2014]

**16.25.5.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5.  
[16.25.5.3 NMAC - Rp, 16.25.5.3 NMAC, 01-17-2014]

**16.25.5.4 DURATION:** Permanent.  
[16.25.5.4 NMAC - Rp, 16.25.5.4 NMAC, 01-17-2014]

**16.25.5.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.5.5 NMAC - Rp, 16.25.5.5 NMAC, 01-17-2014]

**16.25.5.6 OBJECTIVE:** To outline requirements in addition to 16.25.2 NMAC for the graduate of a veterinary school not accredited by the American veterinary medical association (AVMA).  
[16.25.5.6 NMAC - Rp, 16.25.5.6 NMAC, 01-17-2014]

**16.25.5.7 DEFINITIONS:** [RESERVED]  
[16.25.5.7 NMAC - Rp, 16.25.5.7 NMAC, 01-17-2014]

**16.25.5.8 REQUIREMENTS FOR LICENSURE:**

A. To obtain a license to practice veterinary medicine in the state of New Mexico, a graduate of a non-AVMA accredited veterinary school must complete certification by the educational commission for foreign veterinary graduates (ECFVG) program administered by the American veterinary medical association prior to examination by the New Mexico board of veterinary medicine.

B. A foreign veterinary graduate must meet all other requirements for licensure in New Mexico, as specified in 16.25.2 NMAC.  
[16.25.5.8 NMAC - Rp, 16.25.5.8 NMAC, 01-17-2014]

**HISTORY OF 16.21.5 NMAC:**

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

BVE 78-2, Pertaining to Foreign Veterinary Graduate Internship, filed 1-20-78  
BVE 79-4, Rules Governing Foreign Veterinary Graduate Internship, filed 9-21-79.  
BVE 88-4, Rules Governing Foreign Veterinary Graduate Internship, filed 10-14-98.  
BVE 92-4, Rules Governing Foreign Veterinary Graduate Internship, filed 5-22-92.  
BVE 93-4, Rules Governing Foreign Veterinary Graduates, filed 6-3-93.

**History of the Repealed Material:**

16 NMAC 25.5, Foreign Graduates, filed 5-17-96 - Repealed effective 10-12-00.  
16.25.5 NMAC, Graduates of Non-VMA-Accredited Veterinary Schools (Foreign Graduates) filed 10-12-00 - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 6 VETERINARY TECHNICIANS**

**16.25.6.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.  
[16.25.6.1 NMAC - Rp, 16.25.6.1 NMAC, 01-17-2014]

**16.25.6.2 SCOPE:** These rules apply to all registered veterinary technicians licensed in the state of New Mexico.  
[16.25.6.2 NMAC - Rp, 16.25.6.2 NMAC, 01-17-2014]

**16.25.6.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5, Section 61-14-6, Section 61-14-7, Section 61-14-12, and Section 61-14-16.  
[16.25.6.3 NMAC - Rp, 16.25.6.3 NMAC, 01-17-2014]

**16.25.6.4 DURATION:** Permanent.  
[16.25.6.4 NMAC - Rp, 16.25.6.4 NMAC, 01-17-2014]

**16.25.6.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.6.5 NMAC - Rp, 16.25.6.5 NMAC, 01-17-2014]

**16.25.6.6 OBJECTIVE:** To establish requirements for registered veterinary technicians.  
[16.25.6.6 NMAC - Rp, 16.25.6.6 NMAC, 01-17-2014]

**16.25.6.7 DEFINITIONS:** [RESERVED]  
[16.25.6.7 NMAC - Rp, 16.25.6.7 NMAC, 01-17-2014]

**16.25.6.8 RULES GOVERNING REGISTERED VETERINARY TECHNICIANS:**

A. To perform the duties of a registered veterinary technician in New Mexico and receive a license issued by the board of veterinary medicine, an applicant must meet all the requirements set forth in these rules. The following documents are required:

- (1) a completed, signed and notarized *application for licensure-RVT* form;
- (2) the examination fee; and
- (3) a color passport-type head and shoulders photograph of the applicant.

B. Prior to the applicant taking the required examinations, the application will be reviewed to determine if the applicant has satisfactorily met the board's requirements.

(1) The applicant's file must be complete before a license will be issued. If the required documents and information are not provided within one year of board examination, the applicant must reapply for licensure. In addition to (1), (2) and (3) above, the following documents are required:

- (a) notarized copy of diploma;
- (b) final transcripts from an accredited veterinary technician program; and
- (c) verifications of licensure from another state(s) or country(ies) in which applicant

is or has been licensed;

- (2) pass all examinations required by the board;
- (3) meet one of the following requirements:

(a) the applicant is a graduate veterinary technician or a senior student of a two year or longer program accredited by the American veterinary medical association; or

(b) the applicant has a current valid permit or license from another state(s) or country(ies) with similar requirements to New Mexico, as approved by the board.

[16.25.6.8 NMAC - Rp, 16.25.6.8 NMAC, 01-17-2014]

**16.25.6.9 EXAMINATIONS:**

A. Examinations shall be held as specified by the board of veterinary medicine.

(1) Applicants must pass the American association of state veterinary boards (AAVSB) veterinary technician national examination (VTNE) administered by the professional examination service (PES) with the passing grade established by PES.

(2) Prior to taking the VTNE, applicant must apply for sponsorship by the board. The list of all fees relating to examinations is set out at Subsection C of 16.25.6.9 NMAC and is posted at the board's web site at [www.nmbvm.org](http://www.nmbvm.org). In addition, the applicant must take and pass with a minimum score of 75%, the New Mexico veterinary technician licensing examination.

B. No application shall be acted upon until the examination fee is received by the executive director of the board of veterinary medicine. If the board deems an applicant ineligible for examination, fees will not be refunded.

C. The list of fees relating to examinations is as follows and is posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

- (1) state jurisprudence examination:
  - (a) board set dates, January and May - \$75; or
  - (b) date selected by applicant - \$100;
- (2) VTNE: board sponsorship - \$50.

D. Limitations:

- (1) Once the fees have been submitted to the board, the fees cannot be refunded.
- (2) An applicant has a one year time limit within which to take the state examination.

E. Any applicant requesting an examination or re-examination by the board, other than board-set examinations, shall submit the application for review by the board. If the board determines that there is sufficient justification for administering a special examination, the expense of such special examination shall be borne by the applicant requesting the examination.

F. An applicant failing the examination may retake the entire examination at a scheduled time and will be charged the full examination fee.

G. The executive director will notify candidates of the examination results within 30 days of the date of the examination.

[16.25.6.9 NMAC - Rp, 16.25.6.9 NMAC, 01-17-2014]

**16.25.6.10 RENEWAL OF LICENSE:** A list of all fees relating to renewal of a registered veterinary technician license is listed at Subsection D of 16.25.6.10 NMAC and at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

A. A veterinary technician's license expires and is due for renewal each year on the last day of December. If a registered veterinary technician's license lapses and is not renewed within five years, they must reapply, retake and pass the examination before they can obtain licensure, NMSA 1978, Section 61-14-12.

B. A registered veterinary technician license is lapsed if the license renewal is not postal postmarked on or before the December 31 expiration date.

C. Registered veterinary technicians shall display at the business location, in full view of the public, the current year license renewal certificate.

D. License fees:

- (1) initial license fee is prorated from date of license issue to last day of December;
- (2) annual renewal fee - \$75;
- (3) inactive status - \$37.50. Annual continuing education requirement must be fulfilled and reported;
- (4) license reactivation - \$50 along with completed application for reactivation and verification of required annual 8.00 continuing education hours while license in inactive status; and
- (5) late renewal penalties:
  - (a) postal postmarked no later than 30 days after December 31 expiration date - \$25; or
  - (b) postal postmarked more than 30 days after December 31 expiration date - \$25 plus \$5 per day not to exceed \$300.

E. Continuing education.

(1) Each registered veterinary technician licensed to practice in New Mexico must certify that he has completed at least eight hours of approved continuing education during the preceding year. The hours will be derived from seminars, short courses, or scientific programs approved by RACE, AVMA, NAVTA, or sponsored by a veterinary medical association, veterinary organization, university, or by the board. There will be no exemptions for age or retirement.

(2) A waiver of delinquent hours may be granted by the board if a request is made in writing. The hours must be made up in the next calendar year and is in addition to the current year annual CE requirement.

(3) Continuing education hours will be accumulated on an annual basis from January through December.

(4) A maximum of eight credit hours may be accrued as excess and carried forward to the subsequent licensing year.

(5) A form to be completed by the registered veterinary technician at the time of annual renewal will be provided by the board of veterinary medicine.

(6) The burden of proving the validity of the reported hours lies solely with the registered veterinary technician.

(7) A new licensee must comply with the continuing education requirement beginning the next full licensure year after graduation.

(8) In general, CE must be in the form of contact hours. Credit for non-contact forms of instruction including online training or articles in printed periodicals is accepted, if the instruction:

(a) is designed for veterinary technicians; and

(b) non-contact hours do not comprise more than half of the annual requirement of eight CE hours.

[16.25.6.10 NMAC - Rp, 16.25.6.10 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.6.11 ADDRESS CHANGE NOTIFICATION:** Throughout his period of licensure, every board licensee must notify the board in writing within 30 days of any change of address. A *change of address* form is available at the board's web site. All correspondence will be addressed to the executive director of the New Mexico board of veterinary medicine.

[16.25.6.11 NMAC - N, 01-17-2014]

**16.25.6.12 SUPERVISION OF REGISTERED VETERINARY TECHNICIANS:**

A. A registered veterinary technician's professional activities must be under the supervision and direction of a licensed or license-exempt veterinarian.

(1) Direct supervision: Treatment of animals at the direction, order or prescription of a licensed veterinarian who is available on the premises and has established a valid veterinarian-client-patient relationship. NMSA 1978, Section 61-14-2(I).

(2) Indirect supervision: Treatment of animals when a licensed veterinarian is not physically present at the location but has given written or oral instructions for treatment of the animal; the animal has been examined by veterinarian at such times as good veterinary medical practice requires consistent with the particular delegated veterinary care task; and the animal is not anesthetized.

(3) The following life-saving aid and procedures a registered veterinary technician may perform under prior approval of the licensed veterinarian in the absence of direct supervision includes:

(a) application of tourniquet or pressure bandages to control hemorrhages;

(b) administration of pharmacological agents to prevent or control shock, including parenteral fluids, and shall only be continued after direct communication with a licensed or license exempt veterinarian.

(c) resuscitative oxygen procedures;

(d) establishing open airways including intubations but excluding surgery;

(e) external cardiac resuscitation;

(f) application of temporary splints or bandages to prevent further injury to bones or soft tissues;

(g) application of wound dressings and external supportive treatment in severe burn cases; and

(h) external supportive treatment in heat prostration or hypothermal cases.

[16.25.6.12 NMAC - Rp, 16.25.6.11 NMAC, 01-17-2014]

**HISTORY OF 16.25.6 NMAC:**

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

BVE Rule No. 75-2, Rules Governing the Professional Conduct of Veterinarians, filed 12-5-75.

BVE Rule No. 76-1, Rules Governing Veterinary Technicians, filed 3-5-76.

BVE Rule No. 76-1, Amendment No. 1, (BVE Rule No. 78-1) Pertaining to Veterinary Technician Emergency Care, filed 10-30-78.

BVE Rule 79-5, Rules Governing Veterinary Technicians, filed 9-21-79.

BVE 88-5, Rules Governing Veterinary Technicians, filed 10-14-88.

BVE 92-5, Rules Governing Veterinary Technicians, filed 5-22-92.

BVE 93-5, Rules Governing Veterinary Technicians, filed 6-3-93.

**History of Repealed Material:** 16.25.6 NMAC, Veterinary Technicians, filed 3-15-04 - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 7 FACILITY LICENSES**

**16.25.7.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.  
[16.25.7.1 NMAC - Rp, 16.25.7.1 NMAC, 01-17-2014]

**16.25.7.2 SCOPE:** Applies to all veterinary facilities in the state of New Mexico where, or out of which, veterinary medicine, dentistry, and surgery are practiced.  
[16.25.7.2 NMAC - Rp, 16.25.7.2 NMAC, 01-17-2014]

**16.25.7.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5(F) and (J).  
[16.25.7.3 NMAC - Rp, 16.25.7.3 NMAC, 01-17-2014]

**16.25.7.4 DURATION:** Permanent.  
[16.25.7.4 NMAC - Rp, 16.25.7.4 NMAC, 01-17-2014]

**16.25.7.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.7.5 NMAC - Rp, 16.25.7.5 NMAC, 01-17-2014]

**16.25.7.6 OBJECTIVE:** To establish requirements for the licensing of veterinary facilities.  
[16.25.7.6 NMAC - Rp, 16.25.7.6 NMAC, 01-17-2014]

**16.25.7.7 DEFINITIONS:** [RESERVED]  
[16.25.7.7 NMAC - Rp, 16.25.7.7 NMAC, 01-17-2014]

**16.25.7.8 FACILITY LICENSE REQUIREMENTS:**

**A. General Requirements.**

Every facility in New Mexico where the practice of veterinary medicine as defined in NMSA 1978, Section 61-14-2, regularly occurs must possess a facility license issued by the board of veterinary medicine.

- (1) Failure to comply with this section may result in disciplinary action by the board.
- (2) All facility licenses expire, and renewals are due, September 30 of each year.
- (3) A facility license cannot be issued without a physical facility.
- (4) Licensee manager must maintain New Mexico board of veterinary medicine minimum standards.
- (5) A consulting veterinarian who provides consulting services only, (with no hands on practice

whatsoever) does not need a facility license.

(6) A licensed veterinarian practicing in New Mexico under a 60-day temporary permit issued by the board does not need a facility license.

(7) A veterinarian working under the jurisdiction of another DVM or licensee manager is not required to hold a facility license.

**B. One facility license independent of type of facility must be maintained for medical records and drug storage.**

**C. Licensee manager or responsible DVM.** Each application for a facility license shall name the facility, facility owner, and licensee manager or responsible DVM and shall include the licensee manager's original signature.

(1) A facility owned by anyone other than a veterinarian currently licensed to practice in New Mexico must have a New Mexico licensed veterinarian as the licensee manager or responsible DVM who will take full responsibility for maintaining minimum standards as stated in board promulgated rules. The responsibility shall include record keeping, controlled substances, and quality of care at the facility.

(2) The licensee manager or responsible DVM is the official holder of the facility's license.

(3) A facility's licensee manager or responsible DVM must be:

- (a) the individual who oversees veterinary services at a facility currently in operation; and
- (b) present at the facility often enough to have knowledge of and control over the facility's methods for complying with minimum standards and the degree to which the minimum standards are being met.

D. When it is determined that the owner, licensee manager or responsible DVM, or facility has violated any provisions of the Veterinary Practice Act or is in violation of the rules promulgated by the board, the board may take disciplinary action as provided by the Veterinary Practice Act.  
[16.25.7.8 NMAC - Rp, 16.25.7.8 NMAC, 01-17-2014]

**16.25.7.9 LICENSE FEES:** A current list of fees relating to licensure of facilities is also posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

A. Fees shall include but may not be limited to the following:

- (1) initial facility license - \$125;
- (2) annual license renewal - \$125; and
- (3) late renewal penalties:
  - (a) postal postmarked after September 30 but no later than October 30 - \$50;
  - (b) postal postmarked after October 30 - \$125; and
  - (c) administrative penalties as may be determined by the board.

B. The names of facilities with license renewals more than 30 days overdue are presented to the board at the next regular board meeting for possible disciplinary action by the board.  
[16.25.7.9 NMAC - Rp, 16.25.7.9 NMAC, 01-17-2014]

**16.25.7.10 FACILITY INSPECTIONS:**

A. Regular facility inspections. Each licensed veterinary facility is inspected by the facility inspector every other calendar year or at a frequency determined by the board. The board conducts regular facility inspections to:

- (1) ensure that every licensed veterinary facility in New Mexico is operating according to the minimum standards promulgated by the board of veterinary medicine;
- (2) assist facilities in achieving and maintaining minimum standards and to encourage the continuous improvement of quality of services;

B. Corrective actions.

- (1) Plan of correction. When the facility inspector determines that a licensed facility must make corrections to comply with minimum standards, the facility inspector has authority from the board to:
  - (a) request the facility's licensee manager or responsible DVM submit a written plan of correction to facility inspector within a specified time frame; and
  - (b) follow up to ensure that an appropriate plan of correction is submitted and that minimum standards are maintained.
  - (c) the board will begin the procedures set out in the Uniform Licensing Act to issue a notice of contemplated action if a facility remains non-compliant after two notifications from the facility inspector. Such board action may result in revocation or suspension of licensure to practice in the state.

(2) Re-inspections and consultation. For very serious and chronic violations of the minimum standards, the facility inspector shall present those facilities to the board to determine a formal plan of action which may require mandatory re-inspections.

(a) For each mandatory re-inspection, the board may charge an administrative fee of \$500.

(b) For mandatory, individualized training other than initial training provided at the time of the inspection when violations are found, the board may charge the facility a consulting fee of \$50 per hour for additional consultation not to exceed \$500. On a case by case basis, the board may grant credit hours toward the regular annual continuing education (CE) requirement to the licensee manager and any other licensed associates for these types of consultations.

(3) The board mandates re-inspections and individualized training, with corresponding fees, only in cases of very serious or continued violations not for new facilities undergoing their initial inspections.

C. Voluntary consultation.

(1) Upon request, the facility inspector provides an initial professional courtesy inspection to assist a new facility or new licensee manager in setting up a clinic.

(2) A facility's licensee manager may arrange for longer term, more intensive training, consultation, or assistance by the facility inspector relating to specific areas of clinic operations, record keeping or handling of controlled substances, etc., for a fee of \$50 per hour not to exceed \$500. Arrangements shall be approved by the board and coordinated through the board's executive director; and

(3) On a case by case basis, the board may grant credit hours toward the regular annual CE requirement to the clinic's licensee manager and any other licensed associates for voluntary consultations.

[16.25.7.10 NMAC - Rp, 16.25.7.10 NMAC, 01-17-2014]

**HISTORY OF 16.25.7 NMAC:**

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

BVE 92-7, Rules Governing Veterinary Facilities, filed 5-22-92.

BVE 93-7, Rules Governing Veterinary Facilities, filed 6-3-93.

**History of Repealed Material:**

16 NMAC 25.7, Facilities, filed 5-17-96 - Repealed effective 9-1-00.

16.25.7 NMAC, Facility Licenses, filed 8-2-00 - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 8 BOVINE ARTIFICIAL INSEMINATION AND PREGNANCY DIAGNOSIS**  
**TECHNICIANS**

**16.25.8.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.

[16.25.8.1 NMAC - Rp, 16.25.8.1 NMAC, 01-17-2014]

**16.25.8.2 SCOPE:** Applies to all bovine artificial insemination and pregnancy diagnosis technicians.

[16.25.8.2 NMAC - Rp, 16.25.8.2 NMAC, 01-17-2014]

**16.25.8.3 STATUTORY AUTHORITY:** Section 61-14-5 NMSA 1978.

[16.25.8.3 NMAC - Rp, 16.25.8.3 NMAC, 01-17-2014]

**16.25.8.4 DURATION:** Permanent.

[16.25.8.4 NMAC - Rp, 16.25.8.4 NMAC, 01-17-2014]

**16.25.8.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.

[16.25.8.5 NMAC - Rp, 16.25.8.5 NMAC, 01-17-2014]

**16.25.8.6 OBJECTIVE:** To govern instruction, examinations and issuing of permits for bovine artificial insemination and pregnancy diagnosis.

[16.25.8.6 NMAC - Rp, 16.25.8.6 NMAC, 01-17-2014]

**16.25.8.7 DEFINITIONS:** [RESERVED]

[16.25.8.7 NMAC - Rp, 16.25.8.7 NMAC, 01-17-2014]

**16.25.8.8 PERMIT REQUIREMENT:** Any person who provides bovine artificial insemination (AI) and bovine pregnancy diagnosis (PD) services for compensation must possess a permit from the board for each type of service.

A. Bovine AI and bovine PD permits are separate. An applicant may obtain a bovine AI permit, a bovine PD permit, or both.

B. The bovine AI and PD permit year is January 1 through December 31 and renewals are issued annually expiring on December 31 of each year.

[16.25.8.8 NMAC - Rp, 16.25.8.8 NMAC, 01-17-2014]

**16.25.8.9 INSTRUCTION, EXAMINATIONS, AND LICENSING:**

A. To obtain a bovine AI and bovine PD permit, an applicant must:

(1) Complete bovine AI and bovine PD instruction given by the bovine AI and PD examiner or through another institution approved by the board. To request board approval for a particular bovine AI and PD course of instruction, an applicant must provide to the board a course outline or description, including number of instructional contact hours and sponsoring group or organization. At its next meeting, the board will make its determination whether the instruction or course is adequate and if approval will be granted.

(2) Pass bovine AI and PD written and proficiency examinations prepared and administered by the board or its appointed agent(s). The purpose of the examination(s) is to determine the knowledge and proficiency of each applicant.

(3) Be recommended by the board appointed examiner as qualified for the bovine AI and PD permit(s).

B. Upon the examiner's recommendation, the board may issue a bovine AI and bovine PD permit.

C. Each bovine AI and PD permit applicant has one year in which to apply to the board for a permit after passing the proficiency examination(s). If the applicant does not apply for a permit within one year, applicant must retake the appropriate examination(s).

D. Fees:

(1) Fees for instruction are paid directly to the instructor or institution that provides the instruction.

(2) Fees for the proficiency examinations are paid directly to the board appointed examiner.

(3) Fees for initial bovine AI and PD permits and annual renewals are paid to the board. A current list of fees relating to bovine artificial insemination and bovine pregnancy diagnosis permits is also posted at the board's web site: [www.nmbvm.org](http://www.nmbvm.org).

- (a) Initial permit: each permit, bovine AI or bovine PD - \$75.
- (b) Annual permit renewal: each permit, bovine AI or bovine PD - \$75.
- (c) Late-renewal penalty fees:
  - (i) postal postmarked after December 31 but no later than January 31 - \$50; or
  - (ii) postal postmarked after January 31 - \$75.

[16.25.8.9 NMAC - A, 16.25.8.9 NMAC; A, 07-01-2018]

**16.25.8.10 PERMIT RENEWAL:**

A. To renew a Bovine AI and PD permit, a technician must submit letters of recommendation from two clients who have used the applicant's services within the last 12 months. The letters of recommendation shall attest to applicant's proficiency and endorse applicant's application for renewal. If two client endorsements are not available, taking and passing the board administered proficiency examination will be sufficient.

B. Bovine AI and PD technicians are not required to accrue continuing education hours.

C. Before the December 31 renewal date, the board office provides bovine AI and PD technicians a renewal form to be completed and returned with the renewal fee.

D. If a bovine AI and PD technician permit lapses and is not renewed within one year, the applicant must re-take and pass the examination(s) before the technician can obtain a new permit.

[16.25.8.10 NMAC - Rp, 16.25.8.10 NMAC, 01-17-2014; A, 07-01-2018]

**16.25.8.11 DISPLAY OF PERMIT:** A bovine AI and PD technician shall have displayed at locations where bovine AI and bovine PD services are performed, the original New Mexico bovine AI and bovine PD certificate(s) and the current year permit renewal certificate(s).

[16.25.8.11 NMAC - Rp, 16.25.8.11 NMAC, 01-17-2014]

**HISTORY OF 16.25.8 NMAC:**

**Pre-NMAC History:**

BVE 79-6, Rules Governing Artificial Insemination and Pregnancy Diagnosis Permits, 9-21-79.

BVE 88-6, Rules Governing Artificial Insemination and Pregnancy Diagnosis Permits, 10-14-88.

BVE 92-6, Rules Governing Artificial Insemination and Pregnancy Diagnosis Permits, 5-22-92.

BVE 93-6, Rules Governing Artificial Insemination and Pregnancy Diagnosis Permits, 6-3-93.

**History of the Repealed Material:**

16 NMAC 25.8, Artificial Insemination and Pregnancy Diagnosis - Repealed, 10-12-00.

16.25.8 NMAC, Bovine Artificial Insemination and Pregnancy Diagnosis - Repealed effective 01-17-14.

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS  
PART 9 MINIMUM STANDARDS**

**16.25.9.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine.  
[16.25.9.1 NMAC - Rp 16.25.9.1 NMAC, 01-17-2014]

**16.25.9.2 SCOPE:** Applies to all veterinary facilities operating in the state of New Mexico where the practice of veterinary medicine regularly occurs. NMSA 1978, Section 61-14-2(B).  
[16.25.9.2 NMAC - Rp 16.25.9.2 NMAC, 01-17-2014]

**16.25.9.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5(F) and (J); Section 61-14-13.  
[16.25.9.3 NMAC - Rp 16.25.9.3 NMAC, 01-17-2014]

**16.25.9.4 DURATION:** Permanent.  
[16.25.9.4 NMAC - Rp 16.25.9.4 NMAC, 01-17-2014]

**16.25.9.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.9.5 NMAC - Rp 16.25.9.5 NMAC, 01-17-2014]

**16.25.9.6 OBJECTIVE:** To govern minimum standards for the practice of veterinary medicine.  
[16.25.9.6 NMAC - Rp 16.25.9.6 NMAC, 01-17-2014]

**16.25.9.7 DEFINITIONS:** [RESERVED]  
[16.25.9.7 NMAC - Rp 16.25.9.7 NMAC, 01-17-2014]

**16.25.9.8 GENERAL STANDARDS:**

- A. The delivery of veterinary care shall be provided in a competent and humane manner.
- B. Veterinary medicine shall be performed in a manner compatible with current veterinary medical practice.
- C. A valid veterinarian-client-patient relationship (VCPR) must be established when delivering veterinary care. See VCPR as defined by the New Mexico Veterinary Practice Act 61-14-2-J (1), (2), (3), and (4).
  - (1) A VCPR cannot be established by telephonic, computer, internet or other electronic communications; however, a New Mexico-licensed veterinarian may provide or arrange for consulting services for their clients using the described electronic communication methods.
  - (2) The veterinarian writing a veterinary food directive (VFD) order for premises in New Mexico must be a New Mexico-licensed veterinarian and present on the premises within the six (6) months preceding the issuance of the order. All elements of the federal rules to issue a VFD order must be met and the issuing veterinarian must provide supporting documentation of the visit to the premises including medical records within fourteen (14) days of a request from the board to provide such documentation.
- D. The board of veterinary medicine shall require periodic inspections of all veterinary facilities to monitor compliance with these standards.
  - (1) Standards depend upon the nature, scope, and limitations of the practice as defined by the practice manager and approved by the board. However, in no case shall standards of cleanliness, hygiene, and sanitation be violated.
  - (2) Inspections shall be conducted by the facility inspector designated by the board.
  - (3) Facilities are subject to inspection at any time during the facility's normal hours of business.

[16.25.9.8 NMAC - Rp 16.25.9.8 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.9.9 PREMISES - GENERAL REQUIREMENTS:**

- A. All premises where veterinary medicine including its various branches is being practiced and all instruments, equipment, apparatus, and apparel used in connection with those practices, shall be kept clean and sanitary and shall conform to the standards specified for different types of facilities.

B. Emergency service either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance shall be provided at all times. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians.

C. Every veterinary facility shall maintain the following:

(1) A sanitary environment to include the proper routine disposal of waste material, proper sterilization or sanitation of all equipment used in diagnosis or treatment, and adequate storage to provide a neat and orderly appearance;

(2) An adequate library of textbooks, journals or other current veterinary reference materials, readily available on the premises or available through electronic access;

(3) Proper storage and environmental control for all medicines and biologics based on the manufacturer's recommendations;

(4) Properly maintained records; and

(5) Legally accessible methods for the disposal of deceased animals and infectious waste.

[16.25.9.9 NMAC - Rp 16.25.9.9 NMAC, 01-17-2014]

#### **16.25.9.10 PREMISES - FIXED VETERINARY FACILITIES:**

A. When premises are closed, an answering machine or answering service shall be used to notify the public when the veterinary premises will re-open and where pre-arranged after hours veterinary care is available.

B. All fixed premises shall conform to or possess the following:

(1) Exterior:

(a) a legible sign;

(b) facility clean and in good repair; and

(c) grounds clean and maintained.

(2) Interior:

(a) indoor lighting for halls, wards, reception areas, examination, treatment, and surgery rooms that is adequate for the intended purposes;

(b) a reception room and office, or a combination of the two;

(c) an examination room separate from other areas of the facility and of sufficient size to accommodate the appropriate hospital personnel;

(d) table tops, counter tops, and floors made of materials suitable for regular disinfection and cleaning;

(e) facility license conspicuously displayed; and

(f) veterinarians' licenses and veterinary technicians' licenses conspicuously displayed.

C. A veterinary facility where animals are housed or retained for treatment shall additionally contain the following:

(1) compartments of sufficient size and construction to maintain animals in a comfortable, safe, and sanitary manner;

(2) exercise runs or a means for providing exercise of sufficient construction to maintain animals in a safe, clean and sanitary manner;

(3) effective separation of known or suspected contagious animals;

(4) maintenance of temperature and ventilation to ensure the comfort of patients;

(5) an animal identification system;

(6) fire precautions that meet the requirements of local and state fire prevention codes; and

(7) if there are no personnel on the premises during any time an animal is left at the veterinary facility, prior written or verbal notice must be given to the client.

D. Full service veterinary facilities shall additionally conform to or possess the following:

(1) a surgery room separate and distinct from all other rooms and reserved for aseptic surgical procedures requiring aseptic preparation;

(2) the capability to render diagnostic radiological services, either the premises or through outside sources; and

(3) the capability to provide clinical pathology and histopathology diagnostic laboratory services, either on the premises or through outside sources.

[16.25.9.10 NMAC - Rp, 16.25.9.10 NMAC, 01-17-2014]

#### **16.25.9.11 PREMISES - MOBILE VETERINARY FACILITIES:**

A. Small animals. A small animal mobile veterinary facility shall conform to or possess the following:

- (1) hot and cold water;
- (2) a 110-volt power source for diagnostic equipment;
- (3) a collection receptacle for proper disposal of waste material;
- (4) lighting adequate for the procedures to be performed;
- (5) table tops and counter tops which can be cleaned and disinfected;
- (6) floor coverings which can be cleaned and disinfected;
- (7) compartments to transport or hold animals;
- (8) indoor lighting for halls, wards, reception areas, examination and surgery rooms that is adequate for the intended purposes;
- (9) An examination room separate from other areas of the facility which shall be of sufficient size to accommodate appropriate hospital personnel unless only one client is in the mobile unit at one time;
- (10) fire precautions that meet the requirements of local and state fire prevention codes;
- (11) temperature and ventilation controls adequate to ensure the comfort of patients;
- (12) if surgical services are offered, a room separate and distinct from other rooms reserved for aseptic surgical procedures;
- (13) the capability to render diagnostic radiological services either in the mobile veterinary unit or through other outside services;
- (14) the capability to provide clinical pathology and histopathology diagnostic laboratory services, either in the mobile veterinary unit or through other outside services;
- (15) ability and equipment to provide immediate emergency care at a level commensurate with the specific veterinary medical services provided;
- (16) provide after-hours emergency service, either by staff veterinarians or by pre-arranged referral to another veterinarian within a reasonable distance. Referral must be acknowledged and agreed upon by both the referring and referred veterinarians;
- (17) in all types of mobile veterinary practice adherence to minimum standards of practice and the existence of a veterinarian-client-patient relationship; and
- (18) proper instrumentation and sterilization maintained in the vehicle to accommodate those services which the veterinarian maintains he is capable of providing.

B. Large animals. A large animal mobile veterinary facility shall conform to or provide the following:

- (1) maintenance of facility in a clean and sanitary fashion; and
- (2) items of equipment necessary for the veterinarian to perform physical examinations, surgical procedures and medical treatments consistent with the standards of the profession and the type of veterinary services being rendered. Standard items equipping the unit should include but not be limited to the following:
  - (a) if aseptic surgery is to be performed: sterile surgical instruments, suturing materials, syringes, and needles;
  - (b) protective clothing, rubber or disposable boots and a means to clean them between each visit to each premises;
  - (c) current and properly stored pharmaceuticals and biologics as per manufacturer's label; and
  - (d) a means of cold sterilization.
- (3) The capability to render diagnostic radiological services, either through the mobile veterinary unit or through other outside services.
- (4) The capability to provide clinical pathology and histopathology diagnostic laboratory services, either through the mobile veterinary unit or through other outside services.

C. In all types of mobile veterinary practice, minimum standards of practice must be adhered to and a veterinarian-client-patient relationship must exist.

[16.25.9.11 NMAC - Rp 16.25.9.11 NMAC, 01-17-2014]

#### **16.25.9.12 PREMISES - EMERGENCY CLINICS:**

A. Emergency clinics are facilities which advertise or otherwise purport to provide veterinary medical services when these services are not normally available through other facilities. Nothing contained in this rule is intended to prohibit any licensed facility from providing services of an emergency nature.

B. The minimum staffing requirements for an emergency facility shall include a licensed veterinarian on the premises at all times during the posted hours of operation.

C. Advertisements shall clearly state:

- (1) a licensed veterinarian is on the premises during the posted emergency hours;
- (2) the hours the facility will provide emergency services; and
- (3) the address and telephone number of the facility.

D. In addition to the equipment for veterinary hospitals and clinics, all emergency facilities shall have the equipment necessary to perform standard emergency medical procedures including but not limited to:

- (1) the capability to render timely diagnostic radiological services on premises;
- (2) the capacity to render timely laboratory services on premises; and
- (3) the ability to provide diagnostic cardiac monitoring.

E. Emergency clinics shall meet the same standards as fixed veterinary premises.

[16.25.9.12 NMAC - Rp 16.25.9.12 NMAC, 01-17-2014]

**16.25.9.13 PREMISES - NON-FULL SERVICE FACILITIES:**

A. Referral, specialty and other facilities in which the services provided are limited in scope shall:

- (1) identify the name of the primary veterinarian on each patient's medical record; and
- (2) possess all necessary instruments, equipment and apparatus essential to the services

rendered.

B. Non-full service facilities shall meet the same standards as fixed veterinary premises.

[16.25.9.13 NMAC - Rp, 16.25.9.13 NMAC, 01-17-2014]

**16.25.9.14 PREMISES - FOOD ANIMAL FACILITIES:** Veterinary premises where food animal medicine is practiced shall have a reception room and office or a combination of the two. The premises shall contain the following:

- A. facilities for cleaning and sterilizing instruments and equipment;
- B. telephone and answering services;
- C. record keeping system;
- D. facilities for proper storage of pharmaceuticals and biologics;
- E. holding pens;
- F. capability for providing restraint; and
- G. a sanitizable area for clean surgery.

[16.25.9.14 NMAC - Rp 16.25.9.14 NMAC, 01-17-2014]

**16.25.9.15 RADIOLOGICAL SERVICES:**

A. Full service veterinary practices must have the capacity to render adequate diagnostic radiological services either in the facility or through an agreement to provide these services through another facility.

B. All exposed radiographs shall be the property of the veterinary facility that originally ordered them to be prepared and shall be stored where easily maintained and accessible by that facility for a period of three years.

C. All radiographs shall have a permanent, legible identification and shall include the following information:

- (1) the hospital, clinic or veterinarian name;
- (2) the location, city and state of the facility;
- (3) client identification;
- (4) patient identification;
- (5) the date the radiograph was taken; and
- (6) anatomical orientation, left or right, as indicated.

D. Radiographs shall be temporarily released in a timely manner to another veterinarian who has the authorization of the owner or agent or directly to the owner or agent. Return of said radiographs to the originating veterinarian shall also be accomplished in a timely manner. Transfer of radiographs shall be documented in the medical record.

E. If radiographs are transferred permanently, the transfer shall be documented in the medical record.

F. Radiographs originating at an emergency hospital shall become the property of the next attending veterinary facility upon receipt of the radiographs. Transfer of radiographs shall be documented in the medical record.

G. Pursuant to the state of New Mexico Environmental Protection Act, 20.3.6 NMAC, each facility shall maintain an x-ray log containing the examinations and the dates the examinations were performed. The log shall indicate when techniques for procedures vary from those specified in Subparagraph (c), Paragraph (1), Subsection A of 20.3.6.602 NMAC.

[16.25.9.15 NMAC - Rp 16.25.9.15 NMAC, 01-17-2014]

**16.25.9.16 LABORATORY SERVICES AND EQUIPMENT:**

A. Clinical pathology and histopathology diagnostic laboratory services must be readily available within the veterinary facility or through outside services.

B. Laboratory data is the property of the veterinary facility that originally ordered it to be prepared.

C. A copy of laboratory data shall be released in a timely manner to another veterinarian who has the authorization of the owner or agent or directly to the owner or agent.

D. A laboratory must be equipped with a microscope and a centrifuge.

[16.25.9.16 NMAC - Rp 16.25.9.16 NMAC, 01-17-2014]

**16.25.9.17 PHARMACEUTICAL SERVICES:**

A. No legend or controlled drug shall be prescribed, dispensed or administered without the establishment of a veterinarian-client-patient relationship.

B. All legend drugs shall be stored in a secure manner limiting public accessibility.

C. No expired drug or biologic shall be administered or dispensed.

D. All expired drugs or biologics shall be stored away from the working pharmacy while awaiting disposal.

E. All drugs and biologics shall be maintained, administered, dispensed and prescribed in compliance with state and federal laws.

F. Unless otherwise requested by the owner, and noted in the medical record, all repackaged legend and dangerous drugs shall be dispensed in safety closure containers.

G. All drugs shall be labeled with:

(1) name, address, and phone number of the facility;

(2) client's name;

(3) patient's name;

(4) date dispensed;

(5) name and strength of drug;

(6) directions for use;

(7) quantity dispensed;

(8) expiration date of drug;

(9) name of prescribing veterinarian; and

(10) the words "for veterinary use only" and "keep out of reach of children."

H. Veterinarians shall honor client requests to dispense a drug(s) or provide a written prescription for a drug(s) that has been determined by the veterinarian to be appropriate for the patient.

[16.25.9.17 NMAC - Rp 16.25.9.17 NMAC, 01-17-2014]

**16.25.9.18 SURGICAL SERVICES:**

A. Aseptic surgery means a procedure that is performed under sterile conditions.

(1) Sterile surgery shall be defined as procedures in which aseptic technique is practiced in patient preparation, instrumentation and surgical attire.

(2) Clean surgery means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

B. The surgeon is responsible for the surgical case until it is completed and there is adequate recovery of the patient from anesthesia.

C. Surgery room.

(1) A room shall be designated for aseptic procedures only, in which no other uses are permitted;

(2) The room shall be well lighted and have available an operational viewing device for reviewing radiographs;

(3) The floors, tabletops, and countertops of the surgery room shall be of a material suitable for disinfection and cleaning and shall be cleaned and disinfected regularly;

(4) Storage in the surgery room is limited to surgically related items only; and

(5) Nothing in this section shall preclude the performance of emergency aseptic surgical procedures in another room when the room designated for that purpose is occupied.

D. Instruments and equipment.

(1) Instruments and equipment shall be:

(a) adequate for the type of surgical service provided; and

(b) sterilized by a method acceptable for the type of surgery for which they shall be used.

(2) In any sterile surgical procedure, a separate sterile pack and gloves shall be used for each animal;

(3) All instruments, packs and equipment that have been sterilized shall have an indicator that reacts to and verifies sterilization within one year; and

(4) Suture material shall not be used beyond the manufacturer's expiration date.

E. Surgical attire.

(1) Each member of the surgical team shall wear an appropriate sanitary cap and sanitary mask which covers his hair, mouth, nose and any facial hair, except for eyebrows and eyelashes;

(2) All members of the surgical team who will be handling sterile instruments or touching the surgical site shall wear sterilized surgical gowns with long sleeves and sterilized gloves;

(3) Ancillary personnel in the surgery room shall wear clean clothing;

(4) Ancillary personnel in immediate proximity to the sterile field shall wear sanitary cap and mask; and

(5) When performing "clean surgery", the instruments used to perform such surgery shall have been properly sterilized or disinfected and the surgeon and ancillary personnel shall wear clean clothing as appropriate.

F. Anesthesia.

(1) General anesthesia is a condition caused by the administration of a drug or combination of drugs sufficient to produce a state of unconsciousness or dissociation and blocked response to a given pain or alarming stimulus.

(2) Administration of appropriate and humane methods of anesthesia, analgesia and sedation to minimize pain and distress during any procedures and shall comply with the following standards:

(a) with the exception of feral or dangerous animals, every animal shall be given a physical examination within two weeks prior to the administration of an anesthetic;

(b) the animal under general anesthesia shall be under continuous observation until, at minimum, the swallowing reflex has returned and shall not be released to the client until the animal demonstrates a righting reflex. This shall not preclude direct transfer of an animal under anesthesia to a suitable facility for referred observation;

(c) provide a method of respiratory monitoring that may include observation of the animal's chest movement or observing the rebreathing bag or respirometer;

(d) provide a method of cardiac monitoring that may include the use of stethoscope or electrocardiographic monitor;

(e) clean endotracheal tubes of assorted sizes shall be readily available;

(f) oxygen equipment shall be available at all times;

(g) anesthetic equipment will be maintained in proper working condition; and

(h) effective means shall be provided for exhausting waste gasses from hospital areas in which inhalation anesthesia is used.

[16.25.9.18 NMAC - Rp 16.25.9.18 NMAC, 01-17-2014; A, 05-08-2016]

**16.25.9.19 DENTAL SERVICES:**

A. Dental operation or procedure is the application or use of any instrument or device to any portion of an animal's tooth, gum or related tissue for the prevention, cure or relief of any wound, fracture, injury, disease or other condition of an animal's tooth, gum or related tissue. Dental operations or procedures shall be performed only by licensed veterinarians except for those preventive veterinary dental procedures as specified below.

B. Preventive veterinary dental procedures including but not limited to the removal of calculus, soft deposits, plaque and stains; the smoothing, filing, polishing of tooth surfaces, or floating or dressing of equine teeth, shall be performed only by licensed veterinarians or under the direct supervision of a licensed veterinarian.

C. Preventive veterinary dental procedures including but not limited to the removal of calculus by either manual or ultrasonic rescaling shall be done in a location specifically designated for such procedures or in a treatment area.

D. This rule does not prohibit any person from utilizing cotton swabs, gauze, dental floss, dentifrice, toothbrushes or similar items to clean an animal's teeth.

[16.25.9.19 NMAC - Rp 16.25.9.19 NMAC, 01-17-2014]

**16.25.9.20 DIRECT SUPERVISION OF NON-VETERINARIANS:** Non-licensed individuals are prohibited from practicing veterinary medicine which includes but is not limited to chiropractic, physical therapy, acupuncture, acupressure, homeopathy, therapeutic massage, dentistry, embryo transfer or any other related services on animals as defined in NMSA 1978, Section 61-14-2(B)(1), except under the direct supervision of a New Mexico-licensed veterinarian. Direct supervision includes the following:

- A. the licensed veterinarian must have established a valid veterinarian-client-patient relationship;
- B. the treatment must be performed on the order of a licensed veterinarian;
- C. the licensed veterinarian must be on the premises and readily available;
- D. the licensed veterinarian must assume liability for the quality of any treatment performed; and
- E. the fee for services rendered shall be paid to the licensed veterinarian or licensed facility.

[16.25.9.20 NMAC - Rp 16.25.9.20 NMAC, 01-17-2014]

**16.25.9.21 RECORD KEEPING:**

A. Every veterinarian involved in a veterinarian-client-patient relationship performing any service requiring a license to work on any animal or group of animals in his custody or in the custody of a veterinary facility, shall prepare a legible individual or group animal and client record concerning the animal(s) which shall contain the following information:

- (1) name, address, and phone number of the animal's owner or agent; and
- (2) name or identity of animal(s), including species, breed, age, sex, weight, and color where appropriate
- (3) The medical record shall contain:
  - (a) a history of pertinent information as it pertains to the animal's medical status;
  - (b) notation of the physical examination findings;
  - (c) treatment or intended treatment plans or both, including medications, medication strengths and amounts administered, dispensed or prescribed and frequency of use as well as method of administration including those medications used for sedation, induction and maintenance of anesthesia;
  - (d) data and interpretation(s) of diagnostic procedures including but not limited to radiographs, laboratory, ultrasound and ECG;
  - (e) a diagnosis or tentative diagnosis;
  - (f) when pertinent, a prognosis;
  - (g) progress notes and disposition of the case;
  - (h) beginning and ending dates of custody of the animal with daily notations;
  - (i) in the case of vaccination clinics, a certificate including the information required by Subsections (1) and (2) above may serve as the medical record;
  - (j) name or initials of the veterinarian responsible for entries; and
  - (k) name or initials of all ancillary and authorized individuals responsible for entries.

(4) Group records are acceptable for herds, flocks or litters of animals that lack individual identification by name or that include a number of individuals to which the same medical record applies. Records for surgical procedures that include a description of the procedure, surgical findings when pertinent and response to or recovery from anesthesia shall contain the requirements listed in Subsection (3) above.

B. Record storage.

(1) All records shall be the property of the veterinary facility or practice that created such records and shall be kept where easily accessible for a minimum of four years after the animal's last visit.

(2) Upon closure of a facility or practice, notice must be published twice in the local newspaper announcing where records can be obtained for 90 days.

(3) Copies of records and radiographs or a summary of records will be made available within 10 working days upon the client's written request.

C. Controlled substances.

(1) A separate log shall be maintained on each controlled substance and shall contain the following information:

- (a) date and time of administering or date of dispensing;
- (b) name of owner or agent;
- (c) name or identification of animal;
- (d) amount dispensed or administered;
- (e) balance remaining; and
- (f) authorizing veterinarian and identification of authorized individual dispensing or

administering the controlled substance.

(2) For each controlled substance, there shall be an annual inventory that includes:

- (a) the date of inventory, May 1 annually, unless prior written notice is submitted to the appropriate agency by the licensee manager;
- (b) a physical count identifying the quantity of each controlled substance on hand on the date of inventory;
- (c) the "balance remaining" from the individual controlled substance log;
- (d) the discrepancy between (b) and (c); and
- (e) the percent the annual use (d) represents.

(3) All New Mexico board of pharmacy, New Mexico Controlled Substances Act, federal drug enforcement administration (DEA) and federal food and drug administration requirements shall be complied with, including but not limited to the following:

(a) controlled substances must be kept securely locked in a closet, safe or fixed cabinet;

(b) access to the controlled substance storage area should be restricted to the absolute minimum number of employees;

(c) the recommendation that controlled substances stock is kept to a minimum.

Should it be necessary to have a substantial quantity of controlled substances stored in the office or facility, the DEA encourages having security which exceeds the minimum requirements such as a safe and alarm system;

(d) the reporting of lost or stolen controlled substances to the appropriate agency;

(e) the disposal of controlled substances through a DEA licensed disposer; and

(f) the DEA and NMCS licenses shall be kept where easily accessible in the pharmacy area but not in public view.

D. Computer records.

(1) There shall be reasonable security of a facility's computer(s) with access limited to authorized individuals only.

(2) A daily and cumulative monthly back-up on a separate disk, magnetic tape or other acceptable device or method shall be made.

[16.25.9.21 NMAC - Rp 16.25.9.21 NMAC, 01-17-2014]

**16.25.9.22 MANAGEMENT OF WASTE:**

A. A licensed veterinarian shall oversee the handling, treatment and disposition of infectious waste including but not limited to carcasses, anatomical body parts, excretions, blood soiled articles or bedding that are generated from an animal that the licensed veterinarian knows or has reason to suspect has a disease that is capable of being transmitted to humans as provided under this section:

(1) all infectious waste will be sterilized or disinfected by heat, steam, chemical disinfection, radiation or desiccation; and

(2) infectious waste held for disposal shall be collected in sanitary leak resistant bags clearly labeled for biohazard disposal. The bag shall contain the gloves worn while collecting the waste and those used in treatment and post-mortem examinations of suspect animals.

B. All sharps shall be disposed of in appropriately labeled sharps containers. Such containers shall be rigid sided, solidly sealed containers that are highly resistant to puncture. These containers shall be incinerated or disposed of in an environmentally safe manner by a duly licensed disposer, an approved medical sharps incineration facility or shall be disposed of in such a way as to render the sharps harmless. This disposal shall not apply to infectious waste sharps contained in a puncture resistant container which should be disposed of as described in

infectious waste disposal. Due to the small volume of sharps generated in a veterinary clinic, transportation of the filled, sealed containers shall not be mandated by nor limited to commercial haulers.

C. Drug disposal.

(1) When feasible, unused or outdated drugs shall be returned to the manufacturer for disposal in accordance with the policies and procedures of the manufacturer.

(2) All scheduled controlled substances which cannot be returned to the manufacturer shall be disposed of at one of the approved controlled drug disposers as approved by the board of pharmacy. A list of these disposers will be provided by the board of pharmacy.

(3) Drugs which do not pose a problem for environmental hazard or are not controlled drugs may be disposed of in a sanitary, non-offensive manner by means of regular solid waste disposal methods.

D. A licensed veterinarian shall oversee the handling of waste materials that are generated from an animal that does not have a disease transmissible to humans or suspected of being contaminated with an agent capable of infecting humans as provided under this section:

(1) Animal carcasses.

(a) An animal carcass shall be disposed of promptly by release to owner, burial, cremation, incineration, commercial rendering or if permitted by local ordinance, placed in a public landfill.

(b) If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed of as provided in (1)(a) above.

(c) All remains stored at a veterinary clinic shall be duly identified with the case number or the owner's name and the name of the animal to prevent improper final disposal.

(2) Tissues, specimens, bedding, animal waste and extraneous materials, not suspected of harboring pathogens infectious to humans shall be disposed of by approved city or county disposal methods.

E. In the event of the occurrence of a suspected foreign animal disease or disease of potential concern to state or national security, the licensed veterinarian will immediately contact the state department of agriculture, the U. S. department of agriculture and other departments that have jurisdiction over such an occurrence. The licensed veterinarian shall oversee the handling of all tissues, laboratory samples and biomedical waste associated with such cases in accordance with the recommendations made by the department of agriculture and other departments and agencies which are deemed necessary and appropriate in such cases.

[16.25.9.22 NMAC – Rp, 16.25.9.22 NMAC, 01-17-2014]

**HISTORY OF 16.25.9 NMAC:**

**Pre-NMAC History:**

BVE 88-7, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 10-14-88.

BVE 92-8, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 5-22-92.

BVE 93-8, Rules Governing Minimum Standards for the Practice of Veterinary Medicine, 6-3-93.

**History of Repealed Material:**

16 NMAC 25.9, Minimum Standards - Repealed, 9-1-00.

16.25.9 NMAC, Minimum Standards - Repealed, 6-7-02.

16.25.9 NMAC, Minimum Standards - Repealed effective 01-17-14.

**TITLE 16      OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25    VETERINARY MEDICINE PRACTITIONERS**  
**PART 10        RESERVED**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 25 VETERINARY MEDICINE PRACTITIONERS**  
**PART 11 PARENTAL RESPONSIBILITY COMPLIANCE**

**16.25.11.1 ISSUING AGENCY:** New Mexico Board of Veterinary Medicine  
[16.25.11.1 NMAC - Rp, 16.25.11.1 NMAC, 01-17-2014]

**16.25.11.2 SCOPE:** Provisions of 16.25.11 NMAC shall apply to all those licensed by the New Mexico Board of Veterinary Medicine.  
[16.25.11.2 NMAC – Rp, 16.25.11.2 NMAC, 01-17-2014]

**16.25.11.3 STATUTORY AUTHORITY:** NMSA 1978, Section 61-14-5(F), directs the board of veterinary medicine to adopt, regularly review and revise rules necessary to carry out the provisions of the Veterinary Practice Act after a hearing open to the public. The board adopts this part pursuant to the Parental Responsibility, NMSA 1978, Section 40-5(A)(1) through (13), which requires all professional licensing boards to promulgate rules to implement the Parental Responsibility Act.  
[16.25.11.3 NMAC - Rp, 16.25.11.3 NMAC, 01-17-2014]

**16.25.11.4 DURATION:** Permanent.  
[16.25.11.4 NMAC - Rp, 16.25.11.4 NMAC, 01-17-2014]

**16.25.11.5 EFFECTIVE DATE:** 01-17-2014 unless a later date is cited at the end of a section.  
[16.25.11.5 NMAC - Rp, 16.25.11.5 NMAC, 01-17-2014]

**16.25.11.6 OBJECTIVE:** To ensure that licensees and applicants for licensure from the board of veterinary medicine comply with the Parental Responsibility Act.  
[16.25.11.6 NMAC - Rp, 16.25.11.6 NMAC, 01-17-2014]

**16.25.11.7 DEFINITIONS:** All terms defined in the Parental Responsibility Act shall have the same meanings in this part. As used in this part:

- 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 order for support.

[16.25.11.7 NMAC - Rp, 16.25.11.7 NMAC, 01-17-2014]

**16.25.11.8 AUTHORITY:** The board adopts this part pursuant to the Parental Responsibility Act, NMSA 1978, Section 40-5(A)(1) through (13).  
[16.25.11.8 NMAC - Rp, 16.25.11.8 NMAC, 01-17-2014]

**16.25.11.9 DISCIPLINARY ACTION:** If an applicant or licensee is not in compliance with a judgment and order for support, the board:

- A. shall deny an application for a license;
- B. shall deny the renewal of a license; and
- C. has grounds for suspension or revocation of the license.

[16.25.11.9 NMAC - Rp, 16.25.11.9 NMAC, 01-17-2014]

**16.25.11.10 CERTIFIED LIST:**  
Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the board shall match the certified list against the current list of board licensees and applicants. Upon the subsequent receipt of an application for licensure or renewal, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants and licensees who are on the certified list and the action the board has taken in connection with such applicants and licensees.  
[16.25.11.10 NMAC - Rp, 16.25.11.10 NMAC, 01-17-2014]

**16.25.11.11 INITIAL ACTION:**

Upon determination that an applicant or licensee appears on the certified list, the board shall:

- A. commence a formal proceeding under 16.25.11.9 NMAC to take the appropriate action under 16.25.11.12 NMAC;
- 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:
  - (1) the application for license renewal; or
  - (2) specified date not to exceed 30 days.

If the licensee fails to provide this statement, the board shall commence a formal proceeding under 16.25.11.14 NMAC.

[16.25.11.11 NMAC - Rp, 16.25.11.11 NMAC, 01-17-2014]

**16.25.11.12 NOTICE OF CONTEMPLATED ACTION:** Prior to taking any action specified in 16.25.11.11 NMAC, the board shall serve written notice to the applicant or licensee setting forth the grounds, as determined by the board, to take such action and the board's intention to take such action unless the licensee or applicant:

- A. mails a certified letter return receipt requested within 20 days after service of the notice requesting a hearing; or
- B. provides the board, within 30 days of the date of the notice, a statement of compliance from HSD.
- C. If the applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee shall contact the HSD child support enforcement division.

[16.25.11.12 NMAC - Rp, 16.25.11.12 NMAC, 01-17-2014]

**16.25.11.13 EVIDENCE AND PROOF:** In any hearing under this part, relevant evidence is limited to the following: A statement of non-compliance is conclusive evidence that requires the board to take the appropriate action under 16.25.11.12 NMAC, unless the applicant or licensee provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this part.

[16.25.11.13 NMAC - Rp, 16.24.11.13 NMAC, 01-17-2014]

**16.25.11.14 ORDER:**

When a disciplinary action is taken under this part solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

[16.25.11.14 NMAC - Rp, 16.25.11.14 NMAC, 01-17-2014]

**16.25.11.15 PROCEDURES:**

Proceedings under this part shall be governed by the Uniform Licensing Act, NMSA 1978, Section 61-1-1.

[16.25.11.15 NMAC - Rp, 16.25.11.15 NMAC, 01-17-2014]

**HISTORY OF 16.25.11 NMAC:**

**History of Repealed Material:**

16 NMAC 25.11, Parental Responsibility - Repealed 05-31-96.

16.25.11 NMAC Parental Responsibility - Repealed effective 01-17-14.

# CHAPTER 61

## Professional and Occupational Licenses

Art. 1. Uniform Licensing, 61-1-1 to 61-1-33.

### ARTICLE 1

#### Uniform Licensing

Sec.		Sec.	
61-1-1.	Short title.	61-1-16.	Contents of decision.
61-1-2.	Definitions.	61-1-17.	Petition for review.
61-1-3.	Opportunity for licensee or applicant to have hearing.	61-1-18.	Repealed.
61-1-3.1.	Limitations.	61-1-19.	Stay.
61-1-4.	Notice of contemplated board action; request for hearing; notice of hearing.	61-1-20.	Repealed.
61-1-5.	Method of service.	61-1-21.	Power of board to reopen the case.
61-1-6.	Venue of hearing.	61-1-22, 61-1-23.	Repealed.
61-1-7.	Hearing officers; hearings; public; exception; excusal; protection of witness and information.	61-1-24.	Power of board to seek injunctive relief.
61-1-8.	Rights of person entitled to hearing.	61-1-25.	Declaratory judgment.
61-1-9.	Powers of board or hearing officer in connection with hearings.	61-1-26.	Repealed.
61-1-10.	Enforcement of board orders and contempt procedure.	61-1-27.	Amending and repealing.
61-1-11.	Rules of evidence.	61-1-28.	Purpose of act; liberal interpretation.
61-1-12.	Record.	61-1-29.	Adoption of regulations; notice and hearing.
61-1-13.	Decision.	61-1-30.	Emergency regulations; appeal.
61-1-14.	Service of decision.	61-1-31.	Validity of regulation; judicial review.
61-1-15.	Procedure where person fails to request or appear for hearing.	61-1-32.	Petition for adoption, amendment or repeal of regulations.
		61-1-33.	Declaratory rulings.

#### 61-1-1. Short title.

Sections 61-1-1 through 61-1-31 NMSA 1978 may be cited as the "Uniform Licensing Act".

**History:** 1953 Comp., § 67-26-1, enacted by Laws 1957, ch. 247, § 1; 1971, ch. 54, § 1.

#### 61-1-2. Definitions.

As used in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978]

##### A. "board" means

(1) the construction industries commission, the construction industries division and the electrical bureau, mechanical bureau and general construction bureau of the construction industries division of the regulation and licensing department;

(2) the manufactured housing committee and manufactured housing division of the regulation and licensing department;

(3) a board, commission or agency that administers a profession or occupation licensed pursuant to Chapter 61 NMSA 1978; and

(4) any other state agency to which the Uniform Licensing Act is applied by law;

##### B. "applicant" means a person who has applied for a license;

C. "license" means a certificate, permit or other authorization to engage in each of the professions and occupations regulated by the boards enumerated in Subsection A of this section;

##### D. "revoke a license" means to prohibit the conduct authorized by the license; and

E. "suspend a license" means to prohibit, for a stated period of time, the conduct authorized by the license. "Suspend a license" also means to allow for a stated period of time the conduct authorized by the license subject to conditions that are reasonably related to the grounds for suspension.

**History:** 1953 Comp., § 67-26-2, enacted by Laws 1957, ch. 247, § 2; 1959, ch. 223, § 13; 1969, ch. 6, § 1; 1971, ch. 54, § 2; 1973, ch. 259, § 4; 1977, ch. 245, § 165; 1981, ch. 62, § 16; 1981, ch. 349, § 1; 1983, ch. 295, § 26; 1989, ch. 6, § 49; 1989, ch. 51, § 26; 1989, ch. 387, § 16; 1990, ch. 75, § 24; 1991, ch. 147, § 26; 1993, ch. 49, § 31; 1993, ch. 171, § 25; 1993, ch. 295, § 1.

**61-1-3. Opportunity for licensee or applicant to have hearing.**

Every licensee or applicant shall be afforded notice and an opportunity to be heard, before the board has authority to take any action which would result in

- A. denial of permission to take an examination for licensing for which application has been properly made as required by board rule;
- B. denial of a license after examination for any cause other than failure to pass an examination;
- C. denial of a license for which application has been properly made as required by board rule on the basis of reciprocity or endorsement or acceptance of a national certificate of qualification;
- D. withholding the renewal of a license for any cause other than
  - (1) failure to pay the required renewal fee;
  - (2) failure to meet continuing education requirements; or
  - (3) issuance of a temporary license extension if authorized by statute;
- E. suspension of a license;
- F. revocation of a license;
- G. restrictions or limitations on the scope of a practice;
- H. the requirement that the applicant complete a program of remedial education or treatment;
- I. monitoring of the practice by a supervisor approved by the board;
- J. the censure or reprimand of the licensee or applicant;
- K. compliance with conditions of probation or suspension for a specific period of time;
- L. payment of a fine for a violation not to exceed one thousand dollars (\$1,000) for each violation, unless a greater amount is provided by law;
- M. corrective action, as specified by the board; or
- N. a refund to the consumer of fees that were billed to and collected from the consumer by the licensee.

**History:** 1953 Comp., § 67-26-3, enacted by Laws 1957, ch. 247, § 3; 1981, ch. 349, § 2; 1993, ch. 295, § 2.

**61-1-3.1. Limitations.**

- A. No action that would have any of the effects specified in Subsections D through N of Section 61-1-3 NMSA 1978 shall be initiated by a board later than two years after the discovery of the conduct that would be the basis for the action except as provided in Subsections C and D of this section.
- B. The time limitation contained in Subsection A of this section shall be tolled by any civil or criminal litigation in which the licensee or applicant is a party arising from substantially the same facts, conduct or transactions that would be the basis for the board's action.
- C. The New Mexico state board of psychologist examiners shall not initiate an action that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than five years after the conduct of the psychologist or psychologist associate that is the basis for the action. However, if the conduct that is the basis for the action involves a minor or a person adjudicated incompetent, the action shall be initiated, in the case of a minor, no later than one year after the minor's eighteenth birthday or five years after the conduct, whichever is last and, in the case of a person adjudicated incompetent, one year after the adjudication of incompetence is terminated or five years after the conduct, whichever is last.
- D. The New Mexico state board of public accountancy shall not initiate an action under the Public Accountancy Act [now repealed] that would result in any of the actions specified in Subsections D through N of Section 61-1-3 NMSA 1978 later than two years following the discovery of a violation of that act.

**History:** 1978 Comp., § 61-1-3.1, enacted by Laws 1981, ch. 349, § 3; 1989, ch. 41, § 1; 1992, ch. 10, § 27; 1993, ch. 218, § 40; 1993, ch. 295, § 4.

**61-1-4. Notice of contemplated board action; request for hearing; notice of hearing.**

- A. For the purpose of investigating complaints against licensees, the board may issue investigative subpoenas prior to the issuance of a notice of contemplated action as provided in this section.

**B.** When a board contemplates taking any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, it shall serve upon the applicant a written notice containing a statement

- (1) that the applicant has failed to satisfy the board of his qualifications to be examined or to be issued a license, as the case may be;
- (2) indicating in what respects the applicant has failed to satisfy the board;
- (3) that the applicant may secure a hearing before the board by depositing in the mail within twenty days after service of the notice a certified return receipt requested letter addressed to the board and containing a request for a hearing; and
- (4) calling the applicant's attention to his rights under Section 61-1-8 NMSA 1978.

**C.** In any board proceeding to take any action of a type specified in Subsection A, B or C of Section 61-1-3 NMSA 1978, the burden of satisfying the board of the applicant's qualifications shall be upon the applicant.

**D.** When a board contemplates taking any action of a type specified in Subsections D through N of Section 61-1-3 NMSA 1978, it shall serve upon the licensee a written notice containing a statement

- (1) that the board has sufficient evidence that, if not rebutted or explained, will justify the board in taking the contemplated action;
- (2) indicating the general nature of the evidence;
- (3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the board and containing a request for a hearing, the board will take the contemplated action; and
- (4) calling the licensee's attention to his rights under Section 61-1-8 NMSA 1978.

**E.** If the licensee or applicant does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

**F.** If the licensee or applicant does mail a request for a hearing as required by this section, the board shall, within twenty days of receipt of the request, notify the licensee or applicant of the time and place of hearing, the name of the person who shall conduct the hearing for the board and the statutes and regulations authorizing the board to take the contemplated action, which hearing shall be held not more than sixty nor less than fifteen days from the date of service of the notice.

**G.** 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 NMSA 1978 is not taken by the board.

**History:** 1953 Comp., § 67-26-4, enacted by Laws 1957, ch. 247, § 4; 1993, ch. 295, § 3.

#### **61-1-5. Method of service.**

Any notice required to be served by Section 61-1-4 or 61-1-21 NMSA 1978 and any decision required to be served by Section 61-1-14 or 61-1-21 NMSA 1978, may be served either personally or by certified mail, return receipt requested, directed to the licensee or applicant at his last known [known] address as shown by the records of the board. If the notice or decision is served personally, service shall be made in the same manner as is provided for service by the Rules of Civil Procedure for the District Courts. Where the notice or decision is served by certified mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery or the last attempted delivery of the notice or decision to the addressee or refusal of the addressee to accept delivery of the notice or decision.

**History:** 1953 Comp., § 67-26-5, enacted by Laws 1957, ch. 247, § 5.

#### **61-1-6. Venue of hearing.**

Board hearings held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be conducted in the county in which the person whose license is involved maintains his residence, or at the election of the board, in any county in which the act or acts complained of occurred; except that, in cases involving initial licensing, hearings shall be held in the county where the board maintains its office. In any case, however, the person whose license is involved and the board may agree that the hearing is to be held in some other county.

**History:** 1953 Comp., § 67-26-6, enacted by Laws 1957, ch. 247, § 6.

**61-1-7. Hearing officers; hearings; public; exception; excusal; protection of witness and information.**

A. All hearings under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall be conducted either by the board or, at the election of the board, by a hearing officer who may be a member or employee of the board or any other person designated by the board in its discretion. A hearing officer shall, within thirty days after any hearing, submit to the board a report setting forth his findings of fact.

B. All hearings under the Uniform Licensing Act shall be open to the public, provided that in cases in which any constitutional right of privacy of an applicant or licensee may be irreparably damaged, a board or hearing officer may hold a closed hearing if the board or hearing officer so desires and states the reasons for this decision in the record. The applicant or licensee may, for good cause shown, request a board or hearing officer to hold either a public or a closed hearing.

C. Each party may preemptorily excuse one board member or a hearing officer by filing with the board a notice of preemptory excusal at least twenty days prior to the date of the hearing, but this privilege of preemptory excusal may not be exercised in any case in which its exercise would result in less than a quorum of the board being able to hear or decide the matter. Any party may request that the board excuse a board member or a hearing officer for good cause by filing with the board a motion of excusal for cause at least twenty days prior to the date of the hearing. In any case in which a combination of preemptory excusals and excusals for good cause would result in less than a quorum of the board being able to hear or decide the matter, the preemptory excusals that would result in removing the member or members of the board necessary for a quorum shall not be effective.

D. In any case in which excusals for cause result in less than a quorum of the board being able to hear or decide the matter, the governor shall, upon request by the board, appoint as many temporary board members as are necessary for a quorum to hear or decide the matter. These temporary members shall have all of the qualifications required for permanent members of the board.

E. In any case in which excusals result in less than a quorum of the board being able to hear or decide the matter, the board, including any board members who have been excused, may designate a hearing officer to conduct the entire hearing.

F. Each board shall have power where a proceeding has been dismissed, either on the merits or otherwise, to relieve the applicant or licensee from any possible odium that may attach by reason of the proceeding, by such public exoneration as it shall see fit to make, if requested by the applicant or licensee to do so.

G. There shall be no liability on the part of and no action for damages against a person who provides information to a 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 a board shall be subject to disciplinary action.

**History: 1953 Comp., § 67-26-7, enacted by Laws 1957, ch. 247, § 7; 1981, ch. 349, § 6; 1993, ch. 295, § 5.**

**61-1-8. Rights of person entitled to hearing.**

A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.

B. Upon written request to another party, any party is entitled to

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten days after the mailing or delivery of the request. No such request shall be made less than fifteen days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

**History: 1953 Comp., § 67-26-8, enacted by Laws 1957, ch. 247, § 8; 1981, ch. 349, § 7.**

**61-1-9. Powers of board or hearing officer in connection with hearings.**

A. In connection with any hearing held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discovery and of the hearing, witnesses and relevant books, papers, documents and other evidence; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Boards or hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues but such settlement or simplification shall only be with the consent of the applicant or licensee.

B. Geographical limits upon the subpoena power shall be the same as if the board or hearing officer were a district court sitting at the location at which the hearing or discovery proceeding is to take place. The method of service, including tendering of witness and mileage fees, shall be the same as that under the Rules of Civil Procedure for the District Courts, except that those rules requiring the tender of fees in advance shall not apply to the state.

C. The board or hearing officer may impose any appropriate evidentiary sanction against a party who fails to provide discovery or to comply with a subpoena.

**History: 1953 Comp., § 67-26-9, enacted by Laws 1957, ch. 247, § 9; 1981, ch. 349, § 8.**

**61-1-10. Enforcement of board orders and contempt procedure.**

In proceedings before a board or hearing officer under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], if any person refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or refuses to obey any lawful order of a board contained in its decision rendered after hearing, the secretary of the board may apply to the district court of the county where the proceedings are being held for an order directing that person to take the requisite action. The court may issue such order in its discretion. Should any person willfully fail to comply with an order so issued, the court shall punish him as for contempt.

**History: 1953 Comp., § 67-26-10, enacted by Laws 1957, ch. 247, § 10; 1981, ch. 349, § 9.**

**61-1-11. Rules of evidence.**

A. In proceedings held under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], boards and hearing officers may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. Boards and hearing officers may in their discretion exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. In proceedings involving the suspension or revocation of a license, rules of privilege shall be applicable to the same extent as in proceedings before the courts of this state. Documentary evidence may be received in the form of copies or excerpts.

B. Boards and hearing officers may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within their specialized knowledge. When any board or hearing officer takes notice of a fact, the applicant or licensee shall be notified either before or during the hearing of the fact so noticed and its source and shall be afforded an opportunity to contest the fact so noticed.

C. Boards and hearing officers may utilize their experience, technical competence and specialized knowledge in the evaluation of evidence presented to them.

**History: 1953 Comp., § 67-26-11, enacted by Laws 1957, ch. 247, § 11; 1981, ch. 349, § 10.**

**61-1-12. Record.**

In all hearings conducted under the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], a complete record shall be made of all evidence received during the course of the hearing. The record shall be preserved by any stenographic method in use in the district courts of this state, or in the discretion of the board, by tape recording. The board shall observe any standards pertaining to tape recordings established for the district courts of this state.

**History: 1953 Comp., § 67-26-12, enacted by Laws 1957, ch. 247, § 12; 1981, ch. 349, § 11.**

**61-1-13. Decision.**

A. After a hearing has been completed, the members of the board shall proceed to consider the case and as soon as practicable shall render their decision, provided that the decision shall be rendered by a quorum of the board. In cases in which the hearing is conducted by a hearing officer, all members who were not present

throughout the hearing shall familiarize themselves with the record, including the hearing officer's report, before participating in the decision. In cases in which the hearing is conducted by the board, all members who were not present throughout the hearing shall thoroughly familiarize themselves with the entire record, including all evidence taken at the hearing, before participating in the decision.

B. A decision based on the hearing shall be made by a quorum of the board and signed by the person designated by the board within sixty days after the completion of the preparation of the record or submission of a hearing officer's report, whichever is later. In any case, the decision must be rendered and signed within ninety days after the hearing.

**History: 1953 Comp., § 67-26-13, enacted by Laws 1957, ch. 247, § 13; 1981, ch. 349, § 12; 1993, ch. 295, § 6.**

#### **61-1-14. Service of decision.**

Within fifteen days after the decision is rendered and signed, the board shall serve upon the applicant or licensee a copy of the written decision.

**History: 1953 Comp., § 67-26-14, enacted by Laws 1957, ch. 247, § 14.**

#### **61-1-15. Procedure where person fails to request or appear for hearing.**

If a person who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by Section 61-1-13 NMSA 1978. Where because of accident, sickness or other cause a person fails to request a hearing or fails to appear for a hearing which he has requested, the person may within a reasonable time apply to the board to reopen the proceeding, and the board upon finding such cause sufficient shall immediately fix a time and place for hearing and give the person notice as required by Sections 61-1-4 and 61-1-5 NMSA 1978. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

**History: 1953 Comp., § 67-26-15, enacted by Laws 1957, ch. 247, § 15; 1981, ch. 349, § 14.**

#### **61-1-16. Contents of decision.**

The decision of the board shall contain findings of fact made by the board; conclusions of law reached by the board; the order of the board based upon these findings of fact and conclusions of law; and a statement informing the applicant or licensee of his right to judicial review and the time within which such review must be sought.

**History: 1953 Comp., § 67-26-16, enacted by Laws 1957, ch. 247, § 16; 1981, ch. 349, § 15.**

#### **61-1-17. Petition for review.**

A person entitled to a hearing provided for in the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978], who is aggrieved by an adverse decision of a board issued after hearing, may obtain a review of the decision in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

**History: 1953 Comp., § 67-26-17, enacted by Laws 1957, ch. 247, § 17; 1993, ch. 295, § 7; 1998, ch. 55, § 73; 1999, ch. 265, § 76.**

#### **61-1-18. Repealed.**

#### **61-1-19. Stay.**

At any time before or during the review proceeding pursuant to Section 61-1-17 NMSA 1978, the aggrieved person may apply to the board or file a motion in accordance with the Rules of Civil Procedure for the District Courts in the reviewing court for an order staying the operation of the board decision pending the outcome of the review. The board or court may grant or deny the stay in its discretion. No order granting or denying a stay shall be reviewable.

**History: 1953 Comp., § 67-26-19, enacted by Laws 1957, ch. 247, § 19; 1976, ch. 4, § 1; 1981, ch. 349, § 16; 1998, ch. 55, § 74.**

**61-1-20. Repealed.**

**61-1-21. Power of board to reopen the case.**

A. At any time after the hearing and prior to the filing of a petition for review, the person aggrieved may request the board to reopen the case to receive additional evidence or for other cause.

B. The board need not reconvene and may be polled about whether to grant or refuse a request to reopen the case. The board shall grant or refuse the request in writing, and that decision and the request shall be made a part of the record. The decision to grant or refuse a request to reopen the case shall be made, signed by the person designated by the board, and served upon the applicant or licensee within fifteen days after the board receives the request.

C. The granting or refusing of a request to reopen the case shall be within the board's discretion. The board may reopen the case on its own motion at any time before petition for review is filed; thereafter, it may do so only with the permission of the reviewing court. If the board reopens the case, it shall provide notice and a hearing to the applicant or licensee. The notice of the hearing shall be served upon the applicant or licensee within fifteen days after service of the decision to reopen the case. The hearing shall be held within forty-five days after service of the notice, and a decision shall be rendered, signed and served upon the applicant or licensee within thirty days after the hearing.

D. The board's decision to refuse a request to reopen the case shall not be reviewable except for an abuse of discretion.

**History: 1953 Comp., § 67-26-21, enacted by Laws 1957, ch. 247, § 21; 1981, ch. 349, § 17.**

**61-1-22, 61-1-23. Repealed.**

**61-1-24. Power of board to seek injunctive relief.**

Any board may appear in its own name in the courts of the state and may apply to courts having jurisdiction for injunctions to prevent violations of statutes administered by the board and of rules and regulations issued pursuant to those statutes, and such courts shall have power to grant such injunctions regardless of whether criminal prosecution has been or may be instituted as a result of such violations.

**History: 1953 Comp., § 67-26-24, enacted by Laws 1957, ch. 247, § 24.**

**61-1-25. Declaratory judgment.**

The validity of any rule adopted by a board may be determined upon petition for a declaratory judgment thereon addressed to the district court of Santa Fe county when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner. The court shall declare the rule invalid if it finds that the rule violates or conflicts with constitutional or statutory provisions or exceeds the statutory authority of the board.

**History: 1953 Comp., § 67-26-25, enacted by Laws 1957, ch. 247, § 25.**

**61-1-26. Repealed.**

**61-1-27. Amending and repealing.**

The provisions of the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] may be amended, repealed or superseded by another act of the legislature only by direct reference to the section or sections of this act being amended, repealed or superseded.

**History: 1953 Comp., § 67-26-27, enacted by Laws 1957, ch. 247, § 27; 1981, ch. 349, § 18.**

**61-1-28. Purpose of act; liberal interpretation.**

The legislature expressly declares that its purpose in enacting the Uniform Licensing Act [61-1-1 to 61-1-31 NMSA 1978] is to promote uniformity with respect to the conduct of board hearings and judicial review and that the Uniform Licensing Act is to be liberally construed to carry out its purpose.

**History: 1953 Comp., § 67-26-28, enacted by Laws 1957, ch. 247, § 28.**

**61-1-29. Adoption of regulations; notice and hearing.**

A. The procedures specified in Sections 61-1-29 through 61-1-31 NMSA 1978 shall be applicable to proceedings by a board to adopt, amend or repeal rules or regulations of general applicability which implement or interpret a law enforced or administered by the board. These procedures shall not apply to

- (1) statements, policies, procedures or regulations concerning only internal management or discipline of a board and not affecting the rights of or procedures available to licensees, applicants or the public generally;
- (2) declaratory rulings issued pursuant to Section 61-1-33 NMSA 1978;
- (3) decisions, statements or interpretations issued or actions taken in the course of disciplinary proceedings against a licensee; or
- (4) formal or informal opinions of the attorney general issued pursuant to requests of the board.

B. No regulation or amendment or repeal thereof shall be adopted by the board until after a public hearing by the board.

C. The board shall make reasonable efforts to give notice of any rulemaking proceeding to its licensees and to the members of the public. Notice of the hearing shall be given at least thirty days prior to the hearing date and shall state the subject, the time and the place of the hearing and the manner in which interested persons may present their views. The notice shall also state where interested persons may secure copies of any proposed regulations. The notice of the public hearing shall include but not necessarily be limited to publishing the notice in a newspaper of general circulation in the state, and the board shall give notice to all persons who have made a written request to the board for advance notice.

D. At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the action of the board. The board may designate a hearing officer to take evidence in the hearing. A record shall be made of all proceedings at the hearing.

E. No regulation or amendment or repeal thereof shall become effective until thirty days after its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**History: 1953 Comp., § 67-26-29, enacted by Laws 1971, ch. 54, § 3; 1981, ch. 349, § 19.**

**61-1-30. Emergency regulations; appeal.**

A. If the board determines that an emergency exists which requires immediate action to protect the public peace, health, welfare or safety, it may, with the written concurrence of the governor, adopt a regulation or amendment or repeal thereof, and the emergency regulation shall become effective immediately upon its filing under the State Rules Act [Chapter 14, Article 4 NMSA 1978]. The emergency regulation shall not continue in effect longer than forty-five days unless within that time the board commences proceedings to adopt the regulation by issuing the notice required under Section 61-1-29 NMSA 1978. If the board commences proceedings under Section 61-1-29 NMSA 1978, the emergency regulation shall remain in effect until a permanent regulation takes effect or until the procedures are otherwise completed. In no event shall any emergency regulation remain in effect for more than one hundred twenty days.

B. Any person who is or may be affected by an emergency regulation adopted by the board may appeal to the court of appeals for relief. An appeal of an emergency regulation is perfected by filing a notice of appeal with the court of appeals and the board within the period of time the emergency regulation is in effect. The notice of appeal shall be accompanied by a copy of the emergency regulation. Within three days of the date the board receives the notice of appeal, the board shall file with the court of appeals a statement setting forth the facts requiring the emergency action. The board shall also deliver a copy of the statement to the appellant. The appellant shall have five days to file with the court of appeals a written response to the board's statement. The appellant shall also deliver a copy of its response to the board. The court of appeals may set aside the emergency regulation only if it finds that the board's exercise of its emergency regulation-making authority is arbitrary, capricious, contrary to law or an abuse of discretion.

**History: 1953 Comp., § 67-26-30, enacted by Laws 1971, ch. 54, § 4; 1981, ch. 349, § 20.**

**61-1-31. Validity of regulation; judicial review.**

A. Any person who is or may be affected by a regulation adopted by the board may appeal to the court of appeals for relief. All appeals shall be upon the record made at the hearing by the board and shall be taken to the court of appeals within thirty days after filing of the regulation under the State Rules Act [Chapter 14, Article 4 NMSA 1978].

**B.** An appeal to the court of appeals under this section is perfected by the timely filing of a notice of appeal with the court of appeals, with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the board for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the board.

- C.** Upon appeal, the court of appeals shall set aside the regulation only if found to be
- (1) arbitrary, capricious or an abuse of discretion;
  - (2) contrary to law; or
  - (3) against the clear weight of substantial evidence of the record.

**History: 1953 Comp., § 67-26-31, enacted by Laws 1971, ch. 54, § 5; 1981, ch. 349, § 21.**

**61-1-32. Petition for adoption, amendment or repeal of regulations.**

Any interested person may request in writing that a board adopt, amend or repeal a regulation. Within one hundred twenty days after receiving the written request, the board shall either initiate proceedings in accordance with Section 61-1-29 NMSA 1978 to adopt the regulation or issue a concise written statement of its reason for denial of the request. The denial of such a request is not subject to judicial review.

**History: 1978 Comp., § 61-1-32, enacted by Laws 1981, ch. 349, § 22.**

**61-1-33. Declaratory rulings.**

**A.** Any licensee of a board whose rights may be affected by the application of any statute enforced or administered by that board or by any decision, order or regulation of that board, may request in writing a declaratory ruling from the board concerning the applicability of the statute, decision, order or regulation to a particular set of facts. The board shall respond in writing to such a written request within one hundred twenty days.

**B.** The board may also issue declaratory rulings on its own motion.

**C.** The effect of a declaratory ruling shall be limited to the board and to the licensee, if any, who requested the declaratory ruling.

**History: 1978 Comp., § 61-1-33, enacted by Laws 1981, ch. 349, § 23.**

# CHAPTER 30

## Criminal Offenses

Art.

31. Controlled Substances, 30-31-1 to 30-31-41.

### ARTICLE 31

#### Controlled Substances

Sec.

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#### 30-31-1. Short title.

Chapter 30, Article 31 NMSA 1978 may be cited as the "Controlled Substances Act".

#### 30-31-2. Definitions.

As used in the Controlled Substances Act [30-31-1 NMSA 1978]:

- A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;
- B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;
- C. "board" means the board of pharmacy;
- D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;
- E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted thereto;
- F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;
- G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;
- H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;
- I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

- J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;
- K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;
- L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;
- M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:
- (1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
  - (2) by a practitioner, or by his agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;
- N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus Cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish, tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;
- O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
- (1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;
  - (2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;
  - (3) opium poppy and poppy straw, including all parts of the plant of the species *Papaver somniferum* L. except its seeds; or
  - (4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine;
- P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts, dextromethorphan. "Opiate" does include its racemic and levorotatory forms;
- Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;
- R. "practitioner" means a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;
- S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, 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 and in accordance with the Controlled Substances Act or rules adopted thereto;
- T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;
- U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

- (1) phenethylamines;
- (2) N-substituted piperidines;
- (3) morphinans;
- (4) ecgonines;
- (5) quinazolinones;
- (6) substituted indoles; and
- (7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school; and

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient.

#### **30-31-3. Duty to administer.**

A. The board shall administer the Controlled Substances Act [30-31-1 NMSA 1978] and may add by regulation substances to the list of substances enumerated in Schedules I through IV pursuant to the procedures of the Uniform Licensing Act [61-1-1 NMSA 1978]. In determining whether a substance has the potential for abuse, the board shall consider the following:

- (1) the actual or relative abuse of the substance;
- (2) the scientific evidence of the pharmacological effect of the substance, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration and significance of abuse;
- (6) the risk to the public health; and
- (7) the potential of the substance to produce psychic or physiological dependence liability.

B. After considering the factors enumerated in Subsection A of this section, the board shall make findings and issue regulations controlling the substance if it finds the substance has a potential for abuse.

C. If any substance is designated as a controlled substance under federal law and notice is given to the board, the board may, by regulation, similarly control the substance under the Controlled Substances Act [30-31-1 NMSA 1978] after providing for a hearing pursuant to the Uniform Licensing Act.

D. Authority to control under this section does not extend to distilled spirits, wine, malt beverages, tobacco or pesticides as defined in the Pesticide Control Act [76-4-1 NMSA 1978].

E. The board shall exclude any nonnarcotic substance from a schedule if such substance may, under Section 61-11-22 NMSA 1978, be lawfully sold over the counter without a prescription.

#### **30-31-4. Nomenclature.**

The controlled substances listed or to be listed in Schedules I through V are included by whatever official, common, usual, chemical or trade name designated.

#### **30-31-5. Schedules; criteria.**

There are established five schedules of controlled substances to be known as Schedules I, II, III, IV and V.

- A. The board shall place a substance in Schedule I if it finds that the substance:
- (1) has a high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

B. The board shall place a substance in Schedule II if it finds that:

(1) the substance has a high potential for abuse;

(2) the substance has a currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence.

C. The board shall place a substance in Schedule III if it finds that:

(1) the substance has a potential for abuse less than the substances listed in Schedules I and II;

(2) the substance has a currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

D. The board shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to the substances in Schedule III;

(2) the substance has a currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substance in Schedule III.

E. The board shall place a substance in Schedule V if it finds that:

(1) the substance has a currently accepted medical use in treatment in the United States; and

(2) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule IV.

### **30-31-6. Schedule I.**

The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) acetylmethadol;

(2) allylprodine;

(3) alphacetylmethadol;

(4) alphameprodine;

(5) alphasmethadol;

(6) benzethidine;

(7) betacetylmethadol;

(8) betameprodine;

(9) betamethadol;

(10) betaprodine;

(11) clonitazene;

(12) dextromoramide;

(13) dextrorphan;

(14) diampromide;

(15) diethylthiambutene;

(16) dimenoxadol;

(17) dimepheptanol;

(18) dimethylthiambutene;

(19) dioxaphetyl butyrate;

(20) dipipanone;

(21) ethylmethylthiambutene;

(22) etonitazene;

(23) etoxeridine;

(24) furethidine;

(25) hydroxypethidine;

(26) ketobemidone;

(27) levomoramide;

(28) levophenacymorphan;

(29) morpheridine;

- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;
- (7) desomorphine;
- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;
- (11) hydromorphanol;
- (12) methyl-desorphine;
- (13) methyldihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myorphine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

C. any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
- (8) ibogaine;
- (9) lysergic acid diethylamide;
- (10) marijuana;
- (11) mescaline;
- (12) peyote, except as otherwise provided in the Controlled Substances Act;
- (13) N-ethyl-3-piperidyl benzilate;
- (14) N-methyl-3-piperidyl benzilate;
- (15) psilocybin;

- (16) psilocyn;
- (17) tetrahydrocannabinols; and
- (18) hashish;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act [26-2A-1 NMSA 1978]; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

### 30-31-7. Schedule II.

A. The following controlled substances are included in Schedule II:

(1) any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (a) opium and opiate, and any salt, compound, derivative or preparation of opium or opiate;
- (b) any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in Subparagraph (a) of this paragraph, but not including the isoquinoline alkaloids of opium;
- (c) opium poppy and poppy straw;
- (d) coca leaves and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine;
- (e) marijuana, but only for the use by certified patients pursuant to the Controlled Substances Therapeutic Research Act [26-2A-1 NMSA 1978]; and
- (f) tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol, but only for the use of certified patients pursuant to the Controlled Substances Therapeutic Research Act.

Marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol shall be considered Schedule II controlled substances only for the purposes enumerated in the Controlled Substances Therapeutic Research Act;

(2) any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) alphaprodine;
- (b) anileridine;
- (c) bezitramide;
- (d) dihydrocodeine;
- (e) diphenoxylate;
- (f) fentanyl;
- (g) hydromorphone;
- (h) isomethadone;
- (i) levomethorphan;
- (j) levorphanol;
- (k) meperidine;
- (l) metazocine;
- (m) methadone;
- (n) methadone--intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (o) moramide--intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- (p) oxycodone;
- (q) pethidine;
- (r) pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine;
- (s) pethidine--intermediate--B, ethyl-4-phenyl-piperidine-4-carboxylate;

- (t) pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (u) phenazocine;
- (v) piminodine;
- (w) racemethorphan; and
- (x) racemorphan;

(3) unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- (a) amphetamine, its salts, optical isomers and salts of its optical isomers;
- (b) phenmetrazine and its salts;
- (c) methamphetamine, its salts, isomers and salts of isomers; and
- (d) methylphenidate; and

(4) controlled substances added to Schedule II by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978.

B. Where methadone is prescribed, administered or dispensed by a practitioner of a drug abuse rehabilitation program while acting in the course of his professional practice, or otherwise lawfully obtained or possessed by a person, such person shall not possess such methadone beyond the date stamped or typed on the label of the container of the methadone, nor shall any person possess methadone except in the container in which it was originally administered or dispensed to such person, and such container shall include a label showing the name of the prescribing physician or practitioner, the identity of methadone, the name of the ultimate user, the date when the methadone is to be administered to or used or consumed by the named ultimate user shown on the label and a warning on the label of the methadone container that the ultimate user must use, consume or administer to himself the methadone in such container. Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years, or by a fine of up to five thousand dollars (\$5,000), or both.

### 30-31-8. Schedule III.

The following contraband substances are included in Schedule III:

A. any material, compound, mixture or preparation containing limited quantities of any substance having a stimulant effect on the central nervous system which is controlled and listed in Schedule II;

B. unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in another schedule;

- (2) chlorhexadol;
- (3) glutethimide;
- (4) lysergic acid;
- (5) lysergic acid amide;
- (6) methyprylon;
- (7) phencyclidine;
- (8) sulfondiethylmethane;
- (9) sulfonethylmethane; or
- (10) sulfonmethane;

C. nalorphine;

D. any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) not more than one and eight-tenths grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(3) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) not more than three hundred milligrams of dihydrocodeinone, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(5) not more than one and eight-tenths grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

(6) not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active non-narcotic ingredients in recognized therapeutic amounts;

(7) not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams, or not more than twenty-five milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts; or

(8) not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, non-narcotic ingredients in recognized therapeutic amounts;

E. controlled substances added to Schedule III by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

F. the board may exempt by regulation any compound, mixture or preparation containing any stimulant or depressant substance listed in Subsections A and B of this section from the application of any part of the Controlled Substances Act [30-31-1 NMSA 1978] if the compound, mixture or preparation contains any active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

#### **30-31-9. Schedule IV.**

The following controlled substances are included in Schedule IV:

A. any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) barbital;
- (2) chloral betaine;
- (3) chloral hydrate;
- (4) ethchlorvynol;
- (5) ethinamate;
- (6) methohexital;
- (7) meprobamate;
- (8) methylphenobarbital;
- (9) paraldehyde;
- (10) petrichloral; or
- (11) phenobarbital;

B. controlled substances added to Schedule IV by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978; and

C. the board may exempt by regulation any compound, mixture or preparation containing any depressant substance listed in Subsection A of this section from the application of all or any part of the Controlled Substances Act [30-31-1 NMSA 1978] if the compound, mixture or preparation contains any active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

#### **30-31-10. Schedule V.**

The following controlled substances are included in Schedule V:

A. any compound, mixture or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) not more than two hundred milligrams of codeine, or any of its salts, per one hundred milliliters or per one hundred grams;
- (2) not more than one hundred milligrams of dihydrocodeine, or any of its salts, per one hundred milliliters or per one hundred grams;
- (3) not more than one hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or per one hundred grams;
- (4) not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit; or
- (5) not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams;

B. the board may by regulation exempt any compound, mixture or preparation containing any depressant or stimulant substance enumerated in Schedules III, IV or V from the application of the Controlled Substances Act [30-31-1 NMSA 1978] if:

- (1) the compound, mixture or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and
- (2) such ingredients are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

**30-31-11. Regulations.**

The board may promulgate regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances; provided, however, that in no case shall the fees exceed eighty dollars (\$80.00) per year. If the board determines to increase any fee, the board shall notify, in addition to any other notice required by law, the affected professional group of the board's intention to increase the fee and the date for the scheduled hearing to review the matter.

**30-31-12. Registration requirements.**

A. Every person who manufactures, distributes or dispenses any controlled substance or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance shall obtain annually a registration issued by the board in accordance with its regulations.

B. Persons registered by the board to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Controlled Substances Act [30-31-1 NMSA 1978].

C. The following persons need not register and may lawfully possess controlled substances:

- (1) an agent of any registered manufacturer, distributor or dispenser of any controlled substance if he is acting in the usual course of his principal's business or employment;
- (2) a common or contract carrier or warehouseman, or an employee whose possession of any controlled substance is in the usual course of the common or contract carrier or warehouseman's business; or
- (3) an ultimate user.

D. The board may waive by regulation the requirement for registration of certain manufacturers, distributors or dispensers if it is consistent with the public health and safety.

E. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's regulations.

**30-31-13. Registrations.**

A. The board shall register an applicant to manufacture or distribute controlled substances unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

- (1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;
- (2) compliance with applicable state and local law;
- (3) any convictions of the applicant under any federal or state laws relating to any controlled substance;
- (4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the Controlled Substances Act [30-31-1 NMSA 1978];

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

B. Registration under this section does not entitle a registrant to manufacture and distribute controlled substances in Schedules I or II other than those allowed in the registration.

C. Compliance by manufacturers and distributors with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting registration, excluding state registration fees entitles them to be registered under the Controlled Substances Act [30-31-1 NMSA 1978].

D. Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under Section 39 [30-31-40 NMSA 1978] of the Controlled Substances Act [30-31-1 NMSA 1978]. The board need not require separate registration under this act for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under the Controlled Substances Act [30-31-1 NMSA 1978] in another capacity. Practitioners or scientific investigators registered under the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

#### **30-31-14. Revocation and suspension of registration.**

A. A registration under Section 30-31-13 NMSA 1978 to manufacture, distribute or dispense a controlled substance may be suspended or revoked upon a finding that the registrant:

- (1) has furnished false or fraudulent material information in any application filed with the board;
- (2) has been convicted of a felony under any state or federal law relating to a controlled substance;
- (3) has had his federal registration suspended or revoked to manufacture, distribute or dispense controlled substances; or

(4) has had his practitioner's license suspended or revoked by his professional licensing board.

B. A hearing to revoke or suspend a registration of a practitioner shall be held before a special hearing panel consisting of the board and two additional persons designated to sit on the hearing panel by the practitioner's own examining and licensing authority.

C. The special hearing panel may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

D. If the special hearing panel suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court.

E. Upon a revocation order becoming final, the board may apply to the court for an order to sell all controlled substances under seal. The court shall order the sale of such controlled substances under such terms and conditions that the court deems appropriate.

F. The board shall promptly notify the bureau of all orders suspending or revoking registration and all sales of controlled substances.

#### **30-31-15. Order to show cause.**

A. Before denying, suspending or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis of the order and shall require the applicant or registrant to appear before the board not less than thirty days after the date of service of the order, but in the case of a denial of renewal of registration the order shall be served not later than thirty days before the expiration of the registration unless the proceedings relate to suspension or revocation of a registration. These proceedings shall be conducted in accordance with the Uniform Licensing Act [61-1-1 NMSA 1978] without regard to any criminal prosecution or other proceeding. Proceedings to suspend or revoke a registration or to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the proceeding.

B. The board may suspend, without an order to show cause, any registrant simultaneously with the institution of proceedings under Section 14 [30-31-14 NMSA 1978] or where renewal of registration is refused if it finds that there is such a substantial and imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

### **30-31-16. Records of registrants.**

A. Every registrant under the Controlled Substances Act [30-31-1 NMSA 1978] manufacturing, distributing or dispensing a controlled substance shall maintain, on a current basis, a complete and accurate record of each substance manufactured, received, sold or delivered by him in accordance with regulations of the board.

Inventories as required in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 shall be deemed in compliance with inventory requirements under this section.

B. Records for drugs under Schedules I and II shall be kept separate from other records. Prescriptions for all Schedule I and II drugs and narcotic prescriptions for controlled substances listed in Schedules III, IV and V shall be maintained separately from other prescription drugs in accordance with regulations of the board.

C. Records for nonnarcotic controlled substances under Schedules III, IV and V shall be maintained either separately or in such form that they are readily retrievable and are marked for ready identification in accordance with regulations of the board. Prescriptions for nonnarcotic controlled substances shall be maintained either in a separate prescription file or in such form that they are readily retrievable from other prescription records and are marked for ready identification in accordance with regulations of the board.

D. Records shall be maintained for a period of at least three years from the date of the record and may be inspected as required by authorized agents of the board.

E. A practitioner is not required to keep records of controlled substances listed in Schedules II through V that he prescribes or administers in the lawful course of his professional practice. He shall keep records of controlled substances that he dispenses other than by prescribing or administering.

F. Each pharmacy licensed in the state shall provide information relating to the dispensing of any controlled substance designated by the board. The board shall administer the collection and dissemination of the information obtained. The manner of reporting and the extent of the required information shall be designated by regulation of the board.

### **30-31-17. Order forms.**

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 respecting order forms shall be deemed compliance with this section.

### **30-31-18. Prescriptions.**

A. No controlled substance listed in Schedule II, which is a prescription drug as determined by the federal food and drug administration, may be dispensed without a written prescription of a practitioner, unless administered directly to an ultimate user. No prescription for a Schedule II substance may be refilled. No person other than a practitioner shall prescribe or write a prescription.

B. Prescriptions for Schedules II through IV shall contain the following information:

- (1) the name and address of the patient for whom the drug is prescribed;
- (2) the name, address and registry number of the person prescribing the drug; and
- (3) the identity of the pharmacist of record.

C. A controlled substance included in Schedules III or IV, which is a prescription drug as determined under the New Mexico Drug and Cosmetic Act [26-1-1 NMSA 1978], shall not be dispensed without a written or oral prescription of a practitioner, except when administered directly by a practitioner to an ultimate user. The prescription shall not be filled or refilled more than six months after the date of issue or be refilled more than five times, unless renewed by the practitioner and a new prescription is placed in the file. Prescriptions shall be retained in conformity with the regulations of the board.

D. The label affixed to the dispensing container of a drug listed in Schedules II, III or IV, when dispensed to or for a patient, shall contain the following information:

- (1) date of dispensing and prescription number;
- (2) name and address of the pharmacy;
- (3) name of the patient;

- (4) name of the practitioner; and
- (5) directions for use and cautionary statements, if any.

E. The label affixed to the dispensing container of a drug listed in Schedule II, III or IV, when dispensed to or for a patient, shall contain a clear concise warning that it is a crime to transfer the drug to any person other than the patient.

F. No controlled substance included in Schedule V, which is a proprietary nonprescription drug, shall be distributed, offered for sale or dispensed other than for a medical purpose and a record of the sale shall be made in accordance with the regulations of the board.

G. In emergency situations, as defined by regulation, Schedule II drugs may be dispensed upon oral prescription of a practitioner, if reduced promptly to writing and filed by the pharmacy in accordance with regulations of the board.

### **30-31-19. Distributions by manufacturers or distributors.**

A registered manufacturer or distributor may distribute controlled substances to the following:

- A. a registered manufacturer, pharmacy or distributor;
- B. a registered practitioner;
- C. a registered hospital or clinic; and
- D. to a person in charge of a registered laboratory, but only for use by that laboratory for scientific and medical purposes.

### **30-31-20. Trafficking controlled substances; violation.**

- A. As used in the Controlled Substances Act [30-31-1 NMSA 1978], "traffic" means the:
  - (1) manufacture of any controlled substance enumerated in Schedules I through V or any controlled substance analog as defined in Subsection W of Section 30-31-2 NMSA 1978;
  - (2) distribution, sale, barter or giving away of any controlled substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug; or
  - (3) possession with intent to distribute any controlled substance enumerated in Schedule I or II that is a narcotic drug or controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug.
- B. Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], it is unlawful for any person to intentionally traffic. Any person who violates this subsection is:
  - (1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
  - (2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.
- C. Any person who knowingly violates Subsection B of this section within a drug-free school zone, excluding private property residentially zoned or used primarily as a residence, is guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

### **30-31-21. Distribution to a minor.**

Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], no person who is eighteen years of age or older shall intentionally distribute a controlled substance to a person under the age of eighteen years. Any person who violates this section with respect to:

- A. marijuana is:
  - (1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
  - (2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
- B. any other controlled substance enumerated in Schedules [Schedule] I, II, III or IV or a controlled substance analog of any controlled substance enumerated in Schedule I, II, III or IV is:
  - (1) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and
  - (2) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**30-31-22. Controlled or counterfeit substances; distribution prohibited.**

A. Except as authorized by the Controlled Substances Act [30-31-1 NMSA 1978], it is unlawful for any person to intentionally distribute or possess with intent to distribute a controlled substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug. Any person who violates this subsection with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

B. It is unlawful for any person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the Controlled Substances Act, it is unlawful for any person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. Any person who violates this subsection with respect to:

(1) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for a definite term not to exceed six months, or both.

D. Any person who knowingly violates Subsection A or C of this section while within a drug-free school zone, excluding private property residentially zoned or used primarily as a residence, with respect to:

(1) marijuana is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug, is:

(a) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(4) the intentional creation, delivery or possession with the intent to deliver:

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) a counterfeit substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of marijuana for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Section 30-31-23 NMSA 1978.

### **30-31-23. Controlled substances; possession prohibited.**

A. It is unlawful for any person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of his professional practice or except as otherwise authorized by the Controlled Substances Act [30-31-1 NMSA 1978]. It is unlawful for any person intentionally to possess a controlled substance analog.

B. Any person who violates this section with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both; or

(3) eight ounces or more of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except for those substances listed in Subsection D of this section, any person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

D. Any person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma

hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Any person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding any person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

(1) one ounce or less of marijuana is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) more than one ounce and less than eight ounces of marijuana is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) eight ounces or more of marijuana is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

### **30-31-24. Controlled substances; violations of administrative provisions.**

A. It is unlawful for any person:

(1) who is subject to Sections 30-31-11 through 30-31-19 NMSA 1978 to intentionally distribute or dispense a controlled substance in violation of Section 30-31-18 NMSA 1978;

(2) who is a registrant, to intentionally manufacture a controlled substance not authorized by his registration, or to intentionally distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) to intentionally refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under the Controlled Substances Act [30-31-1 NMSA 1978]; or

(4) to intentionally refuse an entry into any premises for any inspection authorized by the Controlled Substances Act [30-31-1 NMSA 1978].

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

### **30-31-25. Controlled substances; prohibited acts.**

A. It is unlawful for any person:

(1) who is a registrant to distribute a controlled substance classified in Schedules [Schedule] I or II, except pursuant to an order form as required by Section 30-31-17 NMSA 1978;

(2) to intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(3) to intentionally acquire or obtain, or attempt to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(4) to intentionally furnish false or fraudulent material information in, or omit any material information from, any application, report or other document required to be kept or filed under the Controlled Substances Act [30-31-1 NMSA 1978], or any record required to be kept by that act; or

(5) to intentionally make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any

likeness of any of the foregoing, upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

B. Any person who violates this section is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**30-31-25.1. Possession, delivery or manufacture of drug paraphernalia prohibited; exceptions.**

A. It is unlawful for a person to use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act [30-31-1 NMSA 1978]. The provisions of this subsection do not apply to a person who is in possession of hypodermic syringes or needles at the time he is directly and immediately engaged in a harm reduction program, as provided in the Harm Reduction Act [24-2C-1 NMSA 1978].

B. It is unlawful for a person to deliver, possess with intent to deliver or manufacture with the intent to deliver drug paraphernalia with knowledge, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of the Controlled Substances Act [30-31-1 NMSA 1978]. The provisions of this subsection do not apply to:

- (1) department of health employees or their designees while they are directly and immediately engaged in activities related to the harm reduction program authorized by the Harm Reduction Act; or
- (2) the sale or distribution of hypodermic syringes and needles by pharmacists licensed pursuant to the Pharmacy Act [61-11-1 NMSA 1978]

C. A person who violates this section with respect to Subsection A of this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100) or by imprisonment for a definite term less than one year, or both. A person who violates this section with respect to Subsection B of this section is guilty of a misdemeanor.

D. A person eighteen years of age or over who violates the provisions of Subsection B of this section by delivering drug paraphernalia to a person under eighteen years of age and who is at least three years his junior is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**30-31-26. Penalties under other laws.**

A. Any penalty imposed for violation of the Controlled Substances Act [30-31-1 NMSA 1978] is in addition to any civil or administrative penalty or sanction otherwise provided by law.

B. A municipality may, by ordinance, prohibit distribution or possession of a controlled substance enumerated in Schedules I, II, III or IV but penalty provisions shall be the same as those provided for a similar crime in the Controlled Substances Act [30-31-1 NMSA 1978].

**30-31-27. Bar to prosecution.**

If a violation of the Controlled Substances Act [30-31-1 NMSA 1978] is a violation of a federal law, the law of another state or the ordinance of a municipality, a conviction or acquittal under federal law, the law of another state or the ordinance of a municipality for the same act is a bar to prosecution.

**30-31-28. Conditional discharge for possession as first offense.**

A. If any person who has not previously been convicted of violating the laws of any state or any laws of the United States relating to narcotic drugs, marijuana, hallucinogenic or depressant or stimulant substances, is found guilty of a violation of Section 23 [30-31-23 NMSA 1978], after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place him on probation upon reasonable conditions and for a period, not to exceed one year, as the court may prescribe.

B. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge him from probation before the expiration of the maximum period prescribed from the person's probation.

C. If during the period of his probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt, but a nonpublic record shall be retained by the attorney general solely for the purpose of use by the courts in determining whether or not, in subsequent proceedings, the person qualifies under this section. A discharge or dismissal shall not be deemed

a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the penalties prescribed under this section for second or subsequent convictions or for any other purpose. Discharge and dismissal under this section may occur only once with respect to any person.

D. Upon the dismissal of a person and discharge of the proceedings against him under this section, a person, if he was not over eighteen years of age at the time of the offense, may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, trial, finding or plea of guilty, and dismissal and discharge pursuant to this section except nonpublic records filed with the attorney general. If the court determines, after hearing, that the person was dismissed and the proceedings against him discharged and that he was not over eighteen years of age at the time of the offense, it shall enter the order. The effect of the order shall be to restore the person, in the contemplation of the law, to the status he occupied before the arrest or indictment or information. No person in whose behalf an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

### **30-31-29. Probationary period.**

Notwithstanding any other provision of law, the court may place on probation for a period not to exceed one year any person convicted of a violation of the Controlled Substances Act [30-31-1 NMSA 1978] where the maximum length of the term of imprisonment is one year or less if:

- A. the judge does not impose a prison sentence; or
- B. the judge suspends all of any prison sentence which he imposes.

### **30-31-30. Powers of enforcement personnel.**

Any officer or employee designated by the board may:

- A. serve search warrants, arrest warrants and administrative inspection warrants;
- B. make arrests without warrant for any offense under the Controlled Substances Act [30-31-1-NMSA 1978] committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of the Controlled Substances Act [30-31-1 NMSA 1978] which may constitute a felony; or
- C. make seizures of property pursuant to the Controlled Substances Act [30-31-1 NMSA 1978].

### **30-31-31. Administrative inspections and warrants.**

Issuance and execution of administrative inspection warrants shall be as follows:

- A. a magistrate, within his jurisdiction and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections and seizures of property authorized by the Controlled Substances Act [30-31-1 NMSA 1978]. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Controlled Substances Act [30-31-1 NMSA 1978] sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;
- B. a warrant shall issue only upon an affidavit of a designated officer or employee having actual knowledge of the alleged facts, sworn to before the magistrate and establishing the grounds for issuing the warrant. If the magistrate is satisfied that grounds for the warrant exist, he shall issue a warrant identifying the area, premises, building or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:
  - (1) state the grounds for its issuance and the name of each person whose affidavit has been taken in its support;
  - (2) be directed to a person authorized by Section 29 [30-31-30 NMSA 1978] or a state police officer to serve and carry out the warrant;
  - (3) command the person to whom it is directed to inspect the area, premises, building or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
  - (4) identify the items or types of property to be seized, if any; and
  - (5) direct that it be served during normal business hours or other hours designated by the magistrate and designate the magistrate to whom it shall be returned;
- C. a warrant issued pursuant to this section must be served and returned within five days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy of the warrant shall be given to the person from whom or from whose premises the property is taken,

together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person serving the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person serving the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and the applicant for the warrant; and

D. the magistrate who has issued a warrant shall attach a copy of the return and all papers returnable in connection with it and file them with the clerk of the magistrate court.

### **30-31-32. Administrative inspections.**

The board may make administrative inspections of controlled premises in accordance with the following provisions:

A. for purposes of this section, "controlled premises" means:

(1) places where persons registered or exempted from registration requirements under the Controlled Substances Act [30-31-1 NMSA 1978] are required to keep records; and

(2) places, including factories, warehouses, establishments and conveyances in which persons registered or exempted from registration requirements under the Controlled Substances Act [30-31-1 NMSA 1978] are permitted to hold, manufacture, compound, process, sell, deliver or otherwise dispose of any controlled substance;

B. when authorized by an administrative inspection warrant issued pursuant to Section 30 [30-31-31 NMSA 1978], an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator or agent in charge, may enter the controlled premises for the purpose of conducting an administrative inspection;

C. when authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(1) inspect and copy records required by the Controlled Substances Act [30-31-1 NMSA 1978] to be kept;

(2) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in Subsection E, all other things bearing on violations of the Controlled Substances Act [30-31-1 NMSA 1978], including records, files, papers, processes, controls and facilities; and

(3) inventory any stock of any controlled substance and obtain samples;

D. this section does not prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator or agent in charge of the controlled premises consents;

(2) in situations presenting substantial imminent danger to health or safety; or

(3) in all other situations in which a warrant is not constitutionally required;

E. an inspection authorized by this section shall not extend to financial data, sales data other than shipment data or pricing data unless the owner, operator or agent in charge of the controlled premises consents in writing.

### **30-31-33. Injunctions.**

A. The district courts may exercise jurisdiction to restrain or enjoin violations of the Controlled Substances Act [30-31-1 NMSA 1978].

B. The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

### **30-31-34. Forfeitures; property subject.**

The following are subject to forfeiture:

A. all controlled substances and all controlled substance analogs which have been manufactured, distributed, dispensed or acquired in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

B. all raw materials, products and equipment of any kind including firearms which are used or intended for use in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance or controlled substance analog in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

C. all property which is used or intended for use as a container for property described in Subsection A or B of this section;

D. all conveyances, including aircraft, vehicles or vessels, which are used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale of property described in Subsection A or B of this section;

E. all books, records and research products and materials, including formulas, microfilm, tapes and data, which are used or intended for use in violation of the Controlled Substances Act [30-31-1 NMSA 1978];

F. narcotics paraphernalia or money which is a fruit or instrumentality of the crime;

G. notwithstanding Subsection D of this section:

(1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the Controlled Substances Act [30-31-1 NMSA 1978];

(2) no conveyance is subject to forfeiture under this section by reason of any act or omission established for the owner to have been committed or omitted without his knowledge or consent;

(3) a conveyance is not subject to forfeiture for a violation of law the penalty for which is a misdemeanor; and

(4) a forfeiture of a conveyance encumbered by a bona fide security interest shall be subject to the interest of a secured party if the secured party neither had knowledge of nor consented to the act or omission; and

H. all drug paraphernalia as defined by Subsection W[V] of Section 30-31-2 NMSA 1978.

### **30-31-35. Forfeiture; procedure.**

The provisions of the Forfeiture Act [31-27-1 NMSA 1978] apply to the seizure, forfeiture and disposal of property subject to forfeiture and disposal under the Controlled Substances Act [30-31-1 NMSA 1978].

### **30-31-36. Summary forfeiture.**

A. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of the Controlled Substances Act [30-31-1 NMSA 1978] are contraband and shall be seized and summarily forfeited to the state.

B. Controlled substances listed in Schedule I or controlled substance analogs of substances listed in Schedule I which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

C. Species of plants from which controlled substances in Schedules I and II or controlled substance analogs of substances listed in Schedules I and II may be derived which have been planted or cultivated in violation of the Controlled Substances Act [30-31-1 NMSA 1978], or of which the owners or cultivators are unknown or which are wild growths, may be seized and summarily forfeited to the state.

### **30-31-37. Burden of proof.**

It is not necessary for the state to negate any exemption or exception in the Controlled Substances Act [30-31-1 NMSA 1978] in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under the Controlled Substances Act [30-31-1 NMSA 1978]. The burden of proof of any exemption or exception is upon the person claiming it.

### **30-31-38. Cooperative duties of board.**

A. The board shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end it may:

(1) arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) cooperate in training programs concerning controlled substances law enforcement at local and state levels; and

(3) cooperate with the bureau by establishing a centralized unit to accept, catalogue, file and collect statistics and make the information available for federal, state and local law enforcement purposes. It shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under Section 39 [30-31-40 NMSA 1978].

B. Results, information and evidence received from the bureau relating to the regulatory functions of the Controlled Substances Act [30-31-1 NMSA 1978], including results of inspections conducted by it, may be

relied and acted upon by the board in the exercise of its regulatory functions under the Controlled Substances Act [30-31-1 NMSA 1978].

**30-31-39. Education.**

The board shall provide for educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

- A. promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry;
- B. assist the regulated industry in contributing to the reduction of misuse and abuse of controlled substances; and
- C. assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

**30-31-40. Research; confidentiality.**

A. The board shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of the Controlled Substances Act [30-30-1- NMSA 1978], it may register public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

B. The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

C. The board may authorize the possession and distribution of controlled substances by persons engaged in research. Such authorization shall contain the conditions and terms of the research to be conducted. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

D. A practitioner engaged in medical practice or research shall not be required to furnish the name or identity of a patient or research subject to the board, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

**30-31-41. Anabolic steroids; possession; distribution; penalties; notice.**

A. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act [26-1-1 NMSA 1978], it is unlawful for any person to intentionally possess anabolic steroids. Any person who violates this subsection is guilty of a misdemeanor.

B. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act, it is unlawful for any person to intentionally distribute or possess with intent to distribute anabolic steroids. Any person who violates this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the New Mexico Drug[, Device] and Cosmetic Act, it is unlawful for any person eighteen years of age or older to intentionally distribute anabolic steroids to a person under eighteen years of age. Any person who violates this subsection is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

D. A copy of this act shall be distributed to each licensed athletic trainer by the athletic trainers advisory board and displayed prominently in the athletic locker rooms of all state post-secondary and public schools.



## ARTICLE 18

### Animals

#### 30-18-1. Cruelty to animals; extreme cruelty to animals; penalties; exceptions.

A. As used in this section, "animal" does not include insects or reptiles.

B. Cruelty to animals consists of a person:

(1) negligently mistreating, injuring, killing without lawful justification or tormenting an animal; or

(2) abandoning or failing to provide necessary sustenance to an animal under that person's custody or control.

C. As used in Subsection B of this section, "lawful justification" means:

(1) humanely destroying a sick or injured animal; or

(2) protecting a person or animal from death or injury due to an attack by another animal.

D. Whoever commits cruelty to animals is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978. Upon a fourth or subsequent conviction for committing cruelty to animals, the offender is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Extreme cruelty to animals consists of a person:

(1) intentionally or maliciously torturing, mutilating, injuring or poisoning an animal; or

(2) maliciously killing an animal.

F. Whoever commits extreme cruelty to animals is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The court may order a person convicted for committing cruelty to animals to participate in an animal cruelty prevention program or an animal cruelty education program. The court may also order a person convicted for committing cruelty to animals or extreme cruelty to animals to obtain psychological counseling for treatment of a mental health disorder if, in the court's judgment, the mental health disorder contributed to the commission of the criminal offense. The offender shall bear the expense of participating in an animal cruelty prevention program, animal cruelty education program or psychological counseling ordered by the court.

H. If a child is adjudicated of cruelty to animals, the court shall order an assessment and any necessary psychological counseling or treatment of the child.

I. The provisions of this section do not apply to:

- (1) fishing, hunting, falconry, taking and trapping, as provided in Chapter 17 NMSA 1978;
- (2) the practice of veterinary medicine, as provided in Chapter 61, Article 14 NMSA 1978;
- (3) rodent or pest control, as provided in Chapter 77, Article 15 NMSA 1978;
- (4) the treatment of livestock and other animals used on farms and ranches for the production of food, fiber or other agricultural products, when the treatment is in accordance with commonly accepted agricultural animal husbandry practices;
- (5) the use of commonly accepted Mexican and American rodeo practices, unless otherwise prohibited by law;
- (6) research facilities licensed pursuant to the provisions of 7 U.S.C. Section 2136, except when knowingly operating outside provisions, governing the treatment of animals, of a research or maintenance protocol approved by the institutional animal care and use committee of the facility; or
- (7) other similar activities not otherwise prohibited by law.

J. If there is a dispute as to what constitutes commonly accepted agricultural animal husbandry practices or commonly accepted rodeo practices, the New Mexico livestock board shall hold a hearing to determine if the practice in question is a commonly accepted agricultural animal husbandry practice or commonly accepted rodeo practice.

**History:** 1978 Comp., § 30-18-1, enacted by **Laws 1999, ch. 107, § 1; 2001, ch. 81, § 1; 2007, ch. 6, § 1.**

## ANNOTATIONS

**Cross references.** — For dog fighting, see **30-18-9 NMSA 1978.**

For authority of livestock officers to arrest persons for violations of this article, see **77-2-9 NMSA 1978.**

**Repeals and reenactments.** — **Laws 1999, ch. 107, § 1** repealed **30-18-1 NMSA 1978**, as enacted by **Laws 1963, ch. 303, § 18-1**, and enacted a new section, effective July 1, 1999.

**The 2007 amendment**, effective June 15, 2007, deleted former Subsection K, which provided that this section shall not be interpreted to prohibit cockfighting in New Mexico.

**The 2001 amendment**, effective June 15, 2001, inserted the Subsection A designation and renumbered the remaining Subsections accordingly and made related changes; and rewrote Paragraph I(6) which formerly read "research facilities intermediate handlers, carriers and exhibitors licensed pursuant to the provisions of 7 U.S.C. Section 2136; or".

**General criminal negligence.** — Evidence that a defendant acted intentionally, purposely, or deliberately, in harming an animal, is sufficient to establish that the defendant acted with "willful disregard" for that animal's safety for purposes of conviction under the animal cruelty statute. *State v. Stewart*, **2005-NMCA-126, 138 N.M. 500, 122 P.3d 1269**

**Article II, Section 5 of the New Mexico Constitution does not render the statutory ban on cockfighting unconstitutional.** *N.M. Gamefowl Assn., Inc. v. State of N.M. ex rel. King*, **2009-**

**NMCA-088, 146 N.M. 758, 215 P.3d 67**, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**No standing based on economic injury.** — Where plaintiffs alleged purely economic interests that would be harmed by a ban on cockfighting, including reduced gross receipts, loss of employees and a threat to the viability of their businesses, plaintiffs had no standing to challenge the constitutionality of **30-18-1 NMSA 1978** because the constitution does not protect plaintiffs' right to engage in particular business activities so as to avoid economic loss. *N.M. Gamefowl Assn., Inc. v. State of N.M. ex rel. King*, **2009-NMCA-088, 146 N.M. 758, 215 P.3d 67**, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**No standing based on spectator interest in cockfighting.** — Where plaintiffs alleged past attendance at cockfights and that the ban on cockfighting would prevent them from future attendance at events plaintiffs considered to be an aspect of cultural expression, plaintiffs had no standing to challenge the constitutionality of **30-18-1 NMSA 1978** because there is no credible threat of prosecution related to mere attendance at cockfighting. *N.M. Gamefowl Assn., Inc. v. State ex rel. King*, **2009-NMCA-088, 146 N.M. 758, 215 P.3d 67**, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**No third party standing.** — Where plaintiffs alleged past attendance at cockfights and that the ban on cockfighting would prevent them from future attendance at events plaintiffs considered to be an aspect of cultural expression and alleged that persons who intend to participate in cockfighting would be injured, but provided no reason why a person who has violated **30-18-1 NMSA 1978** cannot challenge the constitutionality of the statute, plaintiffs had no third-party standing to challenge the constitutionality of Section **30-18-1 NMSA 1978**. *N.M. Gamefowl Assn., Inc. v. State ex rel. King*, **2009-NMCA-088, 146 N.M. 758, 215 P.3d 67**, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Associational standing.** — Where members of the plaintiff association owned and equipped cocks for the purpose of fighting; the purpose of the association was to keep cockfighting legal; and the association's remedy to have the ban on cockfighting declared unconstitutional addressed the injury claimed by the entire membership of the association, the association had associational standing to challenge the constitutionality of **30-18-1 NMSA 1978**. *N.M. Gamefowl Assn., Inc. v. State ex rel. King*, **2009-NMCA-088, 146 N.M. 758, 215 P.3d 67**, cert. denied, 2009-NMCERT-007, 147 N.M. 361, 223 P.3d 358.

**Sufficient evidence of cruelty to animals.** — Where defendant was charged with cruelty to animals, and where the state established that defendant kept numerous dogs chained outdoors, that some of the dogs were not given sufficient food, water or shelter, some were emaciated to the degree that their ribs and hip bones were visibly protruding, some were infested with ticks, some had visible injuries and open sores, and some had wounds and scarring on their faces, which was consistent with staged dogfighting, there was sufficient evidence to support, beyond a reasonable doubt, that defendant intentionally mistreated, injured or tormented or abandoned or failed to provide necessary sustenance to numerous dogs. *State v. Duttie*, **2017-NMCA-001**, cert. denied.

**Sufficient evidence of extreme cruelty to animals.** — Where defendant was charged with extreme cruelty to animals, evidence that of the eight dogs that defendant was convicted of subjecting to extreme cruelty, all eight were without clean water, seven were underweight, one was emaciated, five were severely emaciated, six had obvious scarring consistent with staged dogfighting, six had open wounds and untreated sores, one had a severe eye injury, two had advanced heart worm disease, one was infested with ticks, three had large painful tumors or masses, two exhibited obvious signs of serious illness, and four had teeth that were cut or filed to the gum line, making it extremely painful to eat or drink, was sufficient to support, beyond a

reasonable doubt that defendant intentionally or maliciously tortured, mutilated or injured her dogs. *State v. Duttie*, [2017-NMCA-001](#), cert. denied.

**Meaning of "torture" and "torment".** — The words "torture" and "torment" are commonly defined to include every act, omission or neglect whereby unjustified physical pain and suffering or death is caused or permitted. *State v. Buford*, [1958-NMSC-129](#), [65 N.M. 51](#), [331 P.2d 1110](#) (decided under prior law).

**Animals included.** — The language of former 40-4-3, 1953 Comp., seemed to apply only to brute creatures and work animals, and the history showed that it was passed in relation to other laws governing livestock. *State v. Buford*, [1958-NMSC-129](#), [65 N.M. 51](#), [331 P.2d 1110](#) (decided under prior law).

**Section inapplicable to wild animals.** — This section applies only to cruelty to domesticated animals and wild animals previously reduced to captivity, and under the "general-specific" rule of statutory construction, treatment of wild animals is presumed to be governed by the comprehensive hunting and fishing laws contained in Chapter 17, which therefore preempt this section as to such animals. *State v. Cleve*, [1999-NMSC-017](#), [127 N.M. 240](#), [980 P.2d 23](#).

The game and fish laws in Chapter 17 are expressly intended to cover free-roaming, wild game elk; the animal statutes in Article 18 of Chapter 30 are not. *State v. Parson*, [2005-NMCA-083](#), [137 N.M. 773](#), [115 P.3d 236](#).

**Cockfighting.** — Cruelty to animal statute (former 40-4-3, 1953 Comp.) was not passed with the intention of prohibiting such sports as cockfighting. *State v. Buford*, [1958-NMSC-129](#), [65 N.M. 51](#), [331 P.2d 1110](#) (decided under prior law).

**Disputes over commonly accepted practices.** — The district court in a criminal case in which the defendant is charged with animal cruelty is the proper forum to determine if a dispute exists regarding whether the defendant's conduct is a commonly accepted agricultural animal husbandry practice and to define the parameters of the dispute in order to ensure that the issues are fairly referred to the livestock board. If the district court determines that there is a dispute regarding whether the defendant's conduct is a commonly accepted agricultural animal husbandry practice, the district court must order the livestock board to hold a Section 30-18-1 J NMSA 1978 hearing. *State ex rel. Collier v. N.M. Livestock Bd.*, [2014-NMCA-010](#), cert. denied, 2013-NMCERT-011.

Where defendant was charged with extreme animal cruelty that arose from the death of a colt as a result of defendant's use of questionable training techniques; defendant never filed a formal motion in the criminal case requesting a Section 30-18-1 J NMSA 1978 hearing before the livestock board to determine whether defendant's training techniques were commonly accepted agricultural animal husbandry practices; the livestock board denied defendant's request that it hold a hearing; and defendant filed a civil action asking the district court to order the livestock board to hold a hearing, defendant's civil action did not state a proper claim for relief because the district court presiding in defendant's pending criminal case was the proper forum to determine if a dispute existed regarding whether defendant's conduct was a commonly accepted agricultural animal husbandry practice and to order the livestock board to hold a Section 30-18-1 J NMSA 1978 hearing. *State ex rel. Collier v. N.M. Livestock Bd.*, [2014-NMCA-010](#), cert. denied, 2013-NMCERT-011.

**Animals included.** — No legislative intent appears to restrict the sanction of this section to any particular class of animals. 1964 Op. Att'y Gen. No. [64-86](#).

**Cruel sport.** — Placing of a live coon in a shallow barrel which is swiveled to rotate around a pole when pushed, with the object of finding which hound dog can pull the coon out of the barrel in the

shortest time, constitutes cruelty to animals as defined in this section. 1964 Op. Att'y Gen. No. 64-86.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 4 Am. Jur. 2d Animals § 31 et seq.

Applicability of state animal cruelty statute to medical or scientific experimentation employing animals, 42 A.L.R.4th 860.

What constitutes offense of cruelty to animals - modern cases, 6 A.L.R.5th 733.

Damages for killing or injuring dog, 61 A.L.R.5th 635.

Construction and application of Horse Protection Act of 1970 (15 USCS § 1821 et seq.), 131 A.L.R. Fed. 363.

3A C.J.S. Animals §§ 99 to 116.

### **30-18-1.1. Seizure of animals; notice.**

A. A peace officer who reasonably believes that the life or health of an animal is endangered due to cruel treatment may apply to the district court, magistrate court or the metropolitan court in the county where the animal is located for a warrant to seize the animal.

B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within thirty days unless good cause is demonstrated by the state for a later time.

C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.

D. If the owner of the animal cannot be determined, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.

E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice.

F. If the animal is a type of livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

**History:** Laws 1999, ch. 107, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 1999, ch. 107, § 7, made the act effective on July 1, 1999.

### **30-18-1.2. Disposition of seized animals.**

- A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.
- B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.
- C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.
- D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.
- E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section **77-18-2 NMSA 1978**.
- F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.
- G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.
- H. As used in this section, "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals.

**History:** **Laws 1999, ch. 107, § 3; 2009, ch. 43, § 1.**

## ANNOTATIONS

**The 2009 amendment, effective June 19, 2009, added Subsections, C, D, E, F and H.**

### 30-18-1.3. Costs.

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 30-18-1.2 NMSA 1978.

**History:** [Laws 1999, ch. 107, § 4](#); [2009, ch. 43, § 2](#).

### ANNOTATIONS

**The 2009 amendment**, effective June 19, 2009, in Subsection A, added "reasonable" before "cost of boarding" and added the last two sentences; in Subsection B, added the provision that the seizing agency shall return the animal and amounts of the security posted.

## 30-18-2. Repealed.

### ANNOTATIONS

**Repeals.** — [Laws 1999, ch. 107 § 6](#) repealed 30-18-2 NMSA 1978, as enacted by Laws 1963, ch. 303, § 18-2, relating to injury to animals, effective July 1, 1999. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see [30-18-1 NMSA 1978](#).

## 30-18-2.1. Repealed.

### ANNOTATIONS

**Repeals.** — [Laws 1999, ch. 107 § 6](#) repealed 30-18-2.1 NMSA 1978, as enacted by Laws 1981, ch. 226, § 1, relating to malicious slaughter of domestic canine animals, effective July 1, 1999. For provisions of former sections, see the 1998 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see [30-18-1 NMSA 1978](#).

## 30-18-3. Unlawful branding.

Unlawful branding consists of either:

A. branding, marking or causing to be branded or marked any animal, which is the property of another, with any brand not the brand of the owner of the animal;

B. defacing or obliterating any brand or mark upon any animal which is the property of another; or

C. using any brand unless said brand shall have been duly recorded in the office of the cattle sanitary board of New Mexico [New Mexico livestock board] or the sheep sanitary board of New Mexico [New Mexico livestock board], whichever is applicable, and the person holds a certificate from the cattle sanitary board [New Mexico livestock board] or the sheep sanitary board [New Mexico livestock board] certifying to the fact of such record.

Whoever commits unlawful branding is guilty of a fourth degree felony.

**History:** 1953 Comp., § 40A-18-3, enacted by Laws 1963, ch. 303, § 18-3.

## ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Section 47-2-1, 1953 Comp., establishing the cattle sanitary board, and 47-8-2, 1953 Comp., establishing the sheep sanitary board and related sections, were repealed by Laws 1967, ch. 213, § 12. Section 77-2-2 NMSA 1978 created the New Mexico livestock board, and provided that reference to the above-mentioned sanitary boards shall mean the livestock board.

**Cross references.** — For description of bovine animal in a criminal indictment, see 31-7-1 NMSA 1978.

For Livestock Code, see 77-2-1 NMSA 1978 et seq.

For provisions regarding the branding of animals, and penalties for violation thereof, see 77-9-3 to 77-9-5 NMSA 1978.

**Due process.** — Subsection C is a reasonable exercise of the police power of New Mexico; in the light of its purpose, its application to innocent acts and the felony penalty it provides do not violate due process requirements. *State v. Vickery*, 1973-NMCA-091, 85 N.M. 389, 512 P.2d 962, cert. denied, 85 N.M. 380, 512 P.2d 953.

**Equal protection.** — As 77-9-4 NMSA 1978 applies to branding requirements generally while Subsection C of this section applies specifically to the use of an unrecorded brand, one section does not provide a different penalty for the identical act prohibited by the other, and hence these sections do not violate the requirement of equal protection of the laws. *State v. Vickery*, 1973-NMCA-091, 85 N.M. 389, 512 P.2d 962, cert. denied, 85 N.M. 380, 512 P.2d 953.

**Purpose of Subsection C** is to prevent a kind of theft peculiarly easy of commission and difficult of discovery and punishment, and to afford special protection to the important industry of stockraising. *State v. Vickery*, 1973-NMCA-091, 85 N.M. 389, 512 P.2d 962, cert. denied, 85 N.M. 380, 512 P.2d 953; *State v. Thompson*, 1953-NMSC-072, 57 N.M. 459, 260 P.2d 370.

**Criminal intent is not element** of crime stated in Subsection C. *State v. Vickery*, 1973-NMCA-091, 85 N.M. 389, 512 P.2d 962, cert. denied, 85 N.M. 380, 512 P.2d 953.

**Brand not proof of defendant's ownership.** — Proof that calf bore defendant's brand in prosecution for stealing and branding the animal did not constitute prima facie evidence that defendant owned the animal under statute providing that registration in the brand book under seal of the cattle sanitary board (now New Mexico livestock board) constituted prima facie proof that person owning recorded brand was owner of animal branded with such brand. *State v. Reed*, 1951-NMSC-021, 55 N.M. 231, 230 P.2d 966, cert. denied, 342 U.S. 932, 72 S. Ct. 374, 96 L. Ed. 694 (1952).

**Indictment defective.** — An indictment under Laws 1919, ch. 57, § 1 (former 40-4-15, 1953 Comp.), prohibiting branding of unmarked animals with mark not the recorded, kept up or running mark or brand of the user, was fatally defective if it failed to allege that the brand was placed upon an unbranded animal. *State v. Lopez*, 1922-NMSC-061, 28 N.M. 216, 210 P. 567.

**Instructions on circumstantial evidence.** — Instruction on circumstantial evidence concerning the stealing and unlawful branding of a bull calf was not erroneous because of inclusion of statement "that before you would be authorized to find a verdict of guilty against the defendant where the evidence is circumstantial, the facts and circumstances shown in the evidence must be incompatible upon any reasonable hypothesis with the innocence of the defendant and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the defendant." *State v. Reed*, 1951-NMSC-021, 55 N.M. 231, 230 P.2d 966, cert. denied, 342 U.S. 932, 72 S. Ct. 374, 96 L. Ed. 694 (1952).

The court was not required to give an instruction on circumstantial evidence which was cumulative. *State v. Reed*, 1951-NMSC-021, 55 N.M. 231, 230 P.2d 966, cert. denied, 342 U.S. 932, 72 S. Ct. 374, 96 L. Ed. 694 (1952).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 23 to 30.

### 30-18-4. Unlawful disposition of animal.

Unlawful disposition of animal consists of:

- A. skinning or removing without the permission of the owner any part of the hide of any neat cattle found dead;
- B. abandoning any livestock without giving reasonable notice to the owner, where the livestock has been entrusted by the owner to such person for the herding, care or safekeeping upon a contract for a valuable consideration;
- C. taking any livestock for use or work, without the consent of the owner;
- D. driving or leading any animal being the property of another from its usual range, without the consent of the owner;
- E. contracting, selling or otherwise disposing of any animal, which a person has in his possession or under his control on shares or under contract, without the consent of the owner of such animal; or
- F. knowingly buying, taking or receiving from any person having in his possession, or under his control, any animal on shares or under contract, without the consent of the owner of such animal.

Whoever commits unlawful disposition of animal is guilty of a misdemeanor.

**History:** 1953 Comp., § 40A-18-4, enacted by Laws 1963, ch. 303, § 18-4.

### ANNOTATIONS

**Cross references.** — For notification of intention to slaughter cattle, see 7-23-1, 7-23-2 NMSA 1978.

For description of bovine animal in indictment, see 31-7-1 NMSA 1978.

**Former law not violative of equal protection.** — Classification in former law providing for the punishment of all persons who skin or remove the hide from the carcass of neat cattle found dead without the permission of the owner, but exempting all employees of railroad companies so doing when the animal was killed by the railroad company, was entirely constitutional. *State v. Thompson*, 1953-NMSC-072, 57 N.M. 459, 260 P.2d 370 (decided under prior law).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 3A C.J.S. Animals §§ 119, 120.

### 30-18-5. [Illegal confinement of animals.]

Illegal confinement of animals consists of:

A. detaining for more than two (2) hours for the purpose of milking any cow, without the permission of the owner;

B. taking and detaining any bull for the purpose of improving livestock, without the consent of the owner;

C. intentionally separating offspring of livestock from the mother, unless branded. Provided that, when milk cows, which are actually used to furnish milk for household or dairy purposes, have calves, that are unbranded, such young animals may be separated from their mother and inclosed; or

D. confining, or in any manner interfering with the freedom of, or selling, or offering to sell, any freshly branded animal, unless such animal has been previously branded with an older and duly recorded brand for which the person has a legally executed bill of sale from the owner of such brand or unless such animals are with their mother, or unless such animals are the calves of milk cows when such cows are actually used to furnish milk for household purposes or for carrying on a dairy; but in every such case the person, firm or corporation, separating calves from their mother for either of these purposes shall, upon the demand of any sheriff, inspector or other officer, produce, in a reasonable time, the mother of each of such calves so that interested parties may ascertain if the cow does or does not claim and suckle such calf.

Whoever commits illegal confinement of animals is guilty of a misdemeanor.

**History:** 1953 Comp., § 40A-18-5, enacted by Laws 1963, ch. 303, § 18-5; 1965, ch. 3, § 1.

### ANNOTATIONS

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law.

**Indictment adequate.** — An indictment under Laws 1901, ch. 23, § 1 (former 40-4-29, 1953 Comp.), prohibiting separation of calves under seven months old from their mothers, was valid, even though it did not directly and positively allege that calves were under seven months of age, it

using the words "the said calves being then and there under seven months of age." *State v. Brooken*, 1914-NMSC-075, 19 N.M. 404, 143 P. 479 (decided under prior law).

**Evidence sufficient.** — Evidence that calf was found chained in depression in defendant's pasture and that defendant's riding horse was seen close to such depression was sufficient to support conviction under Laws 1901, ch. 23, § 1 (former 40-4-29, 1953 Comp.). *State v. Blevins*, 1935-NMSC-083, 39 N.M. 532, 51 P.2d 599 (decided under prior law).

### 30-18-6. Transporting stolen livestock.

Transporting stolen livestock consists of knowingly transporting or carrying any stolen or unlawfully possessed livestock or any unlawfully possessed game animal, or any parts thereof.

Whoever commits transporting stolen livestock is guilty of a fourth degree felony.

**History:** 1953 Comp., § 40A-18-6, enacted by Laws 1963, ch. 303, § 18-6.

#### ANNOTATIONS

**Cross references.** — For penalties for violation of fish and game laws or regulations, see 17-2-10 NMSA 1978.

For seizure and disposition of game and vehicles under fish and game laws, see 17-2-19 NMSA 1978 et seq.

For prohibition against transporting game or fish taken from unlicensed parks or lakes, see 17-4-10 NMSA 1978.

For transportation of sheep, see 77-8-3 NMSA 1978 et seq.

For transportation of livestock, see 77-9-28 NMSA 1978 et seq.

For penalties for exporting animals without inspection, see 77-9-31 NMSA 1978.

For authority of officers to stop vehicles transporting livestock, see 77-9-46, 77-9-51 NMSA 1978.

**Transporting stolen livestock and larceny of livestock.** — Defendant's conviction for transporting stolen livestock, when considered with his conviction for larceny of livestock, violated his constitutional right to be free of double jeopardy. *State v. Clark*, 2000-NMCA-052, 129 N.M. 194, 3 P.3d 689, cert. denied, 129 N.M. 207, 4 P.3d 35.

**Section inapplicable.** — This section does not apply to the transporting of elk. *State v. Parson*, 2005-NMCA-083, 137 N.M. 773, 115 P.3d 236.

### 30-18-7. Misrepresentation of pedigree.

Misrepresentation of pedigree consists of either the giving, obtaining, misrepresenting or exhibiting of any type of registry certificate or transfer certificate, pertaining to the pedigree registry of any

animal, knowing such certificate to be false or misleading, or to have been secured by means of false pretenses or false representations.

Whoever commits misrepresentation of pedigree is guilty of a misdemeanor.

**History:** 1953 Comp., § 40A-18-7, enacted by Laws 1963, ch. 303, § 18-7.

### **30-18-8. [Killing unbranded cattle; killing, without bill of sale, cattle bearing brand of another person; penalty.]**

Any person, firm or corporation, who shall kill or cause to be killed, for sale or use any unbranded neat cattle, or any cattle on which the brand has not peeled off and fully healed, unless such cattle shall have an older and duly recorded brand; or shall kill, or cause to be killed for sale or use any neat cattle having a brand not legally owned by such person, firm or corporation, without having taken a duly acknowledged bill of sale for the same from the owner thereof, shall be deemed guilty of a petty misdemeanor.

**History:** 1953 Comp., § 40A-18-8, enacted by Laws 1965, ch. 7, § 1.

### **30-18-9. Dog fighting and cockfighting; penalty.**

A. It is unlawful for any person to cause, sponsor, arrange, hold or participate in a fight between dogs or cocks for the purpose of monetary gain or entertainment. Participation in a fight between dogs or cocks for the purpose of monetary gain or entertainment consists of an adult knowingly:

- (1) being present at a dog fight without attempting to interfere with or stop the contest; or
- (2) owning or equipping one of the participating dogs or cocks with knowledge of the contest.

B. It is unlawful to train, equip or sponsor a dog or cock for the purpose of having it participate in a fight with another dog or cock, respectively, for monetary gain or entertainment.

C. Any person violating the provisions of Subsection A or B of this section, as it pertains to dogs, is guilty of a fourth degree felony.

D. Any person violating the provisions of Subsection A or B of this section as it pertains to cocks:

- (1) upon a first conviction, is guilty of a petty misdemeanor;
- (2) upon a second conviction, is guilty of a misdemeanor; and
- (3) upon a third or subsequent conviction, is guilty of a fourth degree felony.

**History:** Laws 1981, ch. 30, § 1; 2007, ch. 6, § 2.

## **ANNOTATIONS**

**The 2007 amendment**, effective June 15, 2007, added "or cocks" after the word "dogs" in Subsection A; changed "such a fight" to "a dog fight" in Paragraph (1) of Subsection A; added "or cock" and "or cock, respectively" after the words "dog" in Subsection B; added "as it pertains to dogs" after the word "section" in Subsection C; and added Subsection D to provide penalties.

### **30-18-10. Exclusion.**

Nothing in this act [30-18-9, 30-18-10 NMSA 1978] shall be construed to prohibit or make unlawful the taking of game animals, game birds or game fish by the use of dogs, provided the person so doing is licensed as provided by law and is using such dogs in a lawful manner.

**History:** Laws 1981, ch. 30, § 2.

### **30-18-11. Unlawful tripping of an equine; exception.**

A. Unlawful tripping of an equine consists of intentionally using a wire, pole, stick, rope or any other object to cause an equine to lose its balance or fall, for the purpose of sport or entertainment.

B. The provisions of Subsection A of this section do not apply to laying an equine down for medical or identification purposes.

C. As used in this section, "equine" means a horse, pony, mule, donkey or hinny.

D. Whoever commits unlawful tripping of an equine is guilty of a misdemeanor.

E. Whoever commits unlawful tripping of an equine that causes the maiming, crippling or death of the equine is guilty of a fourth degree felony.

**History:** Laws 1995, ch. 113, § 1.

## **ANNOTATIONS**

**Effective dates.** — Laws 1995, ch. 113, § 2 makes the act effective July 1, 1995.

### **30-18-12. Injury to livestock.**

A. Injury to livestock consists of willfully and maliciously poisoning, killing or injuring livestock that is the property of another.

B. As used in this section, "livestock" means cattle, sheep, buffalo, horses, mules, goats, swine and ratites.

C. Whoever commits injury to livestock is guilty of a fourth degree felony.

**History:** Laws 1998, ch. 35, § 1.

## ANNOTATIONS

**Effective dates.** — **Laws 1998, ch. 35, § 2** makes the act effective July 1, 1998.

### **30-18-13. Injury to a police dog, police horse or fire dog; harassment of a police dog, police horse or fire dog.**

A. As used in this section:

(1) "fire dog" means a dog used by a fire department, special fire district or the state fire marshal for the primary purpose of aiding in the detection of flammable materials or the investigation of fires;

(2) "police dog" means a dog used by a law enforcement or corrections agency that is specially trained for law enforcement or corrections work in the areas of tracking, suspect apprehension, crowd control or drug or explosives detection; and

(3) "police horse" means a horse that is used by a law enforcement or corrections agency for law enforcement or corrections work.

B. Injury to a police dog, police horse or fire dog consists of willfully and with intent to injure or prevent the lawful performance of its official duties:

(1) striking, beating, kicking, cutting, stabbing, shooting or administering poison or any other harmful substance to a police dog, police horse or fire dog; or

(2) throwing or placing an object or substance in a manner that is likely to produce injury to a police dog, police horse or fire dog.

C. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal minor physical injury or pain is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section **31-19-1** NMSA 1978.

D. Whoever commits injury to a police dog, police horse or fire dog when the injury causes the animal serious physical injury or death or directly causes the destruction of the animal is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section **31-18-15** NMSA 1978.

E. A person convicted of injury to a police dog, police horse or fire dog may be ordered to make restitution for the animal's veterinary bills or replacement costs of the animal if it is permanently disabled, killed or destroyed.

F. Harassment of a police dog, police horse or fire dog consists of a person willfully and maliciously interfering with or obstructing a police dog, police horse or fire dog by frightening, agitating, harassing or hindering the animal.

G. Whoever commits harassment of a police dog, police horse or fire dog is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section **31-19-1** NMSA 1978.

H. Whoever commits harassment of a police dog, police horse or fire dog that results in bodily injury to a person not an accomplice to the criminal offense is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section **31-19-1** NMSA 1978.

I. It is an affirmative defense to a prosecution brought pursuant to the provisions of this section that a police dog, police horse or fire dog was not handled in accordance with well-recognized national handling procedures or was handled in a manner contrary to its own department's handling policies and procedures.

**History:** **Laws 1999, ch. 107, § 5.**

### ANNOTATIONS

**Effective dates.** — **Laws 1999, ch. 107, § 7**, makes the act effective on July 1, 1999.

### **30-18-14. Livestock crimes; livestock inspectors to enforce.**

Livestock inspectors who are certified peace officers shall enforce the provisions of Chapter **30**, Article **18** NMSA 1978 and other criminal laws relating to livestock.

**History:** **Laws 2001, ch. 8, § 1** and **Laws 2001, ch. 341, § 1.**

### ANNOTATIONS

**Duplicate laws.** — **Laws 2001, ch. 8, § 1**, approved March 14, 2001, and **Laws 2001, ch. 341, § 1**, approved April 5, 2001, both effective June 15, 2001, enacted two versions of this section. **Laws 2001, ch. 8, § 1** would have read as follows: "Livestock crimes; livestock inspectors to enforce. Livestock inspectors who are certified peace officers may enforce the provisions of Chapter **30**, Article **18** NMSA 1978 and other criminal laws relating to livestock."

The section is set out as enacted by **Laws 2001, ch. 341, § 1**. See **12-1-8** NMSA 1978.

### **30-18-15. Intracardiac injection prohibited on conscious animal.**

A. It is unlawful for an employee or agent of an animal control service or facility, animal shelter or humane society to use intracardiac injection to administer euthanasia on a conscious animal if the animal could first be rendered unconscious in a humane manner.

B. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section **31-19-1** NMSA 1978.

**History:** **Laws 2004, ch. 35, § 1.**

### ANNOTATIONS

**Effective dates.** — Laws 2004, ch. 35 contained no effective date provision, but, pursuant to **N.M. Const., art. IV, § 23**, was effective May 19, 2004, 90 days after adjournment of the legislature.

### **30-18-16. Coyote; killing contests prohibited; definition; penalties.**

A. It is unlawful for a person to organize, cause, sponsor, arrange, hold or participate in a coyote-killing contest.

B. As used in this section, "coyote-killing contest" means an organized or sponsored competition with the objective of killing coyotes for prizes or entertainment.

C. Organizing, causing, sponsoring, arranging or holding a coyote-killing contest consists of a person knowingly:

- (1) planning, organizing or enticing a person to participate in a coyote-killing contest; or
- (2) providing the venue for a coyote-killing contest.

D. Participation in a coyote-killing contest consists of a person knowingly taking part in a coyote-killing contest.

E. A person who organizes, causes, sponsors, arranges or holds a coyote-killing contest is guilty of a misdemeanor.

F. A person who participates in a coyote-killing contest is guilty of a petty misdemeanor.

G. Nothing in this section shall be construed to prohibit a person from protecting a person or property or the state game commission from carrying out the statutory authority allowed by Chapter 17 NMSA 1978 in a non-coyote-killing contest setting.

**History:** **Laws 2019, ch. 151, § 1.**

#### **ANNOTATIONS**

**Effective dates.** — **Laws 2019, ch. 151, § 2** made **Laws 2019, ch. 151, § 1** effective July 1, 2019.

**TITLE 7           HEALTH**  
**CHAPTER 4       DISEASE CONTROL (EPIDEMIOLOGY)**  
**PART 2           ANIMAL CONTROL REQUIREMENTS**

**7.4.2.1           ISSUING AGENCY:** New Mexico Department of Health.  
[8/27/79; 10/31/96; 7.4.2.1 NMAC - Rn, 7 NMAC 4.2.1, 5/30/2003]

**7.4.2.2           SCOPE:** Together with a network of mandatory and discretionary municipal and county ordinances prescribed at Section 5 and 7, to provide for the control of animals by mandatory rabies vaccination of dogs and cats, confinement of rabies suspect animals, laboratory rabies testing, rabies quarantine, confinement or destruction of animals exposed to rabies, confinement or destruction of vicious dogs, confinement or destruction of animals with symptoms of rabies, control of animals running at large, regulations of the possession of skunks, licensure of dogs and providing for regulations of the animal control officers and impounding facilities.  
[8/27/79; 10/31/96; 7.4.2.2 NMAC - Rn, 7 NMAC 4.2.2, 5/30/2003]

**7.4.2.3           STATUTORY AUTHORITY:** These regulations are promulgated by the secretary of the department of health pursuant to sections 77-1-3 and 9-7-6 (E) NMSA 1978.  
[8/27/79; 10/31/96; 7.4.2.3 NMAC - Rn & A, 7 NMAC 4.2.3, 5/30/2003]

**7.4.2.4           DURATION:** Permanent.  
[8/27/79; 10/31/96; 7.4.2.4 NMAC - Rn, 7 NMAC 4.2.4, 5/30/2003]

**7.4.2.5           EFFECTIVE DATE:** October 31, 1996, unless a later date is cited at the end of a section.  
[8/27/79; 10/31/96; 7.4.2.5 NMAC - Rn & A, 7 NMAC 4.2.5, 5/30/2003]

**7.4.2.6           OBJECTIVE:** To protect humans and animals from rabies by vaccination of dogs and cats and the confinement, destruction and testing of rabies suspect animals. To protect humans and livestock from dog bites by controlling animals running at large and by providing for the licensure of dogs, impoundment of animals and confinement or destruction of vicious dogs.  
[8/27/79; 10/31/96; 7.4.2.6 NMAC - Rn, 7 NMAC 4.2.6, 5/30/2003]

**7.4.2.7           DEFINITIONS:**

- A. "Animal" means any vertebrate member of the animal kingdom excluding man.
- B. "Animal destroyed" means the administration of an agent which shall cause the death of an animal. Such method shall not destroy brain tissue necessary for laboratory examination for rabies.
- C. "Bite" means the puncture or tear of the skin inflicted by the teeth of an animal.
- D. "Confined" means restriction of an animal at all times by an owner or keeper to an escape proof building or other enclosure away from other animals and the public.
- E. "Department" means the department of health of the state of New Mexico.
- F. "District health officer" means the person designated by the director of the public health division to be responsible for district health operations in a district organized by the public health division.
- G. "Division" means the office of epidemiology of the department of health of the state of New Mexico.
- H. "Exposure to rabies" means the exposure resulting from a bite by an animal susceptible to rabies or from contact of the saliva of such animal with any break or abrasion of the skin.
- I. "Field health office" means the health office(s) located in each county and administered by the public health division of the department of health.
- J. "Impounding facilities" means any animal control center, pound, animal shelter, kennel, veterinary hospital, lot premise or building maintained or contracted by a municipality or county for the care and custody of animals.
- K. "Isolation" means the confinement of an animal in an escape proof run or cage so that there is no possibility of direct contact with other animals or humans.
- L. "Laboratory" means the scientific laboratory division (SLD) of the New Mexico department of health, 700 Camino de Salud, Albuquerque, New Mexico, 87106.
- M. "Livestock" means all domestic animals of the following genera: equine, bovine, ovine, caprine and porcine.

- N. "Owner" means a person who owns, harbors, keeps, or knowingly permits an animal to be harbored or kept, or permits an animal to remain on his premises.
- O. "Person" means any individual, household, firm, partnership, corporation, society, association and every officer, agent or employee thereof.
- P. "Premises" means any parcel of land and structure(s) thereon.
- Q. "Quarantine" means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.
- R. "Running at large" means to be free of physical restraint beyond the premises of the owner or keeper.
- S. "Stray animal" means any animal running at large.
- T. "Vaccination against rabies" means the injection of an approved rabies vaccine by or under the supervision of a licensed veterinarian.
- U. "Veterinarian" means a person with a doctor of veterinary medicine degree licensed to practice veterinary medicine in the state of New Mexico.
- V. "Vicious animal" means any animal which at any time without provocation shall bite, attack or injure any person who was peacefully conducting himself where he lawfully may be.  
[8/27/79; 10/31/96; 7.4.2.7 NMAC - Rn & A, 7 NMAC 4.2.7, 5/30/2003]

**7.4.2.8 VACCINATION OF DOGS AND CATS REQUIRED:**

- A. Dogs and cats over the age of three months shall be vaccinated against rabies. The animal shall receive a booster within the 12-month interval following the initial vaccination. Every domestic dog and cat shall be revaccinated against rabies within 12 months if a 1-year vaccine is administered or within 36 months if a 3-year vaccine is administered with a rabies vaccine licensed by the United States Department of Agriculture and administered according to label recommendations. The "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., shall be the reference for the route of inoculation and the type of vaccine. Copies are available upon request from the department.
- B. Rabies vaccine shall not be distributed except to a veterinarian.
- C. The veterinarian who administers rabies vaccine to a dog or cat shall issue to the owner a serially numbered vaccination certificate containing the name of the veterinarian, the type of vaccine used, the initials of the producer of the vaccine, the name and address of the owner, a description of the dog or cat vaccinated, the date of vaccination, and the expiration date for the period of immunity. The veterinarian shall also furnish the owner with a tag bearing the certificate number and the year of the vaccination. The tag shall be affixed to the vaccinated dog or cat and shall be worn at all times the animal is not on the premises of the owner or otherwise confined. A combination rabies vaccination certificate and city/county license shall be permitted providing the certificate/license contains at least the above required information.
- D. Approved rabies vaccine shall be administered to the species, by the route and in the amount recommended by the producer of the vaccine and the latest CARC.
- E. Nothing herein shall prohibit the acceptance and recognition for purpose of compliance with this section of the administration of an approved rabies vaccine by a veterinarian licensed in another state.  
[8/27/79; 10/31/96; 7.4.2.8 NMAC - Rn & A, 7 NMAC 4.2.8, 5/30/2003]

**7.4.2.9 HUMAN EXPOSURE; ANIMALS WITH SYMPTOMS OF RABIES:**

- A. When any person is bitten by an animal, it is the duty of such person or his parent or guardian, or any person having knowledge of the whereabouts of the animal, to immediately notify the animal control officer or the field office of the public health division.
- B. Any dog, cat or ferret which bites or otherwise exposes a person to rabies shall be either destroyed and the head sent to the laboratory for rabies testing or confined immediately at the owner's expense at a place and in a manner designated by the animal control officer and approved by the field health office. If the dog, cat or ferret shows signs or symptoms of rabies during the ten (10) day confinement and observation period, it shall be destroyed and the head sent to the laboratory for rabies testing.
- C. Any skunk, bat, raccoon, coyote, bobcat or other wild animal not born or reared in captivity, with the exception of rodents (order rodentia) or rabbits (order lagomorpha), which bites or otherwise exposes a person to rabies shall be destroyed immediately and the head sent to the laboratory for testing. Rabbits and rodents do not normally transmit rabies.

D. Except for rodents and rabbits, the head of a susceptible animal suspected of having rabies, which bites or otherwise exposes a person to rabies and either dies or is destroyed within ten (10) days following the exposure shall be immediately sent to the laboratory for rabies testing. Rodent and rabbit specimens may be submitted with the consent of the state epidemiologist of the division of epidemiology, evaluation and planning division. A rabies submission form and instructions for shipping are available upon request from the scientific laboratory division, department of health.  
[8/27/79; 10/31/96; 7.4.2.9 NMAC - Rn & A, 7 NMAC 4.2.9, 5/30/2003]

**7.4.2.10 RABIES QUARANTINE AREA:** Any district health officer may declare a quarantine against rabies within the health district or any part thereof when rabies has been determined to exist to the extent that it is a danger to public health. Upon written findings of such danger and approval of the division director of the public health division, all animals designated in the quarantine order and living within the area specified in the order shall be confined as directed by the district health officer. Any reasonable effort to apprehend any dog or cat running at large and uncontrolled by its owner during a period of quarantine, any animal control officer or peace officer may destroy the dog or cat and properly dispose of the body. The district health officer may order other measures as may be necessary to prevent the spread of rabies. A quarantine shall not be removed except by order of the district health officer.  
[8/27/79; 10/31/96; 7.4.2.10 NMAC - Rn, 7 NMAC 4.2.10, 5/30/2003]

**7.4.2.11 ANIMALS EXPOSED TO RABIES:** When circumstances indicate an animal has been bitten by a known rabid animal, the following procedures shall apply:

A. Dogs, cats or ferrets bitten by a known rabid animal should be destroyed immediately. If the owner is unwilling to have this done, the animal should be vaccinated and quarantined according to the recommendations of the latest edition of the "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., at the owner's expense in a manner directed by the animal control officer and approved by the district health officer.

B. Domestic livestock known to have been bitten by a rabid animal shall be destroyed immediately. If the owner is unwilling to have this done, the animal should be vaccinated and quarantined according to the recommendations of the latest edition of the "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., in a manner approved by the district health officer. The exposed animal may be killed and its tissues eaten if the animal is slaughtered within seven (7) days after being bitten. Persons who slaughter an exposed domestic animal shall wear gloves. No animal tissue shall be retained for consumption from areas proximate to the bite. Neither tissues nor milk from a rabid animal should be used for human or animal consumption.

C. Other animals susceptible to rabies known to have been bitten by a rabid animal shall be destroyed immediately as directed by the district health officer.  
[8/27/79; 10/31/96; 7.4.2.11 NMAC - Rn & A, 7 NMAC 4.2.11, 5/30/03]

**7.4.2.12 POSSESSION OF SKUNKS:** Due to the presence of rabies in skunks and the hazard to the public health of rabies developing in skunks kept as pets, no person shall import into the state, nor capture with intent to keep as a pet, nor buy, sell, trade nor possess any skunk except in connection with a recognized zoological park or research institution or by permit from the department. Permits may be approved only for skunks born in captivity. Application for permit shall be made on a form provided by the division.  
[8/27/79; 10/31/96; 7.4.2.12 NMAC - Rn, 7 NMAC 4.2.12, 5/30/2003]

**7.4.2.13 VICIOUS ANIMALS:** It is unlawful for any owner to fail to confine a vicious animal except:

A. an animal confined within an enclosed automobile, truck or other vehicle not being used as a public conveyance;

B. an animal in shipment on a public conveyance and properly confined in a shipping container conspicuously labeled "vicious animal" and constructed in such a manner as to prevent the animal from biting or attacking humans or other animals;

C. a vicious dog muzzled and on a leash of sufficient strength to keep such animal under control and held by a person capable of controlling the animal;

D. Any vicious animal not controlled as required herein shall be destroyed. If the vicious animal has bitten a person or animal within ten days prior to its destruction, the head shall be sent to the laboratory for rabies testing.

[8/27/79; 10/31/96; 7.4.2.13 NMAC - Rn, 7 NMAC 4.2.13, 5/30/2003]

**7.4.2.14 ANIMALS RUNNING AT LARGE:** Municipal or county animal control ordinances shall provide for the seizure and disposition of dogs and cats that have bitten a person, vicious dogs and dogs molesting livestock, and may provide for the seizure and disposition of stray animals.

[8/27/79; 10/31/96; 7.4.2.14 NMAC - Rn, 7 NMAC 4.2.14, 5/30/2003]

**7.4.2.15 DOG LICENSE:**

A. Each county and municipality may provide by ordinance for the licensure of all dogs and cats over the age of three months.

B. Such ordinance shall require a serially numbered certificate and tag for each licensed animal. The certificate shall contain the name and address of the owner of the animal, a description of the animal, proof of rabies vaccination and the expiration date of the license.

C. A combination rabies certificate and city or county license shall be permitted.

D. License fees shall be set by the ordinance. All license fees collected shall be remitted or reported to the treasurer of the county or municipality and shall be used for animal control. No fee for licensure of dogs trained to assist the blind or deaf shall be charged.

[8/27/79; 10/31/96; 7.4.2.15 NMAC - Rn, 7 NMAC 4.2.15, 5/30/2003]

**7.4.2.16 IMPOUNDING OF ANIMALS:** Every municipality and each county shall provide for the impoundment of animals as follows.

A. Impoundment facilities shall be provided for the confinement of all unowned animals susceptible to rabies which have bitten a person. The animal shall be either destroyed or confined for a period of ten (10) days and if the animal dies or is destroyed during the confinement period, the head shall be sent to the laboratory for rabies testing.

B. Impoundment facilities should be provided for the confinement of animals running at large, vicious animals and animals attacking livestock.

C. Impoundment facilities may be provided for by contract with a veterinary hospital, a kennel, an animal shelter or in cooperation with other municipalities or counties.

[8/27/79; 10/31/96; 7.4.2.16 NMAC - Rn, 7 NMAC 4.2.16, 5/30/2003]

**7.4.2.17 ANIMAL CONTROL OFFICERS:**

A. Every municipality and each county shall designate a part-time or full-time animal control officer who shall be deputized to enforce animal control laws, orders, ordinances and regulations.

B. The animal control officer shall prevent and control the spread of rabies within the municipality or county including but not limited to the capture and confinement or disposition of rabies suspect animals, the enforcement of quarantine orders, the destruction or confinement of animals exposed to rabies and the enforcement of pet skunk regulations.

C. Animal control officers should be provided with proper training to apprehend, handle and care for animals.

D. In carrying out the provisions of these regulations every deputized animal control officer is authorized to pursue a straying animal or a vicious dog or a dog molesting livestock or any animal with symptoms of rabies onto private premises unless permission to make such pursuit is explicitly refused by the occupant.

[8/27/79; 10/31/96; 7.4.2.17 NMAC - Rn, 7 NMAC 4.2.17, 5/30/2003]

**HISTORY OF 7.4.2 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives.

HED-79-2 (HSD), Regulations Governing Animal Control, 8/27/79.

**History of Repealed Material:** [RESERVED]

**Other History:** HED-79-2 (HSD), Regulations Governing Animal Control, filed 8/27/79 was **renumbered and reformatted** into first version of the New Mexico Administrative Code as 7 NMAC 4.2, Animal Control Requirements, effective 10/31/96.

7 NMAC 4.2, Animal Control Requirements, filed 10/31/96 was **renumbered, reformatted, and amended** into the second version of the New Mexico Administrative Code as 7.4.2 NMAC, Animal Control Requirements, effective 5/30/2003.

# CHAPTER 77

## Livestock Code

Art.

1. Dogs and Domesticated Animals, 77-1-1 to 77-1-20.
2. Livestock Board, 77-2-1 to 77-2-29.

### ARTICLE 1

#### Dogs and Domesticated Animals

Sec.

- 77-1-1. Dogs, cats, domesticated fowls and birds are personal property.
- 77-1-2. Dog killing or injuring livestock; damages; dog to be killed.
- 77-1-3. Vaccination of dogs and cats required.
- 77-1-4. Repealed.
- 77-1-5. Vaccination of dogs and cats brought into state.
- 77-1-6. Notice to health officer of animal bite; confinement; animal contact with rabid animals; animal rabies quarantine; procedure following death from rabies.
- 77-1-7, 77-1-8. Repealed.
- 77-1-9. Dogs; destruction.
- 77-1-10. Vicious animals; rabid or unvaccinated dogs and cats; failure to destroy.

Sec.

- 77-1-11. Repealed.
- 77-1-12. Local control by ordinance; dogs and cats running at large.
- 77-1-13. Penalty.
- 77-1-14, 77-1-15. Repealed.
- 77-1-15.1. Regulation and licensure of dogs; impoundment of animals; qualified service animals exempt.
- 77-1-16. Repealed.
- 77-1-17. Abandoned dogs and cats; notice to owner; disposal without liability.
- 77-1-18. Short title.
- 77-1-19. Definitions.
- 77-1-20. Sterilization agreement and sterilization deposit required.

#### **77-1-1. [Dogs, cats, domesticated fowls and birds are personal property.]**

That dogs, cats and domesticated fowls and birds shall be deemed and considered as personal property, and all remedies given for the recovery of personal property and of damages for injuries thereto are hereby extended to them.

**History:** Laws 1912, ch. 38, § 1; Code 1915, § 26; C.S. 1929, § 4-101; 1941 Comp., § 49-101; 1953 Comp., § 47-1-1.

#### **77-1-2. Dog killing or injuring livestock; damages; dog to be killed.**

If any dog shall kill or injure any livestock, the owner or keeper of such dog shall be liable for all damages that may be sustained thereby, to be recovered by the party so injured before any court having competent jurisdiction, and it shall be unlawful to keep such dog after it is known that the dog is liable to kill livestock, and it shall be the duty of the owner to kill, or have killed, the dog upon order of the court after a finding that the dog has killed or injured livestock, and provided further, that it shall be the right of any owner of livestock so killed or injured by the actions of any dog to kill the dog while it is upon property controlled by the owner of the livestock.

**History:** Laws 1901, ch. 105, § 2; Code 1915, § 219; C.S. 1929, § 4-2002; 1941 Comp., § 49-103; 1953 Comp., § 47-1-2; Laws 1957, ch. 131, § 1.

#### **77-1-3. Vaccination of dogs and cats required.**

Any person who owns or keeps a dog or cat over the age of three months in this state shall have the dog or cat vaccinated against rabies as prescribed by regulation of the health and environment department [department of health]. All antirabies vaccine shall be administered by or under the supervision of a licensed veterinarian who shall issue a serially numbered certificate and tag for each such administration.

**History:** 1953 Comp., § 47-1-2.1, enacted by Laws 1959, ch. 176, § 1; 1973, ch. 170, § 1; 1977, ch. 253, § 55; 1979, ch. 194, § 1.

77-1-4. Repealed.

**77-1-5. Vaccination of dogs and cats brought into state.**

Any dog or cat brought into the state shall be securely confined by the owner or keeper until vaccinated against rabies, which vaccination shall be administered within one week after entry into the state unless the owner or keeper has a certificate of vaccination issued by a veterinarian in another state or foreign country and such vaccination conforms to the requirements of this state.

**History:** 1953 Comp., § 47-1-2.3, enacted by Laws 1959, ch. 176, § 3; 1973, ch. 170, § 3.

**77-1-6. Notice to health officer of animal bite; confinement; animal contact with rabid animals; animal rabies quarantine; procedure following death from rabies.**

The health and environment department [department of health] shall prescribe regulations for the reporting of animal bites, confinement and disposition of rabies-suspect animals, rabies quarantine and the disposition of dogs and cats exposed to rabies, in the interest of public health and safety.

**History:** 1978 Comp., § 77-1-6, enacted by Laws 1979, ch. 194, § 2.

**77-1-7, 77-1-8. Repealed.**

**77-1-9. Dogs; destruction.**

A. Any peace officer may impound any dog found running at large unaccompanied by and not under the control of the owner or handler, and further, the peace officer shall destroy the dog if it is in the act of pursuing or wounding livestock or wounding and killing poultry or attacking humans.

B. Any peace officer may kill any dog in the act of pursuing or wounding any livestock or wounding or killing poultry or attacking humans whether or not the dog wears a rabies tag required by Section 77-1-3 NMSA 1978. There shall be no liability of the peace officer in damages or otherwise for such killing.

**History:** 1953 Comp., § 47-1-2.7, enacted by Laws 1975, ch. 352, § 1.

**77-1-10. Vicious animals; rabid or unvaccinated dogs and cats; failure to destroy.**

A. It is unlawful for any person to keep any animal known to be vicious and liable to attack or injure human beings unless such animal is securely kept to prevent injury to any person.

B. It is unlawful to keep any unvaccinated dog or cat or any animal with any symptom of rabies.

C. It is unlawful to fail or to refuse to destroy vicious animals or unvaccinated dogs or cats with symptoms of rabies as prescribed by regulation of the health and environment department [department of health] for the protection of public health and safety.

**History:** Laws 1901, ch. 105, § 3; Code 1915, § 220; C.S. 1929, § 4-2003; 1941 Comp., § 49-104; 1953 Comp., § 47-1-3; Laws 1959, ch. 176, § 7; 1973, ch. 170, § 7; 1977, ch. 253, § 56; 1979, ch. 194, § 3.

**77-1-11. Repealed.**

**77-1-12. Local control by ordinance; dogs and cats running at large.**

Each municipality and each county shall make provision by ordinance for the seizure and disposition of dogs and cats running at large and not kept or claimed by any person on their premises.

**History:** Laws 1901, ch. 105, § 5; Code 1915, § 222; C.S. 1929, § 4-2005; 1941 Comp., § 49-106; 1953 Comp., § 47-1-5; Laws 1973, ch. 170, § 9; 1979, ch. 194, § 4.

**77-1-13. Penalty.**

Violation of Sections 77-1-3 and 77-1-10 NMSA 1978 and Section 6 [77-18-1 NMSA 1978] of this act or regulations or orders issued pursuant thereto shall be a misdemeanor.

**History:** 1978 Comp., § 77-1-13, enacted by Laws 1979, ch. 194, § 5.

**77-1-14, 77-1-15. Repealed.**

**77-1-15.1. Regulation and licensure of dogs; impoundment of animals; qualified service animals exempt.**

A. Every municipality and each county may provide by ordinance for the mandatory licensure of dogs over the age of three months. License fees shall be fixed by the responsible municipality or county. Proof of vaccination against rabies shall be provided by the owner or keeper before a license is issued. A combined rabies vaccination certificate and license may be provided by ordinance.

B. Every municipality and each county shall provide for the impoundment of rabies-suspect animals and shall designate a part-time or full-time animal control officer who shall be deputized to enforce animal control laws, orders, ordinances and regulations.

C. No fee shall be charged for the licensure of qualified service animals who are trained to lead partially or totally blind persons, aid hearing impaired persons or assist mobility impaired persons.

**History: Laws 1979, ch. 194, § 7; 1989, ch. 242, § 4.**

**77-1-16. Repealed.**

**77-1-17. Abandoned dogs and cats; notice to owner; disposal without liability.**

A. As used in this act [section], "custodian" means the owner or operator of a veterinary clinic or hospital, a doctor of veterinary medicine, a kennel, grooming parlor or other animal care facility.

B. Any dog or cat placed in the custody of a veterinarian, kennel, animal clinic or hospital, grooming parlor or other animal care facility shall be deemed to be abandoned if, after the term of any agreement for board or other care has expired, the dog or cat has not been reclaimed within ten days after written notice has been given the owner or his agent by registered or certified mail.

C. Any dog or cat deemed abandoned under the provisions of Subsection B of this section, may be disposed of by the custodian if not reclaimed. Notice of the intent to dispose of a dog or cat shall be given to the owner or his agent by registered or certified mail. Such notice, when sent to the address given to the custodian by the owner, shall relieve the custodian from all liability to the owner or his agent for the disposal of the dog or cat.

D. The custodian may turn over an abandoned dog or cat to the municipal or county animal control center, pound or shelter for disposal by them. Nothing in this act [section] shall affect the holding time or notice procedures regarding any municipal or county control facility which is owned or operated by, or is under contract or franchise to, a municipality or county.

E. Nothing in this act [section] shall relieve the owner of a dog or cat for the payment of all reasonable charges for medical or care services rendered to the dog or cat while in the custody of a veterinarian, kennel, animal clinic or hospital, grooming parlor or other animal care facility.

**History: 1953 Comp., § 47-1-9, enacted by Laws 1973, ch. 94, § 1.**

**77-1-18. Short title.**

This act [77-1-18 to 77-1-20 NMSA 1978] may be cited as the "Pet Sterilization Act".

**History: Laws 1993, ch. 43, § 1.**

**77-1-19. Definitions.**

As used in the Pet Sterilization Act [77-1-18 to 77-1-20 NMSA 1978]:

A. "animal" means a cat or dog;

B. "animal shelter" means any animal facility operated privately or by or for a municipality or county, in which stray, lost or unwanted animals are kept and released for adoption;

C. "sterilization" means rendering an animal unable to reproduce, either by the spaying of a female animal or by the neutering of a male animal; and

D. "sterilization deposit" means that portion of the adoption fee charged by the animal shelter when a person adopts an unsterilized animal; the "sterilization deposit" is refunded when the animal is sterilized.

**History: Laws 1993, ch. 43, § 2.**

**77-1-20. Sterilization agreement and sterilization deposit required.**

A. No animal shall be released from an animal shelter to an adopting person unless a sterilization agreement has been signed and a sterilization deposit has been paid, as provided in Subsections C and D of this section.

B. In addition to any adoption fee charged, a sterilization deposit of at least twenty-five dollars (\$25.00) shall be imposed on the adoption of each animal from an animal shelter.

C. Animals less than six months of age shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the adopted animal sterilized when it is no older than six months of age.

D. Adult animals over the age of six months shall be released only upon payment of the adoption fee and a sterilization deposit and after the adopting person has signed an agreement stating he will have the animal sterilized within thirty days of the date of adoption.

E. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized.

F. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the twenty-five dollars (\$25.00) for the sterilization deposit and impoundment fees imposed by the shelter, and the owner shall sign an agreement stating he will sterilize the animal within thirty days after release or will obtain a breeder permit or its equivalent. The sterilization deposit shall be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized.

**History: Laws 1993, ch. 43, § 3.**

## ARTICLE 2 Livestock Board

Sec.		Sec.	
77-2-1.	Short title; purpose. (Repealed effective July 1, 2060.)	77-2-8.	Research and promotion of meat and meat products. (Repealed effective July 1, 2006.)
77-2-1.1.	Definitions. (Repealed effective July 1, 2006.)	77-2-9.	Reports of inspectors; prosecution of violations of livestock laws. (Repealed effective July 1, 2006.)
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77-2-3.	New Mexico livestock board; scope; composition; qualifications; terms; meetings. (Repealed effective July 1, 2006.)	77-2-11.	Repealed.
77-2-4.	Compensation of members. (Repealed effective July 1, 2006.)	77-2-12.	Executive director; duties, oath and bond. (Repealed effective July 1, 2006.)
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77-2-7.2.	Registration of brands and marks; board. (Repealed effective July 1, 2006.)	77-2-17.	Payment of tax collections to state treasurer; disbursement. (Repealed effective July 1, 2006.)
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77-2-7.4.	Recording before use; recording fee; conflicting brands. (Repealed effective July 1, 2006.)	77-2-19.	Limitation on expenditures. (Repealed effective July 1, 2006.)
77-2-7.5.	Fees; disposition. (Repealed effective July 1, 2006.)	77-2-20.	Repealed.
77-2-7.6.	Brand book. (Repealed effective July 1, 2006.)	77-2-21.	Fees. (Repealed effective July 1, 2006.)
77-2-7.7.	More than one brand unlawful; exceptions; penalty. (Repealed effective July 1, 2006.)	77-2-22.	Penalty for violating rule. (Repealed effective July 1, 2006.)
77-2-7.8.	Brands of minors. (Repealed effective July 1, 2006.)	77-2-23, 77-2-24.	Repealed.
77-2-7.9.	Filing of facsimile; designation of brands; holding brand renewal and fee; branding increase; offenses; penalty. (Repealed effective July 1, 2006.)	77-2-25.	Interim receipts and disbursements fund created. (Repealed effective July 1, 2006.)
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77-2-7.11.	Brand; priority of right to. (Repealed effective July 1, 2006.)	77-2-27.	Repealed.
77-2-7.12.	Re-recording of brands; notice; publication; fees. (Repealed effective July 1, 2006.)	77-2-28.	Termination of board life; delayed repeal. (Repealed effective July 1, 2006.)
		77-2-29.	Fees. (Repealed effective July 1, 2006.)

### **77-2-1. Short title; purpose. (Repealed effective July 1, 2060.)**

Chapter 77, Articles 2 through 18 NMSA 1978 may be cited as "The Livestock Code". The Livestock Code shall be liberally construed to carry out its purposes, which are to promote greater economy, service and efficiency in the administration of the laws relating to the livestock industry of New Mexico, to control disease, to prevent the theft or illegal movement of livestock and to oversee the New Mexico meat inspection program.

**History: 1953 Comp., § 47-23-1, enacted by Laws 1967, ch. 213, § 1; 1993, ch. 248, § 1; 1999, ch. 282, § 1.**

### **77-2-1.1. Definitions. (Repealed effective July 1, 2006.)**

As used in The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978]:

**A. "animals" or "livestock"** means all domestic or domesticated animals that are used or raised on a farm or ranch, including the carcasses thereof, and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae upon any land in New Mexico; provided that for the purposes of Chapter 77, Article 9 NMSA 1978, "animals" or "livestock" have the meaning defined in that article. "Animals" or "livestock" does not include canine or feline animals. For the purpose of the rules governing meat inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "livestock" or "animal";

**B. "bill of sale"** means an instrument in substantially the form specified in The Livestock Code by which the owner or his authorized agent transfers to the buyer the title to animals described therein;

**C. "bison" or "buffalo"** means a bovine animal of the species bison;

- D. "board" means the New Mexico livestock board;
- E. "bond" means cash or an insurance agreement from a New Mexico licensed surety or insurance corporation pledging surety for financial loss caused to another, including certificate of deposit, letter of credit or other surety as may be approved by the United States department of agriculture, packers and stockyards administration or the board;
- F. "brand" means a symbol or device in a form approved by and recorded with the board as may be sufficient to readily distinguish livestock should they become intermixed with other animals or livestock;
- G. "brand inspector" means an inspector who is not certified as a peace officer;
- H. "carcasses" means dead or dressed bodies of livestock or parts thereof;
- I. "cattle" means animals of the genus Bos, including dairy cattle, and does not include any other kind of livestock;
- J. "dairy cattle" means animals of the genus Bos raised not for consumption but for dairy products and distinguished from meat breed cattle;
- K. "director" means the executive director of the board;
- L. "disease" means a communicable, infectious or contagious disease;
- M. "district" means a livestock inspection district;
- N. "estrays" means livestock found running at large upon public or private lands, either fenced or unfenced, whose owner is unknown, or that is branded with a brand that is not on record in the office of the board or is a freshly branded or marked offspring not with its branded or marked mother, unless other proof of ownership is produced;
- O. "inspector" means a livestock or brand inspector;
- P. "livestock inspector" means a certified inspector who is granted full law enforcement powers for enforcement of The Livestock Code;
- Q. "mark" means an ear tag or ownership mark that is not a brand;
- R. "meat" means the edible flesh of poultry, birds or animals sold for human consumption and includes livestock, poultry and livestock and poultry products;
- S. "mule" means a hybrid resulting from the cross of a horse and an ass; and
- T. "person" means an individual, firm, partnership, association, corporation or similar legal entity.

**History:** 1978 Comp., § 77-2-1.1, enacted by Laws 1993, ch. 248, § 2; 1995, ch. 111, § 1; 1999, ch. 282, § 2.

**77-2-2. New Mexico livestock board created; transfer of powers; transfer of property. (Repealed effective until July 1, 2006.)**

A. In order to achieve the purposes set forth in Section 1 [77-2-1 NMSA 1978], there is hereby created a board to be known as the "New Mexico livestock board." The New Mexico livestock board shall have all powers which have heretofore been held by the cattle sanitary board or the sheep sanitary board and those powers are hereby transferred to the New Mexico livestock board.

B. Wherever in the NMSA 1978 the term "board" or "sanitary board" is used in relation to the sheep sanitary board or the cattle sanitary board, it shall mean the New Mexico livestock board. Wherever in the NMSA 1978 the terms [term] "sheep sanitary board" or "cattle sanitary board" are [is] used it shall mean the New Mexico livestock board.

C. Wherever in the NMSA 1978 the term "secretary," "secretary of the board," "secretary of the sheep sanitary board," "secretary of the cattle sanitary board" or any similar term is used in relation to the secretary of the sheep sanitary board or the secretary of the cattle sanitary board, it shall mean the executive director of the New Mexico livestock board.

D. All books, records, property and equipment of the sheep sanitary board and the cattle sanitary board are transferred to the New Mexico livestock board.

**History:** 1953 Comp., § 47-23-2, enacted by Laws 1967, ch. 213, § 2.

**77-2-3. New Mexico livestock board; scope; composition; qualifications; terms; meetings. (Repealed effective July 1, 2006.)**

A. The New Mexico livestock board is established to govern the livestock industry of the state in the manner required by law.

B. The New Mexico livestock board shall be composed of nine members appointed by the governor and adequately representing the state livestock industry. Seven of the nine members must raise and own cattle or

raise and own sheep in this state and be residents of this state. Two members of the board shall not raise or own cattle or sheep but shall be appointed to represent the general public. The two public members also shall be residents of New Mexico. The majority of the members of the board at any given time shall, however, be primarily engaged in the business of raising and owning cattle in this state. The board shall be bipartisan, but no more than five members of the board shall belong to the same political party.

C. The term of office of each member of the New Mexico livestock board shall be six years; provided, that of the members of the board to be appointed after the passage and approval of this act, two shall be appointed for a term of two years, two for a term of four years and three for a term of six years and, upon the expiration of the terms of such appointments, the successors shall be appointed for the full term of six years.

D. The New Mexico livestock board shall elect from their number a chairman, vice-chairman and secretary. The board shall hold two regular meetings in each year, one in June and the other in December. Special meetings may be called by the chairman or by the vice-chairman in the event that the chairman is absent from the state or because the chairman is physically incapacitated or by a majority of the members of the board.

**History: 1953 Comp., § 47-23-3, enacted by Laws 1967, ch. 213, § 3; 1983, ch. 229, § 1; 1993, ch. 248, § 3.**

**77-2-4. Compensation of members. (Repealed effective July 1, 2006.)**

The members of the New Mexico livestock board shall receive per diem and mileage as provided in the Per Diem and Mileage Act [10-8-1 to 10-8-7 NMSA 1978] and shall receive no other compensation, perquisite or allowance.

**History: 1953 Comp., § 47-23-4, enacted by Laws 1967, ch. 213, § 4.**

**77-2-5. Report of board. (Repealed effective July 1, 2006.)**

It shall be the duty of the board during the first week in December of each year to transmit to the governor a report of its activities for the previous calendar year. This report shall contain a detailed account of all of the receipts and expenditures of money by the board, together with other facts relating to the livestock industry in New Mexico which may be of public interest. The report of the board shall be transmitted by the governor to the legislature.

**History: 1953 Comp., § 47-23-5, enacted by Laws 1967, ch. 213, § 5.**

**77-2-6. Livestock board attached to New Mexico department of agriculture. (Repealed effective July 1, 2006.)**

The board is attached for coordinative purposes to the New Mexico department of agriculture. The board shall execute a memorandum of understanding with the director of the New Mexico department of agriculture, identifying areas for cooperation and coordination of the activities of the board with those of the department of agriculture. Administrative and other services may be provided the board by the department pursuant to the terms of the memorandum of understanding. The board shall submit an annual report on its activities to the director. This section shall not be construed to affect the exercise of any board power or duty.

**History: 1953 Comp., § 47-23-5.1, enacted by Laws 1977, ch. 256, § 3.**

**77-2-7. Additional powers of the board. (Repealed effective July 1, 2006.)**

In addition to the powers transferred from the cattle and sheep sanitary boards, the board may:

A. exercise general regulatory supervision over the livestock industry of this state in order to protect the industry from theft and diseases and in order to protect the public from diseased or unwholesome meat or meat products;

B. appoint and fix the salary of an executive director who shall file an oath and be bonded in an amount fixed by the board. The director shall manage the affairs of the board under the direction of the board. He shall be chosen solely on qualifications and fitness for the office. He shall devote his entire time to the duties of the office;

C. employ clerical help, provide office space and purchase equipment, including vehicles;

D. employ livestock inspectors and brand inspectors and other personnel necessary to carry out the purposes of The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978]. All livestock inspectors appointed by the board shall have the same powers as any other peace officer in the enforcement of that code;

E. appoint a state veterinarian and subordinate veterinarians as are necessary to carry out the duties of the board;

- F. adopt and promulgate rules to control the importation and exportation of animals;
- G. establish livestock inspection districts;
- H. establish quarantine, provide its boundaries and give notice of the quarantine and do all other things necessary to effect the object of the quarantine and to protect the livestock industry of this state from disease and prevent the spread of disease;
- I. adopt and promulgate rules for meat inspection, including the slaughter and disposition of the carcasses of livestock affected with diseases when the action appears necessary to prevent the spread of any contagion or infection among livestock;
- J. adopt and promulgate rules governing the importation, manufacture, sale, distribution or use within the state of serums, vaccine and other biologicals intended for diagnostic or therapeutic uses with livestock and regulate the importation, manufacture or use of virulent blood or living virus of any diseases affecting livestock;
- K. set fees or charges, not to exceed one hundred dollars (\$100) per call, for any services rendered by the board or its employees that are deemed necessary by the board and for which no fee has been set by statute;
- L. consider the views of the livestock industry in the administration of The Livestock Code;
- M. adopt and promulgate rules to otherwise carry out the purposes of The Livestock Code;
- N. hold hearings and subpoena witnesses for the purpose of investigating or enforcing The Livestock Code or rules established pursuant to that code; and
- O. enter into joint powers agreements with Indian nations, tribes or pueblos to promote cooperation in carrying out the provisions of The Livestock Code.

**History:** 1953 Comp., § 47-23-6, enacted by Laws 1967, ch. 213, § 6; 1973, ch. 234, § 5; 1983, ch. 229, § 2; 1993, ch. 248, § 4; 1995, ch. 111, § 2; 1999, ch. 282, § 3.

**77-2-7.1. Brands; subject to change in ownership; fees for transfer. (Repealed effective July 1, 2006.)**

Brands recorded in accordance with the provisions of Section 77-9-10 NMSA 1978 [77-2-7.4 NMSA 1978] are personal property of the person in whose name they are recorded. Ownership may be transferred in the same manner as other personal property. The fee for recording a transfer of ownership with the director of the New Mexico livestock board shall be a sum fixed by the board not to exceed the amount prescribed by law.

**History:** Laws 1895, ch. 6, § 3; C.L. 1897, § 108; Code 1915, § 119; C.S. 1929, § 4-1405; 1941 Comp., § 49-905; 1953 Comp., § 47-9-5; Laws 1959, ch. 249, § 1; 1971, ch. 50, § 1; 1975, ch. 91, § 1; 1981, ch. 357, § 5; 1978 Comp., § 77-9-7, recompiled as 1978 Comp., § 77-2-7.1 by Laws 1999, ch. 282, § 103.

**77-2-7.2. Registration of brands and marks; board. (Repealed effective July 1, 2006.)**

Except as otherwise authorized by the board, the board is the sole authority for the registration of brands, marks or electronic identification on livestock in this state.

**History:** Laws 1895, ch. 6, § 4; C.L. 1897, § 109; Code 1915, § 120; C.S. 1929, § 4-1406; 1941 Comp., § 49-906; 1953 Comp., § 47-9-6; Laws 1971, ch. 50, § 2; 1978 Comp., § 77-9-8, amended and recompiled as 1978 Comp., § 77-2-7.2 by Laws 1999, ch. 282, § 11.

**77-2-7.3. Brand books. (Repealed effective July 1, 2006.)**

The board shall keep a suitable record of all registered brands, marks and electronic identification used for the identification of livestock in this state.

**History:** Laws 1895, ch. 6, § 5; C.L. 1897, § 110; Code 1915, § 121; C.S. 1929, § 4-1407; 1941 Comp., § 49-907; 1953 Comp., § 47-9-7; Laws 1983, ch. 229, § 7; 1993, ch. 248, § 45; 1978 Comp., § 77-9-9, amended and recompiled as 1978 Comp., § 77-2-7.3 by Laws 1999, ch. 282, § 12.

**77-2-7.4. Recording before use; recording fee; conflicting brands. (Repealed effective July 1, 2006.)**

A. A brand shall not be used until recorded. A facsimile of the brand and a recording fee fixed by the board shall be forwarded to the director. One certified copy of the recorded brand shall be furnished to the owner of the brand by the director when the brand is recorded.

B. The director shall immediately record the brand unless it has been recorded previously or conflicts with a prior recorded brand. In that event, the director shall return the facsimile unrecorded and charge a fee for the research.

C. Additional certified copies of brands recorded may be obtained from the director by the payment of a fee to be fixed by the board in a sum not to exceed the amount prescribed by law.

**History:** Laws 1895, ch. 6, § 9; C.L. 1897, § 113; Code 1915, § 123; C.S. 1929, § 4-1409; 1941 Comp., § 49-908; Laws 1949, ch. 49, § 1; 1953 Comp., § 47-9-8; Laws 1959, ch. 249, § 2; 1971, ch. 50, § 3; 1975, ch. 91, § 2; 1981, ch. 357, § 6; 1978 Comp., § 77-9-10, amended and recompiled as 1978 Comp., § 77-2-7.4 by Laws 1999, ch. 282, § 13.

**77-2-7.5. Fees; disposition. (Repealed effective July 1, 2006.)**

The fees for recording or researching brands and for furnishing certified copies of the recording or research shall be placed to the credit of the New Mexico livestock board interim receipts and disbursements fund.

**History:** Laws 1905, ch. 30, § 1; Code 1915, § 124; C.S. 1929, § 4-1410; 1941 Comp., § 49-909; 1953 Comp., § 47-9-9; Laws 1993, ch. 248, § 46; 1978 Comp., § 77-9-11, amended and recompiled as 1978 Comp., § 77-2-7.5 by Laws 1999, ch. 282, § 14.

**77-2-7.6. Brand book. (Repealed effective July 1, 2006.)**

The director shall publish a brand book in which shall be given a facsimile or copy of all brands recorded in the office of the board, together with the owner's name and address. The board may publish if it deems best to do so a limited number of brand books in addition to the number required by the provisions of this section and to sell them for such price as the board considers reasonable and proper. The price shall not be less than the actual cost.

**History:** Laws 1895, ch. 6, § 12; C.L. 1897, § 116; Code 1915, § 127; C.S. 1929, § 4-1413; 1941 Comp., § 49-912; 1953 Comp., § 47-9-11; Laws 1983, ch. 229, § 8; 1993, ch. 248, § 48; 1978 Comp., § 77-9-13, amended and recompiled as 1978 Comp., § 77-2-7.6 by Laws 1999, ch. 282, § 15.

**77-2-7.7. More than one brand unlawful; exceptions; penalty. (Repealed effective July 1, 2006.)**

A. It is unlawful for an owner of livestock in originally marking or branding livestock to make use of or keep up more than one mark or brand; provided that an owner may own and possess livestock in different marks or brands if they were acquired by him by purchase or other lawful manner and evidenced by a bill of sale from the previous owner of the livestock having such brands or from the heirs, executors, administrators or legal representatives of the owner. Livestock so acquired shall be branded or marked as provided in The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978] by and with the recorded brand or mark of the person acquiring the livestock. It is lawful for the purpose of identification during the pendency of a mortgage or lien to brand the increase of the branded livestock in the recorded brand designated in the mortgage or lien.

B. A brand shall not be altered by placing another brand on it or in the same location.

C. A person who unlawfully brands livestock contrary to the provisions of The Livestock Code is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

**History:** Laws 1895, ch. 6, § 13; C.L. 1897, § 117; Code 1915, § 128; Laws 1919, ch. 54, § 1; C.S. 1929, § 4-1414; 1941 Comp., § 49-913; 1953 Comp., § 47-9-12; Laws 1975, ch. 139, § 4; 1993, ch. 248, § 49; 1978 Comp., § 77-9-14, amended and recompiled as 1978 Comp., § 77-2-7.7 by Laws 1999, ch. 282, § 16.

**77-2-7.8. Brands of minors. (Repealed effective July 1, 2006.)**

Minors owning livestock separate from that of the parent or guardian may have a mark or brand, which shall be recorded in accordance with the requirement of The Livestock Code [Chapter 77, Articles 2 to 18 NMSA 1978], but the parent or guardian shall be responsible for the proper use of the mark or brand by any minor.

**History:** Laws 1895, ch. 6, § 14; C.L. 1897, § 118; Code 1915, § 129; C.S. 1929, § 4-1415; 1941 Comp., § 49-914; 1953 Comp., § 47-9-13; 1993, ch. 248, § 50; 1978 Comp., § 77-9-15, amended and recompiled as § 77-2-7.8 by Laws 1999, ch. 282, § 17.

**77-2-7.9. Filing of facsimile; designation of brands; holding brand renewal and fee; branding increase; offenses; penalty. (Repealed effective July 1, 2006.)**

An owner of livestock desiring to use in branding a brand not already recorded in the office of the board shall file with the director a facsimile of the desired brand. The owner may record the desired brands as holding brands upon livestock so owned upon furnishing to the director a full description as to the number, class and locality of all livestock branded with the holding brand. A recorded holding brand may be used also on a show animal. A fee shall be charged for the recording of a holding brand, which recording shall be valid for a period of one year or until the described livestock depart the state, whichever comes first. The recording may be renewed for additional years by the payment of a fee at each yearly renewal; provided that it is unlawful for the owner to brand the increase of such livestock in any other brand than the recorded brand of the owner except in the case of mortgaged livestock as provided in Section 77-9-14 NMSA 1978, as recompiled [77-2-7.7 NMSA 1978]. A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

**History:** Laws 1912, ch. 55, § 2; Code 1915, § 138; Laws 1919, ch. 55, § 1; C.S. 1929, § 4-1424; 1941 Comp., § 49-915; 1953 Comp., § 47-9-14; Laws 1977, ch. 148, § 1; 1981, ch. 357, § 7; 1993, ch. 248, § 51; 1978 Comp., § 77-9-16, amended and recompiled as 1978 Comp., § 77-2-7.9 by Laws 1999, ch. 282, § 18.

**77-2-7.10. Brands; board may reject. (Repealed effective July 1, 2006.)**

The board shall have the power to reject any brand offered for record under the provisions of Section 77-9-16 NMSA 1978 [77-2-7.9 NMSA 1978] when upon satisfactory evidence it is shown to the board that the same is offered for or is of such character that may be used for malicious or deceptive purposes or is not in conformity with the provisions of Section 77-9-16 NMSA 1978 [77-2-7.9 NMSA 1978].

**History:** Laws 1912, ch. 55, § 5; Code 1915, § 141; C.S. 1929, § 4-1427; 1941 Comp., § 49-917; 1953 Comp., § 47-9-16; 1993, ch. 248, § 52; 1978 Comp., § 77-9-18, recompiled as 1978 Comp., § 77-2-7.10 by Laws 1999, ch. 282, § 103.

**77-2-7.11. Brand; priority of right to. (Repealed effective July 1, 2006.)**

The time of record of any brand by the owner in the county wherein the brand was originally recorded before the creation of the board shall determine the priority of right and property in the brand and not the time of filing with the board, provided the brand has been continuously used from the date of original record.

**History:** Laws 1912, ch. 55, § 6; Code 1915, § 142; C.S. 1929, § 4-1428; 1941 Comp., § 49-918; 1953 Comp., § 47-9-17; Laws 1993, ch. 248, § 53; 1978 Comp., § 77-9-19, recompiled as 1978 Comp., § 77-2-7.11 by Laws 1999, ch. 282, § 103.

**77-2-7.12. Re-recording of brands; notice; publication; fees. (Repealed effective July 1, 2006.)**

**A.** The board shall cause all brands now on record to be re-recorded whenever the board deems necessary to clear records of unused brands. For this purpose, the board shall mail a notice, addressed to each owner of a brand now of record with the board at the current address shown on the brand record, requiring the owners of brands to file with the director any brand being on record to the owners. In addition to this notice, the board shall publish in either English or Spanish or both in at least one newspaper in each county in this state where there is a newspaper a copy of the notice to re-record. The publication shall continue for at least four consecutive weeks.

**B.** Within three months from the date of the first publication of the notice to re-record, owners of brands of record in the office of the board shall file with the director the brands in actual use and recorded by them and pay the re-recording fee. The fees shall be deposited in the proper fund of the board. Re-recording shall not be required more often than once in a three-year period.

**History:** Laws 1923, ch. 146, § 1; C.S. 1929, § 4-1445; 1941 Comp., § 49-919; Laws 1949, ch. 47, § 1; 1953 Comp., § 47-9-18; Laws 1971, ch. 50, § 4; 1975, ch. 91, § 3; 1981, ch. 357, § 8; 1993, ch. 248, § 54; 1978 Comp., § 77-9-20, amended and recompiled as 1978 Comp., § 77-2-7.12 by Laws 1999, ch. 282, § 19.

**77-2-8. Research and promotion of meat and meat products. (Repealed effective July 1, 2006.)**

The board may enter into contracts for research into and promotion of meat and meat products. The contracts shall carry provisions for financing, and the board may accept and expend voluntary contributions from any source to finance the contracts. The provisions of this section shall not apply to or include cattle coming out of feed lots.

**History: 1953 Comp., § 47-23-6.1, enacted by Laws 1969, ch. 177, § 1; 1999, ch. 282, § 4.**

**77-2-9. Reports of inspectors; prosecution of violations of livestock laws. (Repealed effective July 1, 2006.)**

A. The New Mexico livestock board shall keep reports of its veterinarians and inspectors in accordance with Public Records Act [Chapter 14, Article 3 NMSA 1978].

B. The New Mexico livestock board shall assist in the prosecution of persons charged with the violation of the livestock laws and may call upon any inspector or other peace officer to execute its orders, and when it does, the officer or inspector shall obey the order of the board.

**History: 1953 Comp., § 47-23-7, enacted by Laws 1967, ch. 213, § 8; 1983, ch. 229, § 3.**

**77-2-10. Receipts and disbursements; issuance of warrants, purchase orders and contracts; deposit of funds. (Repealed effective July 1, 2006.)**

A. All fees and other money collected by the board shall be received and disbursed directly by the board, but receipts and disbursements are subject to audit by the state auditor. The board is not required to submit proposed vouchers, purchase orders or contracts to the department of finance and administration as otherwise required by Section 6-5-3 NMSA 1978.

B. The executive director of the board shall issue warrants in the name of the board against funds of the board in payment of its lawful obligations, issue purchase orders and contract for goods or services in the name of the board. The board shall provide its own warrant, purchase order and contract forms as well as other supplies and equipment.

C. The board shall designate banks where its money is to be deposited.

D. Notwithstanding the provisions of Section 6-10-3 NMSA 1978, the board may establish rules governing the receipt and deposit of fees collected by its inspectors requiring remittance to the board in not more than ten days.

**History: 1953 Comp., § 47-23-8, enacted by Laws 1973, ch. 84, § 1; 1993, ch. 248, § 5.**

**77-2-11. Repealed.**

**77-2-12. Executive director; duties, oath and bond. (Repealed effective July 1, 2006.)**

The executive director of the board shall keep records of inspections of brands and earmarks as deemed necessary by the board and shall perform such other duties as are prescribed by the board. He shall take and subscribe an oath faithfully to perform all of his duties as executive director of the board and shall enter into bond in an amount to be fixed by the board, with good and sufficient sureties, to be approved by the board, conditioned for the faithful performance of his duties.

**History: Laws 1891, ch. 34, § 11; C.L. 1897, § 217; Code 1915, § 72; C.S. 1929, § 4-807; Laws 1933, ch. 53, § 3; 1941 Comp., § 49-206; 1953 Comp., § 47-2-6; Laws 1983, ch. 229, § 4; 1993, ch. 248, § 6.**

**77-2-13. Records; certified copy evidence. (Repealed effective July 1, 2006.)**

The records required to be kept by the director, including inspector reports, shall be maintained by the board in a readily available manner, and a certified copy of any such records under the hand and seal of the director or the verified oath of an inspector shall be prima facie evidence in all courts of this state of the truth of any fact required to be recorded therein.

**History: Laws 1891, ch. 34, § 9; C.L. 1897, § 215; Code 1915, § 73; C.S. 1929, § 4-808; 1941 Comp., § 49-207; 1953 Comp., § 47-2-7; Laws 1983, ch. 229, § 5; 1999, ch. 282, § 5.**

**77-2-14. Attorney; duties. (Repealed effective July 1, 2006.)**

The board may employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to livestock. The board shall fix the compensation to be paid to such attorney.

**History:** Laws 1937, ch. 205, § 1; 1941 Comp., § 49-210; 1953 Comp., § 47-2-10; Laws 1986, ch. 32, § 41; 1999, ch. 282, § 6.

**77-2-15. Special taxes; levy; collection. (Repealed effective July 1, 2006.)**

A. Each year the board of county commissioners of each county shall at its first meeting after the return of the assessment of the property for taxation by the county assessors of each county, levy a special tax at a rate to be fixed each year by the New Mexico livestock board. Subject to the provisions of Section 7-37-7.1 NMSA 1978, the New Mexico livestock board shall, in each year, order the levy of a tax on livestock at a rate not to exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code [Chapter 7, Article 35 to 38 NMSA 1978], of the livestock. The New Mexico livestock board may set different rates for individual classes of livestock.

B. The order imposing the levy of the tax shall be made on or before June 30 in each year and shall be certified to the department of finance and administration by the director. The department of finance and administration shall certify the amount of the levy to the board of county commissioners of each county, and the board of county commissioners shall include the levy in its annual levy of taxes. The special tax shall be collected in each county and paid to the state treasurer in the manner provided by law for the collection and payment of other state taxes. Such funds shall be remitted to the New Mexico livestock board for deposit in the interim receipts and disbursements fund.

**History:** Laws 1937, ch. 205, § 2; 1939, ch. 15, § 1; 1941, ch. 151, § 1; 1941 Comp., § 49-211; 1953 Comp., § 47-2-11; Laws 1961, ch. 142, § 1; 1986, ch. 32, § 42; 1993, ch. 248, § 7; 1999, ch. 282, § 7.

**77-2-16. Financial report and tax estimate; state levy; maximum rate. (Repealed effective July 1, 2006.)**

It is the duty of the board on or before June 30 of each year to make and file with the department of finance and administration a report and estimate showing the amount of money in the custody or under the control of the treasurer of the board, the estimated receipts from all sources and the actual and estimated expenditures for the current fiscal year. The department of finance and administration shall annually, at the time and in the manner of certifying rates under the Property Tax Code [Chapter 7, Articles 35 to 38 NMSA 1978], certify a rate and impose a levy upon all cattle, horses, mules, asses, sheep, goats and buffalo in every county in the state, provided that such levy shall not exceed the amount required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

**History:** Laws 1915, ch. 85, § 1; 1929, ch. 157, § 2; C.S. 1929, § 4-815; 1941 Comp., § 49-212; 1953 Comp., § 47-2-12; Laws 1977, ch. 249, § 29; 1986, ch. 32, § 43; 1993, ch. 248, § 8.

**77-2-17. Payment of tax collections to state treasurer; disbursement. (Repealed effective July 1, 2006.)**

The special tax provided by Section 77-2-16 NMSA 1978 shall be assessed and collected in every county and paid over to the state treasurer as provided by law for the assessment, collection and payment of other state taxes, and all money so collected and paid over on account of such special tax levies shall be transferred each month to the board for deposit in the interim receipts and disbursements fund and shall be used for fees, salaries, wages, costs and expenses as provided for by laws relating to the powers, duties and expenditures of the board.

**History:** Laws 1915, ch. 85, § 2; C.S. 1929, § 4-816; Laws 1933, ch. 53, § 6; 1941 Comp., § 49-213; 1953 Comp., § 47-2-13; Laws 1993, ch. 248, § 9.

**77-2-18. Compensation of employees. (Repealed effective July 1, 2006.)**

The compensation of all employees by or under the board and, in the first instance, all other expenses incurred by or under that board shall be paid by the board or, upon its order, out of the funds provided for in The Livestock Code [Chapter 77, Articles 2 to 18 NMSA 1978], such board taking or causing to be taken proper vouchers for all money so expended by them.

**History:** Laws 1889, ch. 106, § 21; C.L. 1897, § 201; Code 1915, § 80; C.S. 1929, § 4-817; 1941 Comp., § 49-214; 1953 Comp., § 47-2-14; Laws 1993, ch. 248, § 10.

**77-2-19. Limitation on expenditures. (Repealed effective July 1, 2006.)**

The amount of money to be expended by the board in any one year, is limited to the amount set forth in a budget approved by the department of finance and administration.

**History:** Laws 1889, ch. 106, § 22; C.L. 1897, § 202; Code 1915, § 81; C.S. 1929, § 4-818; 1941 Comp., § 49-215; 1953 Comp., § 47-2-15; Laws 1981, ch. 357, § 1; 1993, ch. 248, § 11.

**77-2-20. Repealed.**

**77-2-21. Fees. (Repealed effective July 1, 2006.)**

All fees and charges collected pursuant to the provisions of The Livestock Code [Chapter 77, Articles 2 to 18 NMSA 1978] shall be paid to the executive director of the board to be deposited in the New Mexico livestock board general fund, hereby created. All fees and charges deposited in the New Mexico livestock board general fund may be expended in accordance with a budget approved by the department of finance and administration.

**History:** Laws 1893, ch. 67, § 3; C.L. 1897, § 222; Code 1915, § 83; C.S. 1929, § 4-820; Laws 1933, ch. 53, § 7; 1941 Comp., § 49-217; 1953 Comp., § 47-2-17; Laws 1993, ch. 248, § 12.

**77-2-22. Penalty for violating rule. (Repealed effective July 1, 2006.)**

Any person who violates a rule adopted under the power granted to the board unless the penalty has been fixed by law is guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

**History:** Laws 1933, ch. 53, § 2; 1941 Comp., § 49-219; 1953 Comp., § 47-2-19; Laws 1967, ch. 213, § 7; 1999, ch. 282, § 8.

**77-2-23, 77-2-24. Repealed.**

**77-2-25. Interim receipts and disbursements fund created. (Repealed effective July 1, 2006.)**

There is created the "interim receipts and disbursements fund". All money received by the board from tax levies authorized by this article shall be credited to this fund and deposited in a designated bank in the name of the board. Money shall be disbursed from this fund only upon a warrant issued by the executive director in the name of the board. Disbursements may be made to pay necessary expenses and obligations of the board, which include expenses for salaries, supplies, equipment, rent on office space or other goods and services in accordance with a budget approved by the department of finance and administration. The board shall prescribe any additional administrative procedure necessary to administer this fund.

**History:** 1953 Comp., § 47-2-23, enacted by Laws 1959, ch. 291, § 2; 1993, ch. 248, § 14.

**77-2-26. Board not to be assessed for general administrative overhead. (Repealed effective July 1, 2006.)**

No appropriation for the board shall include an item for general administrative overhead. No charge for general administrative overhead shall be assessed against or appropriated out of the interim receipts and disbursement fund or from any other fund or money administered by the board. No fees or money collected by the board shall be subject to assessment for any charge for general administrative overhead.

**History:** 1953 Comp., § 47-2-24, enacted by Laws 1959, ch. 291, § 3; 1993, ch. 248, § 15.

**77-2-27. Repealed.**

**77-2-28. Termination of board life; delayed repeal. (Repealed effective July 1, 2006.)**

The New Mexico livestock board is terminated July 1, 2005 unless continued by the legislature pursuant to the Sunset Act [12-9-11 to 12-9-21 NMSA 1978]. The board shall continue to operate according to all of the provisions of Chapter 77, Article 2 NMSA 1978 until July 1, 2006 for the purpose of winding up its affairs. Effective July 1, 2006, Chapter 77, Article 2 NMSA 1978 is repealed.

**History:** 1978 Comp., § 77-2-28, enacted by Laws 1981, ch. 5, § 1; 1987, ch. 333, § 16; 1993, ch. 248, § 16; 1999, ch. 282, § 9; 2000, ch. 4, § 21.

**77-2-29. Fees. (Repealed effective July 1, 2006.)**

The following fees shall be fixed by the board for services rendered pursuant to the provisions of The Livestock Code [Chapter 77, Articles 2 through 18 NMSA 1978]:

A. an inspection or permit fee not to exceed sixteen cents (\$.16) per head to be charged for the importation or exportation of sheep and goats pursuant to Section 77-8-3 NMSA 1978 and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board shall not increase the fee more than four cents (\$.04) in any one fiscal year;

B. a fee for recording a transfer of a brand pursuant to Section 77-9-7 NMSA 1978, as recompiled [77-2-7.1 NMSA 1978], in an amount not to exceed fifty dollars (\$50.00);

C. a fee for recording a brand or researching a brand pursuant to Section 77-9-10 NMSA 1978, as recompiled [77-2-7.4 NMSA 1978], in an amount not to exceed fifty dollars (\$50.00);

D. a fee for additional copies of certified copies of brands pursuant to Section 77-9-10 NMSA 1978, as recompiled [77-2-7.4 NMSA 1978], in an amount not to exceed five dollars (\$5.00) per copy;

E. a fee for the recording of a holding brand pursuant to Section 77-9-16 NMSA 1978, as recompiled [77-2-7.9 NMSA 1978], in an amount not to exceed one hundred dollars (\$100), which recording shall be valid for one year from the date of recording, and an additional fee in an amount not to exceed one hundred dollars (\$100) for each annual renewal;

F. a fee for the rerecording of brands pursuant to Section 77-9-20 NMSA 1978, as recompiled [77-2-7.12 NMSA 1978], in an amount not to exceed fifty dollars (\$50.00);

G. a fee for the inspection of livestock pursuant to Section 77-9-38 or 77-10-4 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per head and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents (\$.10) in any one fiscal year;

H. a fee for the inspection of hides pursuant to Section 77-9-54 NMSA 1978 in an amount not to exceed fifty cents (\$.50) per hide and a service charge in an amount not to exceed ten dollars (\$10.00) for each inspection request; provided that the board may not increase the inspection fee more than ten cents (\$.10) in any one fiscal year;

I. a fee for the handling of the proceeds of the sale of an estray pursuant to Section 77-13-6 NMSA 1978 in an amount not to exceed ten dollars (\$10.00);

J. a fee for the impoundment of trespass livestock pursuant to Section 77-14-36 NMSA 1978 in an amount not to exceed ten dollars (\$10.00) per head per day and a reasonable charge for the moving of trespass livestock pursuant to Section 77-14-36 NMSA 1978 to be set by the board;

K. a fee for the licensing of a livestock auction market pursuant to Section 77-10-2 NMSA 1978 in an amount not to exceed twenty-five dollars (\$25.00);

L. a fee for issuing a transportation permit pursuant to Section 77-9-42 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00);

M. a fee for the licensing of a cattle or sheep rest station pursuant to Section 77-9A-2 NMSA 1978 in an amount not to exceed twenty-five dollars (\$25.00); and

N. a fee for issuing a certificate of brand exemption pursuant to Section 77-8-22 or Section 77-9-3 NMSA 1978 in an amount not to exceed fifty dollars (\$50.00).

**History:** 1978 Comp., § 77-2-28, enacted by Laws 1981, ch. 357, § 2; 1982, ch. 61, § 1; 1993, ch. 248, § 17; 1999, ch. 282, § 10.

