

CHAPTER 61

Professional and Occupational Licenses

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

ARTICLE 1

Uniform Licensing

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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.