

New Mexico Register / Volume XXX, Issue 12 / June 25, 2019

The New Department of Health approved the repeal of its rule 16.11.2 NMAC - Certified Nurse-Midwives (filed 8/15/2013) and replaced it with 16.11.2 NMAC - Certified Nurse-Midwives (adopted on 5/20/2019), and effective 6/25/2019.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 11 MIDWIVES
PART 2 CERTIFIED NURSE-MIDWIVES

16.11.2.1 ISSUING AGENCY: New Mexico Department of Health.
[16.11.2.1 NMAC - Rp, 16.11.2.1 NMAC, 6/25/2019]

16.11.2.2 SCOPE: This rule applies to any person seeking to practice or currently practicing as a certified nurse-midwife in the state of New Mexico.
[16.11.2.2 NMAC - Rp, 16.11.2.2 NMAC, 6/25/2019]

16.11.2.3 STATUTORY AUTHORITY: This rule is authorized by Subsection E of Section 9-7-6 NMSA 1978, Subsection R of Sections 24-1-3 and 24-1-4.1, NMSA 1978.
[16.11.2.3 NMAC - Rp, 16.11.2.3 NMAC, 6/25/2019]

16.11.2.4 DURATION: Permanent.
[16.11.2.4 NMAC - Rp, 16.11.2.4 NMAC, 6/25/2019]

16.11.2.5 EFFECTIVE DATE: June 25, 2019, unless a later date is cited at the end of a section.
[16.11.2.5 NMAC - Rp, 16.11.2.5 NMAC, 6/25/2019]

16.11.2.6 OBJECTIVE: This rule governs the licensure and practice of certified nurse-midwives (CNMs) in New Mexico.
[16.11.2.6 NMAC - Rp, 16.11.2.6 NMAC, 6/25/2019]

16.11.2.7 DEFINITIONS:

- A.** "ACNM" means the American college of nurse-midwives.
- B.** "AMCB" means American midwifery certification board.
- C.** "Addiction" is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and craving. Physical dependence and tolerance are normal physiological consequences of extended opiate or opioid therapy for pain and should not by themselves be considered addiction.
- D.** "Board" means the certified nurse-midwifery advisory board established under these rules.
- E.** "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who is certified by the AMCB or its designee and who is licensed under this rule.
- F.** "Chronic pain" means pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically, for longer than three consecutive months. For purposes of this rule, chronic pain does not include pain associated with a terminal condition or with a progressive disease that, in the normal course of progression, may reasonably be expected to result in a terminal condition.
- G.** "CNM license" means a document issued by the department identifying a legal privilege and authorization to practice within the scope of this rule.
- H.** "Contact hour" means 50-60 minutes of an organized learning experience relevant to CNM practice, approved by one of the following:
 - (1) accreditation council for continuing medical education (ACCME);
 - (2) ACNM;
 - (3) American college of obstetricians and gynecologists (ACOG);
 - (4) American academy of physician assistants (AAPA);
 - (5) American academy of nurse practitioners (AANP);
 - (6) nurse practitioners in women's health (NPWH); or
 - (7) other clinician-level continuing education accrediting agencies approved by the department.

I. "Continuance" means the adjournment or postponement of a trial or other proceeding to a future date.

J. "Controlled substance" means any drug or therapeutic agent listed in Schedules I through V of Sections 30-31-6 to 30-31-10 NMSA 1978, Controlled Substances Act, or rules adopted thereto, which is commonly understood to include narcotics.

K. "Dangerous drug" means a prescription drug other than a controlled substance that has been determined by law to be unsafe for self-administration and is included in Sections 26-1-1 to 26-1-26 NMSA 1978, New Mexico Drug, Device and Cosmetic Act, and in Sections 30-31-6 NMSA, Controlled Substances Act.

L. "Department" means the New Mexico department of health.

M. "Division" means the public health division.

N. "National practitioner data bank (NPDB)" means the web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers.

O. "Pain" means an unpleasant sensory and emotional experience associated with inflammation or with actual or potential tissue damage or described in terms of such inflammation and damage, which could include acute, persistent, or chronic pain.

P. "Peer review" means the assessment and evaluation of CNM practice by other CNMs and other health care providers to measure compliance with established institutional or legal standards. In the peer review process, a CNM's practice undergoes scrutiny for the purpose of professional self-regulation.

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

R. "Prescription monitoring program (PMP)" means a centralized electronic system within the New Mexico board of pharmacy that collects, monitors, and analyzes data submitted by dispensing practitioners and pharmacies related to the prescribing and dispensing of controlled substances. The data are used to support efforts in education, research, enforcement, and abuse prevention.

S. "Primary care" means the provision of integrated, accessible health care services by clinicians who are accountable for addressing the large majority of presenting health care needs, developing sustained partnerships with clients, and practicing within the context of family and community.

T. "Quality assurance" means monitoring structural, procedural, and outcome indicators as they relate to accepted standards.

U. "Quality improvement" means modifying the process for providing care in order to improve outcomes. Modifications are based upon the measurement of parameters such as evidence-based best practices, patient satisfaction, clinical outcomes, population-specific care, culturally appropriate care, appropriate use of technology and resources, and access to care.

V. "Therapeutic purpose" means the use of pharmaceutical and non-pharmaceutical treatments and the spectrum of available modalities that conforms substantially to accepted guidelines.

W. "Tolerance" means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

X. "Valid CNM-client relationship" means a professional relationship between the CNM and the client for the purpose of maintaining the client's well-being. At minimum, this relationship is an interactive encounter between the CNM and client involving an appropriate history and physical or mental examination; ordering labs or diagnostic tests sufficient to make a diagnosis; and providing, prescribing, or recommending treatment, or referring to other health care providers. A patient record must be generated by the encounter. The relationship includes:

(1) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is indicated and necessary for treatment of a condition when the CNM prescribes a dangerous drug or controlled substance;

(2) the CNM has sufficient information to ensure that a dangerous drug or controlled substance is not contraindicated for the individual;

(3) the CNM provides a client with appropriate information on the proper dosage, route, frequency, and duration of a drug treatment;

(4) the CNM informs the client of possible untoward effects and side effects of a proposed treatment;

(5) the CNM provides care for a client in the event of an untoward effect or a side effect that requires care;

- (6) the CNM provides for client education regarding a condition and the condition's treatment to enhance client compliance with plan of care;
 - (7) the CNM provides for appropriate follow-up care, including further testing, treatment and education, as appropriate; and
 - (8) the CNM documents, at minimum, the indication, drug, and dosage of any prescribed drugs in a health record for the individual.
- [16.11.2.7 NMAC - Rp, 16.11.2.7 NMAC, 6/25/2019]

16.11.2.8 DOCUMENTS INCORPORATED BY REFERENCE ARE THE LATEST EDITIONS OF:

- A. ACNM "core competencies for basic midwifery practice".
- B. ACNM "standards for the practice of midwifery".
- C. ACNM handbook: "the home birth practice manual".

[16.11.2.8 NMAC - Rp, 16.11.2.8 NMAC, 6/25/2019]

16.11.2.9 LICENSURE:

A. Licensure requirements: A CNM practicing in New Mexico shall hold a license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico and shall hold current certification by AMCB or its designee. The department may deny licensure, including renewal or reinstatement of licensure, to a CNM whose midwifery or nursing license has been subject to disciplinary action in any jurisdiction. If denied, re-application will only be considered after a minimum of one year from date of initial denial, and the re-application must be accompanied by full disclosure and complete record of previous actions. A CNM license is not transferable.

B. Initial licensure:

- (1) An applicant for licensure to practice as a CNM in New Mexico shall submit to the department:
 - (a) a completed application;
 - (b) proof of holding a valid license that meets the New Mexico board of nursing's requirement to practice as a registered nurse in New Mexico;
 - (c) proof of current certification by AMCB or its designee;
 - (d) the fee designated in Subsection E of this section.
- (2) An initial CNM license may be issued at any time upon submission and verification of the materials required in Paragraph (1) of this subsection and shall expire on the expiration date of the registered nurse license issued by the New Mexico board of nursing. A CNM license shall be valid for a maximum of two years.
- (3) If a license is denied on initial application, the applicant may reapply after one year and upon meeting all the requirements under Subsection B of 16.11.2.9 NMAC.
- (4) Any final action denying a license to an applicant is an event reportable to the NPDB.

C. Licensure renewal:

- (1) A CNM's renewed license shall expire on the expiration date of the registered nurse license issued by the New Mexico board of nursing.
- (2) An applicant for licensure renewal shall submit to the department:
 - (a) a completed application postmarked or electronically submitted at least 25 calendar days before the expiration of the CNM license;
 - (b) proof of holding a valid license that meets the requirement of the New Mexico board of nursing to practice as a registered nurse in New Mexico for the period the renewed CNM license will cover;
 - (c) proof of current certification by AMCB or its designee;
 - (d) proof of having met the continuing education and quality management requirements in Paragraphs (3) and (4) of this subsection; and
 - (e) the fee designated in Subsection E of this section;
 - (f) an additional fee designated in Subsection E of this section for applications postmarked, hand delivered, or electronically submitted after the fifth day of the month after the license is expiring.
- (3) Continuing education: CNMs must complete a minimum of 30 contact hours during the two years preceding license renewal.

(a) 15 of the contact hours shall be pharmacology-related. As part of the pharmacology-related contact hours, a CNM who holds a CNM license shall submit with the first license renewal application proof of completing a minimum of five contact hours on any of the following topics:

- (i) the CNM rule as it applies to management of chronic pain,
- (ii) the pharmacology and risks of controlled substances,
- (iii) the problems of abuse and addiction, or
- (iv) state and federal regulations for the prescription of controlled

substances.

(b) With each subsequent license renewal application, a CNM shall submit proof of completing a minimum of two contact hours on the above topics.

(c) The following options, subject to audit and approval by the department, may be accepted in place of continuing education contact hours, except for the pharmacology-related contact hours requirement:

(i) preparation and presentation of a nurse-midwifery topic that has received contact hour approval by any of the organizations listed in Subsection G of 16.11.2.7 NMAC, will count for twice the number of contact hours for which the presentation is approved; the same presentation cannot be credited more than once;

(ii) sole or primary authorship of one nurse-midwifery related article published in a department-approved professional medical or midwifery journal may be accepted in place of 10 contact hours per licensure period;

(iii) completion of a formal university or college course directly related to nurse-midwifery practice; each university or college unit shall be credited as 15 hours of continuing education; and

(iv) acting as primary preceptor for a nurse-midwifery or certified midwifery student; each 10 hours of precepting shall be credited as one continuing education hour; verification shall be provided by an accreditation commission for midwifery education (ACME) accredited nurse-midwifery education program; acting as primary preceptor for a licensed midwifery student upon verification of out of hospital setting practice by the CNM, prior to preceptor relationship This option shall not be accepted in place of pharmacology-related contact hours.

(4) Quality management: documentation of participation during the preceding two years in a system of quality management meeting the approval of the department is required for license renewal. Quality management includes peer review, quality assurance and quality improvement as defined in Subsections P, U, T of 16.11.2.7 NMAC.

(5) If license renewal is denied, the applicant may request an administrative hearing under the terms set forth by Paragraph (5) of Subsection C of 16.11.2.11 NMAC.

D. Reinstatement of a lapsed CNM license: The requirements for reinstatement of a CNM license that has lapsed are the same as those for license renewal, listed in Paragraph (2) of Subsection C of 16.11.2.9 NMAC, except that the applicant may submit an application at any time within four years of the license's lapsing and the fee is higher than a renewal, as designated in Subsection E of this section.

E. Fees: the department shall charge applicants the following fees for licensure services:

(1) two hundred dollars (\$200) for initial licensure;

(2) one hundred dollars (\$100) for license renewal;

(3) one hundred and fifty dollars (\$150.00) additional for renewing a license when the complete application is not postmarked, hand delivered, or electronically submitted by the fifth calendar day of the month of the current license's expiration date;

(4) one hundred and fifty dollars (\$150.00) additional to a renewal licensure fee for reinstatement of a lapsed or a revoked license;

(5) twenty-five dollars (\$25.00) for verifying licenses by FAX or letter;

(6) thirty dollars (\$30.00) for a hard copy of a license certificate (8 ½" x 11" size).

F. Change of address or other contact information: a CNM shall report a change of any contact information to the department within 30 days of the change.

[16.11.2.9 NMAC - Rp, 16.11.2.9 NMAC, 6/25/2019]

16.11.2.10 PRACTICE OF THE CERTIFIED NURSE-MIDWIFE:

A. Scope of practice: Practice by CNMs encompasses independently providing a full range of primary health care services for women from adolescence to beyond menopause. These services include primary care; gynecologic and family planning services; pre-conception care; care during pregnancy, childbirth, and the

postpartum period; care of the normal newborn; and treatment of male partners for sexually transmitted infections. Midwives provide initial and ongoing comprehensive assessment, diagnosis, and treatment. They conduct physical examinations; independently prescribe, distribute, and administer dangerous drugs, devices, and contraceptive methods, and controlled substances in Schedules II through V of Sections 30-31-1 NMSA 1978, Controlled Substances Act; admit, manage, and discharge patients; order and interpret laboratory and diagnostic tests; and order the use of medical devices. Midwifery care also includes health promotion, disease prevention, and individualized wellness education and counseling. These services are provided in partnership with clients/patients in diverse settings such as ambulatory care clinics, private offices, community and public health systems, homes, hospitals, and birth centers. A CNM practices within a health care system that provides for consultation, collaborative management, or referral as indicated by the health status of the client. A CNM practices in accordance with the ACNM "standards for the practice of midwifery". A CNM who expands beyond the ACNM "core competencies" to incorporate new procedures that improve care for their clients/patients shall comply with the guidelines set out in the ACNM "standards for the practice of midwifery", standard VIII. Practice guidelines for home births should be informed by the most recent edition of the "ACNM home birth practice manual."

B. Prescriptive authority:

(1) Dangerous drugs: A CNM who prescribes, distributes, or administers a dangerous drug or device shall do so in accordance with Section 26-1 NMSA 1978, New Mexico Drug, Device and Cosmetic Act.

(2) Controlled substances:

(a) A CNM shall not prescribe nor distribute controlled substances in Schedule I of Section 26-1 1978 NMSA, Controlled Substances Act..

(b) A CNM shall not prescribe, distribute, or administer controlled substances in Schedules II-V of the Controlled Substances Act unless the CNM is registered with the New Mexico board of pharmacy and the United States drug enforcement administration (DEA) to prescribe, distribute, and administer controlled substances.

(c) A CNM who prescribes, distributes, or administers a controlled substance in Schedules II-V of Section 26-1 NMSA 1978, Controlled Substances Act, shall do so in accordance with the Controlled Substances Act.

(d) An individual employed as a CNM by the United States military, the United States veterans administration, or the United States public health service, and operating in the official capacity of that employment, who is prescribing, distributing or administering controlled substances under that facility's United States drug enforcement administration registration is exempt from the Subparagraphs (a), (b) and (c) of Paragraph (2) of this subsection.

(e) A CNM may prescribe, provide samples of, and dispense any dangerous drug to a patient if, at the time of the prescription, the CNM has a valid CNM-client relationship with the patient, as defined in 16.12.2.7 NMAC.

(3) Prescriptions: A CNM may prescribe by telephone, by written prescription, by e-mail, or through an electronic health record (EHR) system. Controlled substances may only be prescribed by written prescription. A CNM prescription shall have the CNM's name, office address, and telephone number printed on it. In the event that a CNM is writing a prescription printed with the names of more than one CNM, the name of the CNM writing the individual prescription shall be indicated. The name and address of the client, the date of the prescription, the name and quantity of the drug prescribed, and directions for use shall be included on a prescription.

(4) Labeling: When distributing a drug, a CNM shall label it with the client's name and date of birth; the date; instructions for use; and the CNM's name, address, and telephone number.

C. Guidelines for management of chronic pain or other conditions with controlled substances.

The treatment of chronic pain or other conditions with various modalities, including controlled substances such as opiates and opioids, is a legitimate practice when done in the usual course of CNM practice. The goal when treating chronic pain is to reduce or eliminate pain and also to avoid development of or contribution to addiction, drug abuse, and overdosing. Effective dosages should be prescribed, with both under- and over-prescribing to be avoided, using patient protection as a guiding principle. The CNM should provide control of the patient's pain for its duration, while effectively addressing other aspects of the patient's functioning, including physical, psychological, social, and work-related factors. A CNM may treat patients with addiction, physical dependence, or tolerance who have legitimate pain, however such patients require very close monitoring and precise documentation.

(1) If, in a CNM's professional opinion, a patient is seeking pain medication for reasons that are not medically justified, the CNM is not required to prescribe controlled substances for the patient.

(2) When prescribing, dispensing, or administering controlled substances for management of chronic pain, a CNM shall:

(a) obtain a PMP report for the patient covering the preceding 12 months from the New Mexico board of pharmacy and any other state's report that is applicable and available;

(b) complete a history and physical examination and include an evaluation of the patient's psychological and pain status, any previous history of significant pain, past history of alternate treatments for pain, potential for substance abuse, coexisting disease or medical conditions, and the presence of medical indications or contra-indications related to controlled substances;

(c) be familiar with and employ screening tools, as well as the spectrum of available modalities for therapeutic purposes, in the evaluation and management of pain, and consider an integrative approach to pain management in collaboration with other care providers, including but not limited to acupuncturists, chiropractors, doctors of oriental medicine, exercise physiologists, massage therapists, pharmacists, physical therapists, psychiatrists, or psychologists;

(d) develop a written individual treatment plan taking age, gender, and culture into consideration, with stated objectives by which treatment can be evaluated, such as degree of pain relief, improved physical and psychological function, or other accepted measures, and include any need for further testing, consultation, referral, or use of other treatment modalities as appropriate;

(e) discuss the risks and benefits of using controlled substances with the patient or legal guardian and document this discussion in the medical record;

(f) make a written agreement with the patient or legal guardian outlining patient responsibilities, including a provision stating that the chronic pain patient will receive all chronic pain management prescriptions from one practitioner and one pharmacy whenever possible;

(g) maintain complete and accurate records of care provided and drugs prescribed, including the indications for use, the name of the drug, quantity, prescribed dosage, and number of refills authorized;

(h) when indicated by the patient's condition, consult with health care professionals who are experienced in the area of the chronic pain or other conditions, though not necessarily specialists in pain control, both early in the course of long-term treatment and at least every six months;

(i) when treating patients with drug addiction or physical dependence, use drug screening prior to and during the course of treatment to identify the drugs the patient is consuming and compare the screening results with patients' self-reports (this should be included in the written agreement, see Subparagraph (f) above);

(j) note possible indications of drug abuse by a patient and take appropriate steps to further investigate and to avoid contributing to drug abuse; such steps may include termination of treatment. Information about some of the indications may be available only through PMP reports. The following list of possible indications of drug abuse is non-exhaustive:

(i) receiving controlled substances from multiple prescribers;

(ii) receiving controlled substances for more than 12 consecutive weeks;

(iii) receiving more than one controlled substance analgesic;

(iv) receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone;

(v) overutilization, including but not limited to early refills;

(vi) appearing overly sedated or intoxicated upon presentation; or

(vii) an unfamiliar patient requesting a controlled substance by specific name, street name, color, or identifying marks.

D. Prescription Monitoring Program (PMP) Requirements: The department requires participation in the PMP to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals. Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting. A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months.

When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record. A prescription monitoring report shall be

reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

(1) A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

- (a) for a period of four days or less; or
- (b) to a patient in a nursing facility; or
- (c) to a patient in hospice care.
- (d) or when prescribing, dispensing, or administering of: testosterone, pregabalin, lacosamide, ezogabine or stimulant therapy for pediatric patients less than age 14.

(2) Upon review of a prescription monitoring report for a patient, the practitioner shall identify, be aware, and document if a patient is currently:

- (a) receiving opioids from multiple prescribers;
- (b) receiving opioids and benzodiazepines concurrently;
- (c) receiving opioids for more than 12 consecutive weeks;
- (d) receiving more than one controlled substance analgesic;
- (e) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (f) exhibiting potential for abuse or misuse of opioids and other controlled

substances, such as any of the following indicators:

- (g) over-utilization;
- (h) requests to fill early;
- (i) requests for a controlled substance or specific opioid by specific name, street name; color, or identifying marks;
- (j) requests to pay cash when insurance is available;
- (k) receiving opioids from multiple pharmacies; or
- (l) appearing overly sedated or intoxicated upon presentation.

(3) Receiving a new prescription for any long-acting controlled substance analgesic formulation, including oral or transdermal dosage forms or methadone.

(4) Upon recognizing any of the above conditions described in item (iv) of Subparagraph (j) of Paragraph (2) of Subsection C 16.11.2.10 NMAC, the practitioner, using professional judgement based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

(5) Practitioners licensed to practice in an opioid treatment program, as defined in 7.32.8 NMAC, shall review a prescription monitoring report upon a patient's initial enrollment into the Opioid Treatment Program and every three months thereafter while prescribing, ordering, administering, or dispensing opioid treatment medications in Schedule II-V for the purpose of treating opioid use disorder. The practitioner shall document the receipt and review of a report in the patient's medical record.

E. Other rules: a CNM shall fulfill the requirements of all relevant department rules including:

- (1) "bureau of vital records and health statistics," 7.2.2 NMAC;
- (2) "control of disease and conditions of public health significance," 7.4.3 NMAC;
- (3) "newborn genetic screening," 7.30.6 NMAC;
- (4) "prevention of infant blindness," 7.30.7 NMAC;
- (5) "requirement for freestanding birth centers," 7.10.2 NMAC; and
- (6) "birthing workforce retention fund," 7.30.9 NMAC.

[16.11.2.10 NMAC - Rp, 16.11.2.10 NMAC, 6/25/2019]

16.11.2.11 LICENSE DENIAL, SUSPENSION, OR REVOCATION; DISCIPLINARY ACTION: The department may deny, revoke, or suspend any license held or applied for or reprimand or place a license on probation on the grounds of incompetence, unprofessional conduct, or other grounds listed in this section, pursuant to Subsection R of Section 24-1-3, NMSA 1978.

A. Grounds for action.

(1) Incompetence. A CNM who fails to possess and apply the knowledge, skill, or care that is ordinarily possessed and exercised by CNMs or as defined by the ACNM "core competencies for basic midwifery practice" is considered incompetent. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions which extend over a period of time and which, taken as a whole, demonstrate incompetence. Conduct of such a character that could result in harm to the client or to the public from the act or omission or series of acts or omissions constitutes incompetence, whether or not actual harm resulted.

(2) Unprofessional conduct. For purposes of this rule "unprofessional conduct" includes, but is not limited to, the following:

- (a) verbally or physically abusing a client;
- (b) engaging in sexual contact with or toward a client;
- (c) abandonment of a client;
- (d) engaging in the practice of midwifery when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (e) practice that is beyond the scope of CNM licensure;
- (f) dissemination of a client's health information or treatment plan to individuals not entitled to such information and where such information is protected by law from disclosure;
- (g) falsifying or altering client records or personnel records for the purpose of reflecting incorrect or incomplete information;
- (h) obtaining or attempting to obtain any fee for client services for one's self or for another through fraud, misrepresentation, or deceit;
- (i) aiding, abetting, assisting, or hiring an individual to violate any rule of the department;
- (j) failure to follow established procedure regarding controlled substances;
- (k) failure to make or to keep accurate, intelligible entries in records as required by the ACNM "standards for the practice of midwifery";
- (l) obtaining or attempting to obtain a license to practice certified nurse-midwifery for one's self or for another through fraud, deceit, misrepresentation, or any other act of dishonesty in any phase of the licensure or relicensure process;
- (m) practicing midwifery in New Mexico without a valid New Mexico license or permit or aiding, abetting or assisting another to practice midwifery without a valid New Mexico license;
- (n) delegation of midwifery assessment, evaluation, judgment, or medication administration to a non-licensed person; or
- (o) failure to provide information requested by the department pursuant to this rule within 20 business days of receiving the request.

(3) Failure to comply with the New Mexico Parental Responsibility Act, Section 40-5A-1 through 40-5A-13, NMSA 1978.

(4) Dereliction of any duty imposed by law.

(5) Conviction of a felony.

(6) Failure to report in writing to the division any complaint or claim made against the CNM's practice as a registered, certified, or licensed health care provider in any jurisdiction, including as a registered nurse. Such notification shall include the credentialing jurisdiction and the location, time, and content of the complaint or claim. It shall be made within 20 business days of the CNM becoming aware of the complaint or claim.

(7) Conduct resulting in the suspension or revocation of a registration, license, or certification to perform as a health care provider.

(8) Failure to report a CNM who appears to have violated the rule for the practice of certified nurse-midwifery. Anyone reporting an alleged violation of this rule shall be immune from liability under this rule unless the person acted in bad faith or with malicious purpose.

(9) Violation of any of the provisions of this rule.

B. Non-disciplinary proceedings: For non-disciplinary actions involving denial of renewal of a license the applicant will be provided a notice of contemplated action and the right to the hearing procedures set forth in Paragraphs (4) and (5) of Subsection (C) 16.11.2.11 NMAC.

C. Disciplinary proceedings: Disciplinary proceedings shall be conducted in accordance with Sections 61-1-1 through 61-1-31 NMSA 1978 of the Uniform Licensing Act (UCLA). Disciplinary proceedings

related to a CNM's treatment of a patient, for chronic pain or other conditions, with a controlled substance shall be conducted in accordance with Sections 24-2D-1 through 24-2D-6 NMSA 1978 of the Pain Relief Act, in addition to this rule.

(1) Filing of a complaint:

(a) A written complaint must be filed with the division before a disciplinary proceeding may be initiated.

(i) A complaint is an allegation of a wrongful act(s) or omission(s).

(ii) An allegation of a wrongful act may include knowledge of a judgment or settlement against a licensee.

(b) A written complaint may be filed by any person, including a member of the board.

(2) Investigation of a complaint.

(a) All complaints alleging a violation of the rules adopted by the department shall be investigated to determine whether a violation of applicable law or rule has occurred.

(b) The investigation may result in a notice of contemplated action (NCA) being issued by the department if a violation occurred or it may result in a dismissal of the complaint if no actionable violation can be substantiated. Once dismissal of a complaint is made following an investigation, the licensee will be notified of the dismissal.

(3) Notice of contemplated action.

(a) The NCA shall be drafted by the department.

(b) The director of the division, or her/his designee shall sign all NCAs.

(c) The NCAs shall contain written information in accordance with the requirements of the ULA and shall be served on the licensee in accordance with the ULA.

(4) Request for a hearing, notice of hearing and request for continuance.

(a) Every licensee shall be afforded notice and an opportunity to be heard.

(b) Within 20 days of receiving the NCA, a licensee may request a hearing in writing by certified mail. The department shall notify the licensee of the time and place of hearing within 20 days of receipt of the request. The hearing shall be held no more than 60 nor less than 15 days from the date of service of the notice of hearing. However, if the ULA designates time requirements different from the above stated time requirements, the ULA time requirements shall prevail. The department shall notify the licensee of these prevailing time requirements when it sends the NCA.

(c) The licensee may request to explore a settlement by negotiating a stipulation and agreement with the administrative attorney of the department at any time prior to the hearing; if a settlement is negotiated, the proposed stipulation and agreement shall be presented to the department for final approval; the proposed stipulation and agreement does not divest the department of its authority to require a formal hearing or final approval, amendment, or rejection; if a settlement is not reached, a hearing shall be held.

(d) Once a hearing has been scheduled, if a request for a continuance is made it shall be presented to the department's hearing officer, in writing, at least 10 days prior to the scheduled hearing. The hearing officer may approve or deny the request.

(e) If a person fails to appear after requesting a hearing, the department may proceed to consider the matter and make a decision.

(f) If no request for a hearing is made within the time and manner stated in the NCA, the department may take the action contemplated in the NCA. Such action shall be final and reportable to NPBD.

(g) The department shall keep a record of the number of complaints received and the disposition of said complaints as either substantiated or unsubstantiated.

(5) Administrative hearing.

(a) All hearings shall be conducted by a hearing officer designated by the secretary or authorized representative of the department. The hearing officer shall have authority to rule on all non-dispositive motions.

(b) All hearings before the department shall be conducted in the same manner as a hearing in a court of law with the exception that the rules of evidence may be relaxed in the hearing pursuant to the ULA.

(i) Hearsay evidence is admissible if it is of a kind commonly relied upon by reasonable prudent people in the conduct of serious affairs.

(ii) Disciplinary action against a CNM license must not be based solely on hearsay evidence.

(c) The hearing officer may take testimony, examine witnesses and direct a continuance of any case.

(d) The hearing officer shall have the power to issue subpoenas to compel the attendance of witnesses or the production of books, documents or records pertinent to the matter of a case before the department.

(e) The hearing officer shall issue a report and recommended finding to the department secretary.

(f) Decision of the department: the secretary of the department shall render a final administrative determination after reviewing the report and recommended findings issued by the hearing officer. Copies of the written decision shall be mailed via certified mail to the licensee in accordance with the ULA and placed in the CNM's licensure file. The department shall mail a copy of the written decision to the authority(ies) that license(s) the CNM as a registered nurse and shall report the decision to the NPDB if the decision is to uphold the disciplinary action.

D. Reinstatement of a suspended or revoked license.

(1) Individuals who request reinstatement of their license or who request that their probation be lifted or altered shall provide the department with substantial evidence to support their request. This evidence must be in the form of notarized written reports or sworn written testimony from individuals who have personal knowledge of the individual's activities and progress during the period of probation, suspension, or revocation.

(2) For reinstatement of licenses for reasons other than noncompliance with Section 40-5A-1 to -13 NMSA 1978, Parental Responsibility Act, requests for reinstatement of a revoked license shall not be considered by the department prior to the expiration of one year from the date of the order of revocation. The date of the order of revocation or suspension is the controlling date, unless otherwise specified in the order. Reinstatement of a revoked license requires proof of meeting the renewal requirements set forth in this rule and payment of the reinstatement of current or lapsed license fee.

(3) Requests for reinstatement of a suspended license shall be considered at such time as provided by the department in the order of suspension. Reinstatement of a suspended license requires proof of meeting the renewal requirements as set forth in this rule, any remedial education, supervised practice or other condition specified in the order for suspension required by the department and payment of the reinstatement of current or lapsed license fee.

(4) When a license is revoked solely because the licensee is not in compliance with the Parental Responsibility Act, Section 40-5A-1 to 13 NMSA 1978, the license shall be reinstated upon presentation of a subsequent statement of compliance.

[16.11.2.11 NMAC - Rp, 16.11.2.11 NMAC, 6/25/2019]

16.11.2.12 ADVISORY BOARD: The department shall appoint a CNM advisory board to make recommendations to the department regarding the regulation of CNMs.

A. The board shall be comprised of:

- (1) three New Mexico licensed CNMs, at least one of whom is actively practicing midwifery;
- (2) one New Mexico licensed midwife (LM) who is actively practicing midwifery;
- (3) two members of the general public, who shall not have any significant financial interest, direct or indirect, in the profession regulated;
- (4) one actively practicing board-certified obstetrician-gynecologist physician; and
- (5) one employee of the division.

B. Board members other than the department representative shall be appointed for staggered terms up to three years in length. Board members shall serve on a voluntary basis without compensation. They shall not serve for more than two consecutive terms. The department representative shall not be subject to term limits.

C. The board shall meet a minimum of two times a year when a meeting of the board is called by the director of the division.

D. Board members may submit requests for reimbursement of in-state travel and per diem for attending board meetings in accordance with the Per Diem and Mileage Act, Section 10-8-1 to -8 NMSA 1978 department of finance administration rules, Section 2.42.2 NMAC.

E. Any member failing to attend two consecutive board meetings without good cause and an absence excused prior to the meetings shall be deemed to have resigned from the board.

[16.11.2.12 NMAC - Rp, 16.11.2.12 NMAC, 6/25/2019]

16.11.2.13 SEVERABILITY: If any part or application of these rules is determined to be illegal, the remainder of these rules shall not be affected.

[16.11.2.13 NMAC - Rp, 16.11.2.13 NMAC, 6/25/2019]

HISTORY OF 16.11.2 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.

DPHW 67-24, Nurse Midwife Regulations For New Mexico, filed 12/12/1967.

HSSD 76-2, Nurse Midwife Regulations For New Mexico, filed 1/20/1976.

HED-80-6 (HSD), Regulations Governing the Practice of Certified Nurse Midwives, filed 10/17/1980.

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives, filed 11/04/1991.

History of Repealed Material:

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) repealed 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) repealed 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) repealed 6/25/2019.

Other History:

DOH 91-06 (PHD), Regulations Governing the Practice of Certified Nurse Midwives (filed 11/04/1991) was renumbered into first version of the New Mexico Administrative Code as 16 NMAC 11.2, Certified Nurse Midwives, effective 10/31/1996.

16 NMAC 11.2, Certified Nurse Midwives (filed 10/18/1996) was replaced by 16.11.2 NMAC Certified Nurse Midwives, effective 10/15/2009.

16.11.2 NMAC, Certified Nurse Midwives (filed 9/28/2009) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 8/30/2013.

16.11.2 NMAC, Certified Nurse Midwives (filed 8/15/2013) was replaced by 16.11.2 NMAC, Certified Nurse Midwives, effective 6/25/2019.