

This is an amendment to 16.12.12 NMAC, Sections 7 and 11 effective 1/1/2026.

**16.12.12.7 DEFINITIONS:**

**A.** Refer to definitions, 16.12.1.7 NMAC.

**B.** **“Abandonment”** means, in the context of disciplinary action, a nurse’s abrupt severance of, or disengagement from, the relationship between the nurse and the patient or client without giving reasonable notice to a qualified person for the purpose of making arrangements for the continuation of care by others. This definition does not include the abandonment of employment, such as contract issues, no call, no show, refusal to work mandatory overtime, refusal to float to unfamiliar areas, or resignation from a position, since the board has no jurisdiction over employment issues. Abandonment, which can only occur after the nurse has accepted an assignment to provide care, service or treatment to the patient or client, also known as taking report, or accepting the nurse handover or shift report (can be accepted verbally or in written or electronic form), typically consists of one or more of the following elements that, as result of the nurse’s abandonment of the patient or client, caused or may have caused harm:

- (1) failure to provide observation, including but not limited to assessment and intervention;
- (2) failure to assure competent intervention at any time, including but not limited to delayed treatment, insufficient treatment, or refusal to treat; or
- (3) failure to provide for provision of qualified coverage, including but not limited to adequate time to arrange nursing coverage of assigned care.

**C.** **“Certificate of compliance”** means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

~~[C.]~~ **D.** **“Competency”** means, in the context of the nursing profession, the ability to perform skillfully and proficiently the role of the licensee; the role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity; competency is a dynamic concept and is based on educational training, preparation, and expertise.

~~[D.]~~ **E.** **“Complaint”** means, in the context of disciplinary action, a written allegation by any person of one or more wrongful acts or omissions by an applicant, licensee, certificate holder, or anyone else subject to the jurisdiction of the board. A complaint may include knowledge of a judgment or settlement against a licensee.

~~[E.]~~ **F.** **“Disqualifying criminal conviction”** has the same meaning as defined in Subsection E of Section 61-1-36 NMSA 1978.

~~[F.]~~ **G.** **“HSD”** means the New Mexico human services department.

~~[G.]~~ **H.** **“Incompetent”** means the failure to possess or to apply to a substantial degree the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards of the profession. In performing nursing functions, whether those be direct patient care or the administration or management of that care, a nurse is under a legal duty to exercise this knowledge, skill and care. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

~~[H.]~~ **I.** **“Statement of compliance”** means, in the context of the Parental Responsibility Act, a certified statement from HSD stating that an applicant or licensee/certificate holder is in compliance with the judgment and order for support.

**I.** **“Social media”** means a form of mass media communication on the internet (such as websites for social networking and microblogging) through which users share information, ideas, personal messages and other content such as photographs, screen shots, and or videos. Information posted on social medial sites should be considered permanent.

**J.** **“Unprofessional conduct”** means any departure from or failure to conform to the minimal standards of acceptable and prevailing nursing practice, including but not limited to such conduct which is or may be harmful to the health, safety, or welfare of the public or which reflects negatively on the individual’s fitness to practice nursing or on the profession more broadly. Unprofessional conduct includes, but is not limited to, the following:

- (1) Misconduct involving misappropriation, such as:
  - (a) misappropriation of money, drugs, or property;
  - (b) obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit;
  - (c) obtaining, attempting to obtain, possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe;
- (2) Misconduct involving the delivery of nursing services, such as:
  - (a) intentionally engaging in sexual contact with or toward a patient or client in a manner that is commonly recognized as outside the scope of the individual nurse's practice; abandonment;
  - (b) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
  - (c) intemperance, addiction, incompetence, or unfitness manifesting itself during the course of employment as a nurse in a fashion or manner which is contrary to the provision of good health care;
  - (d) failure to maintain appropriate professional boundaries which may cause harm to the patient;
  - (e) inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;
  - (f) practicing beyond the scope of a license, certificate, or other similar credential.
- (3) Misconduct involving patient health care records, such as:
  - (a) falsifying or altering patient or client health care records or personnel records for the purpose of reflecting incorrect or incomplete information;
  - (b) making statements or disclosures that create a risk of compromising a patient's privacy, confidentiality and dignity; or
  - (c) dissemination of a patient or client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital or agency policy from disclosure.
- (4) Misconduct involving legal process, such as:
  - (a) refusing to cooperate with the board in the course of an investigation or otherwise refusing to provide information requested by the board;
  - (b) physically intimidating or threatening, or attempting to physically intimidate or threaten, the board or its staff, whether in connection with an investigation or otherwise;
  - (c) obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or re-licensure process;
  - (d) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;
  - (e) failure to report a nurse or certificate holder who is suspected of violating the New Mexico Nursing Practice Act or rules;
  - (f) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;
- (5) Misconduct involving other procedures or policies, such as:
  - (a) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;
  - (b) failure to follow established procedure and documentation regarding controlled substances;
  - (c) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing; or
  - (d) physical, verbal, written, electronic, or other abuse of a patient, client or colleague.
- (6) Misconduct involving inappropriate disclosures on social media, such that the licensee has:
  - (a) violated the ethical and legal obligation to protect the confidentiality of information or knowledge concerning and patient/family;
  - (b) negligently or willfully acted in a manner inconsistent with the practice of nursing by mismanaging patient/family's medical information or care by violating patient rights to confidentiality;

(c) disseminating any information or images about a patient or information gained in the nurse/patient relationship with anyone unless there is a patient care-related need to disclose the information or other legal obligation to do so;

(d) revealed a privileged communication regarding any patient;

(e) disregarded the duty to maintain professional boundaries in the use of electronic media;

(f) failed to follow the nursing practice act bullying colleagues or a complainant; and

(g) disregard a duty to maintain the professional workplace and trust of the team by avoiding disparaging comments about colleagues on social media.

[16.12.12.7 NMAC - N, 12/30/2021, A, 1/1/2026]

**16.12.12.11 PARENTAL RESPONSIBILITY ACT COMPLIANCE:** The board shall suspend or revoke licenses or certificate holders and deny applications for licenses or certificates in accordance with the Parental Responsibility Act, Sections 40-5A-1 to -13 NMSA 1978.

**A.** All terms defined by the Parental Responsibility Act shall have the same meaning in this section.

**B.** If an applicant, licensee, or certificate holder is not in compliance with a judgment and order for support, the board:

(1) shall deny an application for a license or certificate;

(2) shall deny the renewal of a license or certificate; and

(3) has grounds for suspension or revocation of the license or certificate.

**C.** Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support; the board shall match the applicant against the current certified list of board licensees, certificate holders, and applicants.

(1) Upon the later receipt of an application for licensure, certification or renewal, the board shall match the applicant against the current certified list.

(2) By the end of the month in which the certified list is received, the board shall report to HSD the names of board applicants, licensees, and certificate holders who are on the certified list and the action the board has taken in connection with such applicants, licensees, or certificate holders.

**D.** Upon determination that an applicant, licensee, or certificate holder appears on the certified list, board staff shall automatically issue a notice of contemplated action in accordance with the Uniform Licensing Act, Section 61-1-1 NMSA 1978, to take the appropriate action.

(1) The notice of contemplated action shall state that the board has grounds to take such action unless the applicant, licensee, or certificate holder:

(a) mails a letter, certified mail return receipt requested, within 20 days of receipt of the notice of contemplated action requesting a hearing; and

(b) provides the board, prior to the scheduled hearing date, with a ~~[statement]~~ certificate of compliance from HSD.

(2) If the applicant, licensee, or certificate holder disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant, licensee, or certificate holder should contact the HSD child support ~~[enforcement]~~ services division.

**E.** In any hearing under this subsection, a statement of non-compliance is conclusive evidence that requires the board to take the action to deny the application or suspend or revoke the license, unless the applicant, licensee, or certificate holder provides the board with a subsequent ~~[statement]~~ certificate compliance which shall preclude the board from taking any action.

**F.** When the board takes disciplinary action solely because the applicant, licensee, or certificate holder is not in compliance with a judgment and order for child support, the final decision and order shall state that the applicant, licensee, or certificate holder shall be reinstated upon presentation of a subsequent ~~[statement]~~ certificate of compliance.

**G.** Reinstatement: The executive director shall, upon presentation of a subsequent ~~[statement]~~ certificate of compliance, reinstate a license or certificate previously revoked solely due to noncompliance with a judgment and order for child support, provided that the licensee or certificate holder must meet the requirements for reinstatement and pay the appropriate reinstatement fee.

[16.12.12.11 NMAC - N, 12/30/2021, A, 1/1/2026]