

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 5 DENTISTRY (DENTISTS, DENTAL HYGIENISTS, ETC.)
PART 9 NON-DENTIST OWNERS

16.5.9.1 ISSUING AGENCY: New Mexico Board of Dental Health Care.
[16.5.9.1 NMAC - Rp, 16.5.9.1 NMAC, 5/31/2023]

16.5.9.2 SCOPE: The provisions of 16.5.9 NMAC apply to all parts of Chapter 5 and provide relevant information to any person who wishes to own a practice and is not a dentist or collaborative practice dental hygienist licensed in New Mexico.
[16.5.9.2 NMAC - RP, 16.5.9.2 NMAC, 5/31/2023]

16.5.9.3 STATUTORY AUTHORITY: Sections 61-5A-1 through Section 61-5A-30 NMSA 1978.
[16.5.9.3 NMAC - Rp, 16.5.9.3 NMAC, 5/31/2023]

16.5.9.4 DURATION: Permanent.
[16.5.9.4 NMAC - Rp, 16.5.9.4 NMAC, 5/31/2023]

16.5.9.5 EFFECTIVE DATE: May 31, 2023, unless a later date is cited at the end of a section.
[16.5.9.5 NMAC - Rp, 16.5.9.5 NMAC, 5/31/2023]

16.5.9.6 OBJECTIVE: To set forth the provisions which apply to all of Chapter 5, and to all persons and entities affected or regulated by Chapter 5 of Title 16, and to all persons and entities affected or regulated by Chapter 5 of Title 16.
[16.5.9.6 NMAC - Rp, 16.5.9.6 NMAC, 5/31/2023]

16.5.9.7 DEFINITIONS:

A. “Employee” means a licensee of the board employed or contracted with a non-dentist owner for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or enters into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

B. “Exempted entities” not included in non-dentist owner, under the following stipulations an entity may function as a non-dentist owner without a New Mexico license:

- (1) government agencies providing dental services within affiliated facilities;
- (2) government agencies engaged in providing public health measures to prevent dental disease;
- (3) spouses of a deceased licensed dentist or dental hygienists for a period of one year following the death of the licensee;
- (4) accredited school of dentistry, dental hygiene or dental assisting providing dental services solely in an education setting only;
- (5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;
- (6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;
- (7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent person; and
- (8) hospitals licensed by the department of health.

C. “Non-dentist owner” means ~~[an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services.]~~ a person, corporation or agency not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of New Mexico licensed dentists that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services, including telehealth services.

[16.5.9.7 NMAC - Rp, 16.5.9.7 NMAC, 5/31/2023; A, XX/XX/2026]

16.5.9.8 RESPONSIBILITY OF NON-DENTIST OWNER: To employ and contract for dental services, a non-dentist owner shall apply to the board for the proper license and adhere to the re-licensure criteria and fees as established by the rules of the board.

~~[A. unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:
(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or
(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.~~

~~B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;~~

~~C. if an employee dentist or dental hygienist leaves the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;~~

~~D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership;~~

~~E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;~~

~~F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s);~~

~~G. non-dentist owner employees shall follow provision of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;~~

~~H. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);~~

~~I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;~~

~~J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;~~

~~K. no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;~~

~~L. non-dentist owners shall maintain patient records for a minimum of six years; and~~

~~M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.~~

~~N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.]~~

A. unless licensed as a dentist or non-dentist owner an individual or corporate entity shall not:
(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico;

B. the non-dentist owner licensee shall follow the provisions of 16.5.16 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

C. if an employee dentist or dental hygienist separates from the non-dentist owner practice, the non-dentist owner is responsible for the continued uninterrupted care of the patient by another licensed dentist or dental hygienist;

D. non-dentist owner shall notify the board in writing within 30 days of any changes in ownership; business entity structure, officers, directors, and designated agent.

E. non-dentist owner shall notify the board in writing within 30 days of any employment changes of board licensed employees;

F. non-dentist owner shall notify the board within 30 days of any disciplinary actions against the non-dentist owner(s) in New Mexico or other jurisdictions.

G. non-dentist owner employees shall follow provisions of 16.5.16 NMAC; failure of an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC;

H. non-dentist owners licensed prior to the effective date of these rules shall be allowed to maintain their existing license(s);

I. the name and contact information of the non-dentist owner(s) shall be prominently displayed in a public area of the practice location(s) and on all advertisements of the practice;

J. the non-dentist owner(s) shall prominently display in a public area of the practice location(s) and on all advertisements the practice names of employee(s) licensed by the board;

K. no person other than a New Mexico licensed dentist shall have direct control or interfere with the dentist's or dental hygienist's clinical judgment and treatment, including, referrals or prescriptions of laboratory services;

L. non-dentist owners shall maintain patient records for a minimum of six years; and shall follow provisions of 16.5.1.24 NMAC; failure of the licensee or an employee of the licensee to follow these provisions will result in disciplinary actions as defined in 16.5.16 NMAC.

M. a non-dentist owner licensee shall notify the board of any adverse action taken against such licensee by any licensing board, peer review body, malpractice insurance carrier, or any other entity as defined by the board; a non-dentist owner licensee shall also notify the board of its surrender of a license while under, or in lieu of, an investigation by any authority; such report shall be made in conformance with the provision of 16.5.3 NMAC.

N. the non-dentist owner shall be subject to the provisions of 16.5.58 NMAC.
[16.5.9.8 NMAC - Rp, 16.5.9.8 NMAC, 5/31/2023; A, XX/XX/2026]

16.5.9.9 RESPONSIBILITY OF DENTISTS AND DENTAL HYGIENIST EMPLOYED BY A NON-DENTIST OWNER: Dentists and dental hygienists employed by a non-dentist owner shall report such employment in their initial and renewal applications, including the name, address and phone number of the non-dentist owner or corporation, and the name of their immediate manager or supervisor.
[16.5.9.9 NMAC - Rp, 16.5.9.9 NMAC, 5/31/2023]

16.5.9.10 DOCUMENTATION REQUIREMENTS: Each applicant for a non-dentist owner license shall submit a completed application obtained from the board office with the required fees and the following documentation:

~~[A. completed application signed by the individual that is the non-dentist owner or by the president of the parent corporation; applications are valid for one year from the date of receipt;~~

~~B. the board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporation entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporation in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;~~

~~C. passed the jurisprudence examination with a score of at least seventy five percent;~~

~~D. non-dentist owner(s) shall comply with Subsection C of this section within six months of the effective date of the rule;~~

~~E. verification of licensure in all states where the non-dentist owner holds or has held a license, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall include a raised seal, and shall attest to the status, issue date, expiration date, license number, and other information contained on the form; and~~

~~F. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, these rules, or if it is determined that the applicant poses a threat to the welfare of the public.]~~

A. Applicants shall provide the following information:

(1) evidence of ownership, including percentages of ownership;

(2) corporate or business status;

(3) state of formation;

(4) copies of articles of incorporation;

(5) by-laws, if applicable;

(6) identity of designated point of contact with authority to speak on behalf of the corporation and registered agent to include address and phone number;

- (7) If the corporation is a subsidiary corporation, the name of the parent company, the state in which the parent company is incorporated, and the percent of stock that the parent company owns in the subsidiary;
- (8) the facility manager's name, phone number, and email address;
- (9) if a corporation owner or manager has ever been convicted of a felony, an explanation and court disposition documents;
- (10) if the applicant corporation, owner, or manager has ever been the subject of a disciplinary investigation or action, including a cease-and-desist order, in any jurisdiction, an explanation of that investigation or action;
- (11) the identity and contact information of two business or financial references;
- (12) any other information requested by the Board upon investigation and discrepancy of information.

B. Corporate applicant shall disclose civil actions brought within 10 years of the date of the application against an owner(s), partner(s), or director(s) for or involving nonpayment of a debt, fraud, embezzlement or misrepresentation and the disposition of such action(s).

C. A corporate applicant shall disclose if they filed or declared bankruptcy within the last seven years.

D. It shall be the duty of each corporation owner or manager to notify the Board in writing within 60 days of:

- (1) a change in ownership or management of the facility;
- (2) a change in location of the facility;
- (3) closure of the facility;
- (4) a change in mailing address for the owner or manager of the corporation.

E. The board requires a board designated professional background service report; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service; if the applicant has or has had a professional license in dentistry or another related health care profession the board designated professional background service report will do a search of those appropriate databases for past disciplinary action as well as a criminal background check; in the case of any corporate entity, the board requires a review of public records and other nationally recognized data resources that record actions against a corporate entity in the United States that may reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude;

F. passed the jurisprudence examination with a score of at least seventy-five percent; and

G. verification of licensure in all states where the non-dentist owner holds or has held a license or registration, or other health care profession; verification shall be sent directly to the office from the other state(s) board, shall attest to the status, issue date, expiration date, license number, and other information contained on the form.

[16.5.9.10 NMAC - Rp, 16.5.9.10 NMAC, 5/31/2023; A, XX/XX/2026]

16.5.9.11 LICENSURE PROCEDURE: Upon receipt of a completed application, including all required documentation and fees, the secretary-treasurer or the delegate of the board will review and may approve the application. The board shall formally accept the approval of the application at the next scheduled meeting.

A. Initial license: Non-dentist owner licenses are issued for a period not to exceed three years. The licensee shall apply for renewal on a triennial basis.

B. Posting: The license and subsequent renewal certificates shall be posted in each place of business. Duplicates may be requested from the board office with location of each business address where they will be posted for the public to view.

C. License: This license is non-transferable.

D. Renewal: After the initial license period, non-dentist owner licenses expire every three years on July 1. Licenses not renewed by July 1 are considered expired.

(1) A completed renewal application with appropriate fees shall be post-marked on or before July 1 of the renewal year.

(2) The board assumes no responsibility for renewal applications not received by the licensee for any reason. It is the licensee's responsibility to make timely request for the renewal form if one has not been received 30 days prior to license expiration.

E. Late renewals: Renewal applications post-marked after July 1 and prior to August 1 of the renewal year shall be accompanied by the completed renewal application, the triennial renewal fee, and the late fee.

(1) Renewal applications post-marked on or after August 1 but before September 1 of the renewal year, shall be accompanied by the completed application, the triennial renewal fee, a late fee, and a cumulative late fee of ten-dollars (\$10) per day from August 1 to the date of the postmark or hand-delivery to board office.

(2) If a renewal application is not received by the board office, or post-marked before September 1, the license shall be summarily revoked for non-payment of fees. Dental professionals in such offices or clinics shall cease and desist from further practice of dentistry or dental hygiene until non-dentist owner has renewed or re-applied.

F. Fees:

(1) Initial Licensure: \$300.

(2) Renewal: \$150.

(3) Jurisprudence Exam re-take: \$100;

(4) electronic processing fee, initial and renewal, per year \$10;

(5) return payment fee \$35

[16.5.9.11 NMAC - Rp, 16.5.9.11 NMAC, 5/31/2023; A, XX/XX/2026]

16.5.9.12 PREREQUISITES FOR NON-DENTIST OWNER: Each applicant for licensure as a non-dentist owner shall possess the following:

~~[— **A.** a corporate entity must be registered in New Mexico; and~~

~~— **B.** an individual non dentist owner(s) or agent of a corporation shall pass the New Mexico jurisprudence examination with seventy five percent.]~~

A. a corporate entity must be registered in New Mexico; and

B. the non-dentist owner(s) or designated agent shall pass the New Mexico jurisprudence examination with seventy-five percent

[16.5.9.12 NMAC - Rp, 16.5.9.12 NMAC, 5/31/2023; A, XX/XX/2026]

HISTORY OF 16.5.9 NMAC: [RESERVED]

History of Repealed Material:

16.5.9 NMAC, Non-Dentist Owners, filed 2/4/2005 Repealed effective 5/31/2023.

Other History:

16.5.9 NMAC, Non-Dentist Owners, filed 2/4/2005 Replaced by 16.5.9 NMAC, Non-Dentist Owners, effective 5/31/2023.