

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 26 HEARING, SPEECH AND AUDIOLOGY PRACTITIONERS**  
**PART 7 GROUNDS FOR DISCIPLINARY ACTION**

**16.26.7.1 ISSUING AGENCY:** New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.  
[11/7/98; 16.26.7.1 NMAC - Rn & A, 16 NMAC 26.7.1, 2/3/06]

**16.26.7.2 SCOPE:** The provisions of Part 7 apply to applicants or licensees under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.  
[11/7/98; 16.26.7.2 NMAC - Rn, 16 NMAC 26.7.2, 2/3/06]

**16.26.7.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act, Sections 61-14B-1 to 61-14B-25 NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.  
[11/7/98; 16.26.7.3 NMAC - Rn, 16 NMAC 26.7.3, 2/3/06]

**16.26.7.4 DURATION:** Permanent  
[11/7/98; 16.26.7.4 NMAC - Rn, 16 NMAC 26.7.4, 2/3/06]

**16.26.7.5 EFFECTIVE DATE:** November 7, 1998, unless a later date is cited at the end of a section.  
[11/7/98; 16.26.7.5 NMAC - Rn & A, 16 NMAC 26.7.5, 2/3/06]

**16.26.7.6 OBJECTIVE:** The objective of Part 7 is to set forth the grounds for disciplinary action which may subject an applicant or licensee to disciplinary action by the board.  
[11/7/98; 16.26.7.6 NMAC - Rn, 16 NMAC 26.7.6, 2/3/06]

**16.26.7.7 DEFINITIONS:** [RESERVED]

**16.26.7.8 DISCIPLINARY GROUNDS:** In accordance with the provisions of the Uniform Licensing Act, the board may take disciplinary action if the board determines that the applicant or licensee has violated the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the board's ~~regulations~~ rules. The following shall subject the applicant or licensee to disciplinary action by the board.

**A.** Engaging in unprofessional conduct: Unprofessional conduct includes, but is not limited to, the following:

(1) violations of the principles of ethics or the ethical proscriptions as set forth in board regulations concerning its Code of Ethics (16.26.9 NMAC);

~~(2) violating a provision of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act including practicing without a license;~~

~~(2) (3) committing [a misdemeanor substantially related to the practice of speech language pathology, audiology or hearing aid dispensing or a misdemeanor involving moral turpitude; a certified copy of the record of conviction shall be conclusive evidence of conviction;] any of these crimes, for which a certified copy of the record of conviction shall be conclusive evidence of conviction;~~

~~(a) a felony;~~

~~(b) a misdemeanor substantially related to the practice of speech language pathology, audiology or hearing aid dispensing or a misdemeanor involving moral turpitude; and~~

~~(c) violating the Controlled Substances Act (Sections 30-31-1 to 30-31-41 NMSA 1978).~~

~~(4) attempting to practice with a license, certificate or registration to practice speech-language pathology, audiology or hearing aid dispensing under a revoked, suspended or denied license from another jurisdiction, territory or possession of the United States or another country for actions similar to acts described within this section.~~

~~(3) (5) for an audiologist or dispensing otorhinolaryngologist, [to accept] accepting a [ease referred] referral from a hearing aid dispenser [and not return] but failing to return the case to the referring professional unless the person seeking the hearing aid refuses to return to the referring professional or if the~~

professional determines, using his best professional judgement, the return of the case would not be in the person's best medical or audiological interest.

- (6) fraud or deceit in procuring or attempting to procure a license;
- (7) selling or fitting the first hearing aid of a child under sixteen years of age who has not been examined and cleared for the hearing aid by an otolaryngologist or a dispensing audiologist who has earned certification by a national professional association;
- (8) selling or fitting a hearing aid on a person who has not been tested, except for replacement aids;
- (9) using untruthful or misleading advertising;
- (10) misrepresenting the license or applicant's status as being a medical doctor;
- (11) becoming addicted to a habit-forming drug or other substance to such a degree as to render the license or applicant unfit to practice;
- (12) willfully or negligently practicing beyond the scope of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

**B.** Engaging in acts that constitute incompetence: Incompetence includes, but is not limited to, the following:

- (1) failure to possess the knowledge, apply the skill or provide the care required by generally accepted standards of the professions of speech-language pathology, audiology or hearing aid dispensing; or
  - (2) violation of the principles of ethics II or the ethical proscriptions thereunder as set forth in board regulations relating to professional competence (Subsections D and E of 16.26.9.8 NMAC);
- ~~[(3)] C. [a] A finding of incompetence may be based upon a single act or omission of competence 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.~~

~~[C. — Violation of the Controlled Substances Act (Sections 30-31-1 to 30-31-41 NMSA 1978). A certified copy of the record of conviction shall be conclusive evidence of conviction.]~~

**D.** Aiding or abetting the practice by a person not licensed by the board. Aiding or abetting the practice of speech language pathology by a person not licensed by the board includes, but is not limited to, the following[-]:

- (1) ~~[A licensee shall not authorize or otherwise permit]~~ Authorizing or otherwise permitting a speech language paraprofessional or assistant working under ~~[his or her]~~ the licensee's supervision to diagnose, conduct diagnostic testing, interpret diagnostic testing, develop a plan of care or deviate from a plan of care.
- (2) ~~[A licensee shall]~~ Failing to ensure that a speech language paraprofessional or assistant working under ~~[his or her]~~ the licensee's supervision follows the plan of care[-] ; and
- (3) ~~[A licensee shall not authorize]~~ Authorizing or otherwise permitting an apprentice in speech-language pathology working under ~~[his or her]~~ the licensee's supervision to conduct any of the duties set forth in Subsection E of 16.26.2.18 NMAC of the boards rules. ~~[and shall ensure that the apprentice only engages in those duties authorized in Subsection D of 16.26.2.18 NMAC of the boards rules.]~~

**E.** Failing to deliver to any person supplied with a hearing aid a receipt which contains the following information:

- (1) licensee's license number and signature;
- (2) the sponsor's/supervisor's signature approving of the fitting if the seller is a clinical fellow, graduate student or trainee;
- (3) address of the licensee's regular place of business;
- (4) make and model of the hearing aid;
- (5) full financial terms of the sale;
- (6) statement as to whether the hearing aid is new, used or reconditioned;
- (7) statement that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser, audiologist, clinical fellow, trainee or graduate student and not as a medical diagnosis or prescription;
- (8) terms of guarantee, if any.

[11/7/98, 11/27/99, 12/5/99; 16.26.7.8 NMAC - Rn & A, 16 NMAC 26.7.8, 2/3/06]

**HISTORY OF 16.26.7 NMAC: [RESERVED]**