

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 26 HEARING, SPEECH AND AUDIOLOGY PRACTITIONERS
PART 8 PROCEDURES FOR DISCIPLINARY ACTION

16.26.8.1 ISSUING AGENCY: New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board.
[11/7/98; 16.26.8.1 NMAC - Rn & A, 16 NMAC 26.8.1, 2/3/06]

16.26.8.2 SCOPE: The provisions in Part 8 may be of interest to anyone who may wish to file a complaint against a person licensed by the board. Disciplinary proceedings may be initiated against licensees or applicants.
[11/7/98; 16.26.8.2 NMAC - Rn, 16 NMAC 26.8.2, 2/3/06]

16.26.8.3 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; 16.26.8.3 NMAC - Rn, 16 NMAC 26.8.3, 2/3/06]

16.26.8.4 DURATION: Permanent.
[11/7/98; 16.26.8.4 NMAC - Rn, 16 NMAC 26.8.4, 2/3/06]

16.26.8.5 EFFECTIVE DATE: November 7, 1998, unless a later date is cited at the end of a section.
[11/7/98; 16.26.8.5 NMAC - Rn & A, 16 NMAC 26.8.5, 2/3/06]

16.26.8.6 OBJECTIVE: The objective of Part 8 is to set forth procedures for filing complaints against applicants and licensees and the procedures for the board to follow in processing complaints.
[11/7/98; 16.26.8.6 NMAC - Rn, 16 NMAC 26.8.6, 2/3/06]

16.26.8.7 DEFINITIONS:

A. “Complaint” means a complaint filed with the board against an applicant for licensure or against a licensee.

B. “Complainant” means the party who files a complaint against a licensee or an applicant for licensure.

C. “Respondent” means the applicant for licensure or the licensee who is the subject of the complaint filed with the board.

D. “Hearing” means the formal process whereby the respondent is afforded the opportunity to be heard by the board, or its designated hearing officer, before the board takes action which might result in the disciplinary action against the respondent’s application for licensure or ~~his or her~~ license to practice speech-language pathology, audiology or hearing aid dispensing.

E. “Violation” means a violation of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act or the rules and regulations duly adopted by the board.

F. “Notice of contemplated action” or “NCA” means the administrative process provided for by the Uniform Licensing Act whereby the respondent is notified of the boards intent to take action based upon the alleged violations of practice and whereby the respondent is afforded the opportunity for a hearing before the board.

G. “License revocation” means to prohibit the conduct authorized by the license.

H. “License suspension” means to prohibit, for a stated period of time, the conduct authorized by the license.

I. “License restricted subject to conditions” means to allow the conduct authorized by the license for a stated period of time, subject to conditions that are reasonably related to the grounds for disciplinary action.

[11/7/98; 16.26.8.7 NMAC - Rn, 16 NMAC 26.8.7, 2/3/06]

16.26.8.8 COMPLAINTS: The disciplinary process may be instituted by a complaint on a board approved form by any person, including board members and board staff.

[11/7/98; 16.26.8.8 NMAC - Rn, 16 NMAC 26.8.8, 2/3/06]

16.26.8.9 INVESTIGATION: Upon receipt of the complaint, the board will cause an investigation to be made into the subject complaint by the board’s ~~standards of practice~~ disciplinary committee.

[11/7/98; 16.26.8.9 NMAC - Rn, 16 NMAC 26.8.9, 2/3/06]

16.26.8.10 ~~[STANDARDS OF PRACTICE]~~ **DISCIPLINARY COMMITTEE:** The ~~[standards of practice]~~ disciplinary committee is formed for the purpose of investigating disciplinary matters referred to it by the board. The board chairperson shall appoint a member or members of the board to the ~~[standards of practice]~~ disciplinary committee.

A. The ~~[standards of practice]~~ disciplinary committee shall review all documentation provided to it in reference to the subject complaint.

B. The ~~[standards of practice]~~ disciplinary committee may provide the respondent with a copy of the complaint and allow a reasonable time for the respondent to respond to the allegations in the complaint.

C. The foregoing notwithstanding, the ~~[standards of practice]~~ disciplinary committee will not be required to provide the respondent with notice of the complaint filing, or a copy of the complaint, or any related investigatory evidence prior to the notice of contemplated action, if the committee determines that disclosure may impair, impede, or compromise the efficacy or integrity of the investigation.

D. The ~~[standards of practice]~~ disciplinary committee may employ an investigator or other persons determined to be necessary in order to assist in the processing and investigation of the complaint.

E. Upon completion of its investigation, the ~~[standards of practice]~~ disciplinary committee shall submit to the board its proposed recommendations concerning the proper disposition of the subject complaint.

F. Upon review the board shall vote upon the proposed recommendations and either uphold, reverse, or modify the ~~[standards of practice]~~ disciplinary committee recommendations.

G. ~~[standards of practice]~~ Disciplinary committee members who participate in the preparation of recommendations to the remaining board members shall not participate further in any actions initiated by the board against the licensee or applicant who is the subject of the complaint.

H. If the board determines that it lacks jurisdiction, or that there is insufficient evidence or cause to issue a notice of contemplated action, the board may vote to dismiss or close the complaint.

I. If the board determines that there is sufficient evidence or cause to issue a notice of contemplated action, it may vote to refer the complaint to the attorney general's office for possible prosecution in accordance with the provisions contained in the Uniform Licensing Act.

J. The board may take any other action with regard to the complaint which is within its authority and which is within the law, including referring the complaint to the attorney general and/or the district attorney for prosecution of persons alleged to be practicing without a valid license.

[11/7/98; 16.26.8.10 NMAC - Rn, 16 NMAC 26.8.10, 2/3/06; A, 1/29/15]

16.26.8.11 **PRIVATE CAUSE OF ACTION:** Neither the action nor inaction by the board on any complaint shall preclude the initiation of any private cause of action by the complainant.

[11/7/98; 16.26.8.11 NMAC - Rn, 16 NMAC 26.8.11, 2/3/06]

16.26.8.12 **DISCIPLINARY ACTION:** In accordance with the Uniform Licensing Act, the board has authority to impose penalties in disciplinary matters and may deny, revoke, suspend or impose conditions on a license. The Uniform Licensing Act allows discipline in many forms including but not limited to fines, letters of reprimand, corrective action plans, suspension, and revocation of license.

A. Formal letter of reprimand: The board shall have discretionary authority to issue formal letters of reprimand or warning instead of revocation or suspension. Issuance of formal letters of reprimand shall be subject to the provisions of the Uniform Licensing Act and shall be matters of public record.

B. Notice of Contemplated Action: The board may issue a notice of contemplated action (NCA) when appropriate.

~~[B]~~ **(C).** Prehearing motions: The board may appoint a hearing officer to decide non-dispositive motions filed prior to a hearing. Until such time as the board appoints a hearing officer, the chair of the board shall serve as hearing officer.

~~[C]~~ **(D).** Settlement agreements: Following the issuance of a notice of contemplated action, the board may enter into a settlement agreement with the respondent as a means of resolving a complaint.

~~[D]~~ **(E).** Costs of disciplinary proceedings: Licensees or applicants 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 in Section 61-1-3 NMSA 1978 of the Uniform Licensing Act is not taken by the board.

~~(E)~~ (F). Uniform licensing provisions: In accordance with Section 61-1-7.G NMSA 1978 of the Uniform Licensing Act, a licensee who directly or through an agent intimidates, threatens, injures or takes any adverse action against a person for providing information to the board shall be subject to disciplinary action.

~~(F)~~ (G). License returned to the board: Any license, renewal license or temporary permit issued by the board must be returned to the board subsequent to revocation or suspension. Unless otherwise ordered by the board, a licensee or permit holder whose license has been suspended or revoked must return ~~his/her~~ the license or permit to the board no later than thirty (30) days from receipt of a final order of suspension or revocation.

~~(G)~~ (H). Federal fraud and abuse data bank: As required by federal law, final adverse disciplinary actions taken by the board against applicants or licensees will be reported to the federal health care integrity and protection data bank (or its successor data bank), which was established by the enactment of the federal Health Insurance Portability and Accountability Act of 1996.

[11/7/98; 16.26.8.12 NMAC - Rn, 16 NMAC 26.8.12, 2/3/06; A, 1/29/15]

HISTORY OF 16.26.8 NMAC: [RESERVED]