

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 21 PODIATRISTS
PART 11 DISCIPLINARY PROCEEDINGS

16.21.11.1 ISSUING AGENCY: Regulation and Licensing Department, [NM] Board of Podiatry.
[16.21.11.1 NMAC - N, 10/15/2004, A, XX/XX/19]

16.21.11.2 SCOPE: The provisions of Part 11 apply to all active license holders and applicants for licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a podiatrist licensed by the board.
[16.21.11.2 NMAC - N, 10/15/2004]

16.21.11.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the Podiatry Act, 61-8-6 NMSA 1978, 61-8-11 NMSA 1978, and 61-8-13 NMSA 1978.
[16.21.11.3 NMAC - N, 10/15/2004]

16.21.11.4 DURATION: Permanent.
[16.21.11.4 NMAC - N, 10/15/2004]

16.21.11.5 EFFECTIVE DATE: October 15, 2004, unless a different date is cited at the end of a section.
[16.21.11.5 NMAC - N, 10/15/2004]

16.21.11.6 OBJECTIVE: To establish the procedures for filing complaints against licensees, the disciplinary actions available to the board, the authority to issue investigative subpoenas and to define conduct that constitutes incompetent or unprofessional practice.
[16.21.11.6 NMAC - N, 10/15/2004]

16.21.11.7 DEFINITIONS: [RESERVED]

16.21.11.8 COMPLAINTS: Disciplinary proceedings may be instituted by the sworn complaint of any person, including members of the board. The complaint will be reviewed by the board and any subsequent disciplinary action shall conform with the Uniform Licensing Act, Sections 61-1-1, et. seq., NMSA 1978.

A. No member of the board or any investigators or representatives appointed by the board shall bear liability or be subject to civil damages or criminal prosecutions for any action undertaken or performed within the proper functions of the board.

B. No person or legal entity providing information to the board whether as a report, a complaint or testimony, shall be subject to civil damages or criminal prosecutions.

C. All written and oral communications made by any person to the board or the committee relating to actual or potential disciplinary action, which includes complaints made to the board, shall be confidential communications and are not public records for the purposes of the Public Records Act.

D. Information contained in compliance files [in] is public information and subject to disclosure following formal disciplinary proceedings.

[16.21.11.8 NMAC - Rp, Rule XV.A, 10/15/2004; A, 7/15/2007, A, XX/XX/19]

16.21.11.9 ACTIONS: The board may take any action authorized by the Podiatry Act, Section 61-8-1, et. seq., NMSA 1978 and the Uniform Licensing Act, 61-1-1, et. seq. NMSA 1978 if the board determines that a licensee has violated any of the provisions of the Podiatry Act, the rules, or the Impaired Health Care Provider Act, 61-7-1 NMSA 1978.

[16.21.11.9 NMAC - Rp, Rule XV.B, 10/15/2004, A, XX/XX/19]

16.21.11.10 SUSPENSION, REVOCATION OR REFUSAL OF A LICENSE: For the purpose of the Podiatry Act, Section 61.8.11.10 NMSA 1978 of, the following may apply.

A. "Gross negligence" or "gross incompetency" means, but shall not be limited to, a significant departure from the prevailing standard of care in treating patients, or any act or omission by a podiatrist such as to indicate a willful act or injury to the patient, or such incompetence on the part of the podiatrist as to render the podiatrist unfit to hold himself out to the public as a licensed podiatrist.

B. "Unprofessional conduct" means, but is not limited to:

- (1) performing, or holding oneself out as able to perform, professional services beyond the scope of one's license and field or fields of competence as established by education, experience, training, or any combination thereof; this includes, but is not limited to, the use of any instrument or device in a manner that is not in accordance with the customary standards and practices of the profession;
- (2) practicing beyond the scope of practice of a podiatrist as defined by the Podiatry Act, Section 61-8-1 NMSA 1978, or board rule;
- (3) failure of a podiatrist to comply with the following advertising guidelines:
 - (a) shall not advertise in a false, fraudulent or misleading manner;
 - (b) shall include in the advertisement the podiatrist's name or medical group name, address and telephone number;
- (4) the making of false or misleading statement in communication with patients or potential patients;
- (5) the use of misleading or deceptive titles or designations in a name or title of a podiatric practice, including the unauthorized advertisement of a specialty designation;
- (6) failure to release to a patient copies of that patient's records and x-rays; ~~in a reasonable period of time;~~
- (7) conviction of a felony; a certified copy of the record of the court of conviction shall be proof of such conviction;
- (8) impersonating another person licensed to practice podiatry or permitting or allowing any person to use his license or certificate of registration;
- ~~(9) failure to obtain informed consent prior to incisional surgical treatment;~~
- ~~(10)~~⁹ deliberate and willful failure to reveal, at the request of the board, the incompetent, dishonest, or corrupt practices of another podiatrist licensed or applying for licensure by the board;
- ~~(11)~~¹⁰ accept rebates, or split fees or commissions from any source associated with the service rendered to a patient; provided, however, the sharing of profits in a professional partnership, association, HMO, or similar association shall not be construed as fee-splitting;
- ~~(12)~~¹¹ injudicious prescribing, administration, or dispensing of any drug or medicine;
- ~~(13)~~¹² sexual misconduct;
- ~~(14)~~¹³ the use of a false, fraudulent or deceptive statement in any document connected with the practice of podiatry;
- ~~(15)~~¹⁴ the falsifying of medical records, whether or not for personal gain;
- ~~(16)~~¹⁵ any intentional conduct or practice which is harmful or dangerous to the health of the patient;
- ~~(17)~~¹⁶ fraud, deceit or misrepresentation in any renewal or reinstatement application;
- ~~(18)~~¹⁷ obtaining or attempting to obtain a license through fraud, misrepresentation, or other dishonesty;
- ~~(19)~~¹⁸ cheating on an examination for licensure;
- ~~(20)~~¹⁹ violation of any order of the board, including any probation order;
- ~~(21)~~²⁰ treating patients when the podiatrist is under the influence of alcohol, illegal drugs, or injudicious use of prescription medications; or
- ~~(22)~~²¹ failure to report to the board the involuntary surrender of a license to practice in another state, or involuntary surrender of membership on any medical staff or in any podiatric or professional association or society, in lieu of, and while under disciplinary investigation by any authority;
- ~~(23)~~²² willful abandonment of a patient;
- ~~(24)~~²³ has failed to furnish the board, its investigators or its representatives with information requested by the board or the committee in the course of an official investigation;
- ~~(25)~~²⁴ breach of ethical standards, an inquiry into which the board will begin by reference to the code of ethics of the American podiatric medical association.

[16.21.11.10 NMAC - Rp, Rules VIII, X, & XV, 10/15/2004; A, 7/15/2007; A, 7/29/2011; A, 11/1/2013, A, XX/XX/19]

16.21.11.11 ~~INVESTIGATIVE SUBPOENAS: The board secretary or other designee of the board is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.~~

~~[16.21.11.11 NMAC - N, 10/15/2004]~~

COMPLAINT COMMITTEE: The chair of the board shall appoint at least one member of the board to serve on the complaint committee along with the Board's compliance liaison. A complaint committee shall review each complaint charging a licensed podiatrist with unprofessional conduct or other violations under the Podiatry Act.

A. The complaint committee may refer complaints to other board members or experts in the field for a determination of merit.

B. Upon completion of an investigation, the complaint committee shall submit its recommendations to the board

C. The complaint committee, on behalf of the board, may issue investigative subpoenas. Failure to comply with an investigative subpoena may result in the Board seeking an order from the district court directing the subject of the investigative subpoena to comply.

16.21.11.12 DELEGATION OF AUTHORITY: ~~The authority of the New Mexico board of podiatry to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in NMSA 1978, 40-5A-1, et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall be not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.~~

~~[16.21.11.12 NMAC - N, 7/29/2011]~~

INVESTIGATIVE SUBPOENAS: The board [secretary or other] designee of the board is authorized to issue investigative subpoenas prior to the issuance of a notice of contemplated action and to employ experts with regard to pending investigations.

[16.21.11.11 NMAC - N, 10/15/2004, A, XX/XX/19]

16.21.11.13 DELEGATION OF AUTHORITY: The authority of the New Mexico board of podiatry to issue a notice of contemplated action against any licensee/registrant or applicant for licensure/registration whose name appears on the certified list issued by the New Mexico department of human services, as provided in Sections 40-5A-1 to -13 NMSA 1978, [40-5A-1], et seq, and to refer cases in which notices of contemplated action have been issued for administrative prosecution, is delegated to the administrator of the board. This section shall be not be construed to deprive the board of its authority and power to issue a notice of contemplated action for any apparent violation of the Parental Responsibility Act, and to refer any such case for administrative prosecution.

[16.21.11.12 NMAC - N, 7/29/2011]

HISTORY of 16.21.11 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:

Rule VIII, Dishonest or Unprofessional Conduct Defined, filed 7/21/1980;

Rule X, Gross Malpractice Defined, filed 7/21/1980;

Rule XV, Complaints and Disciplinary Proceedings, filed 1/28/1991.

History of the Repealed Material:

Rule VIII, Dishonest or Unprofessional Conduct Defined (filed 7/21/1980); Rule X, Gross Malpractice Defined (filed 7/21/1980); and Rule XV, Complaints and Disciplinary Proceedings (filed 1/28/1991) all repealed 10/15/2004.

Other History:

Those applicable portions of Rule VIII, Dishonest Or Unprofessional Conduct Defined (filed 7/21/1980); Rule X, Gross Malpractice Defined (filed 7/21/1980); and Rule XV, Complaints and Disciplinary Proceedings (filed 1/28/1991) were replaced by 16.21.11 NMAC, Disciplinary Proceedings, effective 10/15/2004.