

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 34 BARBERS AND COSMETOLOGISTS
PART 13 ADMINISTRATIVE PROCEDURES

16.34.13.1 ISSUING AGENCY: Regulation and Licensing Department, Board of Barbers and Cosmetologists.
[16.34.13.1 NMAC - Rp 16 NMAC 34.13.1, 6/16/2001]

16.34.13.2 SCOPE: All barbers, cosmetologists, hairstylists, estheticians, manicurist/pedicurists, manicurist/estheticians, instructors, electrologists, schools, enterprises, establishments, applicants and consumers.
[16.34.13.2 NMAC - Rp 16 NMAC 34.13.2, 6/16/2001; A, 07/14/2018]

16.34.13.3 STATUTORY AUTHORITY: Section 61-17A-7 - Board Powers and Duties - This authorizes the board to adopt and file rules and regulations necessary to carry out the provisions of the Barbers and Cosmetologists Act.
[16.34.13.3 NMAC - Rp 16 NMAC 34.13.3, 6/16/2001]

16.34.13.4 DURATION: Permanent.
[16.34.13.4 NMAC - Rp 16 NMAC 34.13.4, 6/16/2001]

16.34.13.5 EFFECTIVE DATE: June 16, 2001 unless a later date is cited in the history note at the end of a section.
[16.34.13.5 NMAC - Rp 16 NMAC 34.13.5, 6/16/2001]

16.34.13.6 OBJECTIVE: Pursuant to the Barbers and Cosmetologists Act this part establishes the requirements and standards for complaints, inspections, examinations and tele-conference meetings.
[16.34.13.6 NMAC - Rp 16 NMAC 34.13.6, 6/16/2001]

16.34.13.7 DEFINITIONS: Refer to Part 1.
[16.34.13.7 NMAC - Rp 16 NMAC 34.13.7, 6/16/2001]

16.34.13.8 COMPLAINTS:

- A.** The board, or its designee, will consider a formal complaint filed against a licensee or an establishment provided the complaint is on the proper form, signed and notarized.
 - B.** When a complaint is received on the proper form, the board, or its designee, will write to the licensee the complaint is against and request a response within fifteen days of receipt of such request.
 - C.** The response will be reviewed by a committee designated by the board chairman.
 - D.** If the committee's recommendation is that the complaint be taken before the board, the complaint will be reviewed at the next regularly scheduled board meeting. The executive director will notify all individuals involved of the action taken.
- [16.34.13.8 NMAC - Rp 16 NMAC 34.13.8, 6/16/2001; A, 10/4/2007]

16.34.13.9 INSPECTIONS:

- A.** Schools and establishments licensed by the board are subject to inspection by any member of the board, its employees or agents who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act.
- B.** Outreach enterprise mobile units are subject to inspection by any member of the board, its employees or agent who may enter and inspect at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act. Inspections may occur at the enterprise's base location, a mutually convenient public pullover location, at a unit's appointment destination. The outreach enterprise will maintain with each client's service record a permission statement, provided by the board, signed by the client allowing the board inspection to be conducted on the client's property while services are being performed.
- C.** It shall constitute a violation of the Barbers and Cosmetologists Act when a licensee:
 - (1)** attempts by means of any threat, force, intimidation or violence to deter, interfere with or prevent any inspector or board designee from performing any official duty of the department or board;

(2) willfully resists, does not cooperate with the inspector, does not allow an inspection to occur, delays or obstructs an inspector or board designee in the performance of his/her official duty;

(3) fails to comply with the lawful command of an inspector or board designee in the discharge of his/her official duty.

[16.34.13.9 NMAC - Rp 16 NMAC 34.13.9, 6/16/2001; A, 12/17/2015]

16.34.13.10 EXAMINATION PROCEDURES:

A. To be eligible for the examination, the applicant must meet all requirements and follow all procedures set forth by the board or its designee.

B. Special needs: If an applicant has a physical disability or a special need that prevents him/her from taking the examination under the regular conditions, he/she may request special accommodations. Written documentation of the disability must be submitted to the board office to determine what special accommodations are necessary. If special accommodations are needed to take the exam, the board office or its designee must be notified with the examination application.

C. Policy on cheating: The exchange of information related to exam performance between examinees during the exam is prohibited. Applicants are not allowed to have any written or taped material in the testing area other than the supplies listed and approved for the exam.

[16.34.13.10 NMAC - Rp 16 NMAC 34.13.10, 6/16/2001; A, 7/16/2004; A, 10/4/2007]

16.34.13.11 TELE-CONFERENCE MEETINGS: Pursuant to Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment under the following conditions:

A. this rule shall only apply when it is otherwise difficult or impossible for the member to attend the meeting in person;

B. each member participating by conference telephone must be identified when speaking;

C. all participants must be able to hear each other at the same time;

D. members of the public attending the meeting must be able to hear any member of the board who speaks during the meeting;

E. the member of the board participating by telephone can only vote on a matter if he/she has copies of the documents that are available to the members who are physically present; and

F. the member participating by telephone cannot vote on any matter where the credibility of a witness who physically appears at the meeting is an issue that the board members must consider when voting on a pending matter.

[16.34.13.11 NMAC - Rp 16 NMAC 34.13.11, 6/16/2001]

16.34.13.12 RECORD KEEPING - FEES: Records of monies received in the board office for licenses and fees are maintained in the board office for a period of one year from date of receipt.

[16.34.13.12 NMAC - Rp 16 NMAC 34.13.12, 6/16/2001]

16.34.13.13 PETITIONS:

A. The board shall accept for consideration at its regular meetings where licensee actions are taken, petitions for variance of these rules. If a licensee wishes to petition the board for a variance of these rules, the licensee shall do so by filing with the board, in writing, a petition for variance. Such petition shall cite the specific section of these rules from which a variance is sought. It shall include an explanation of all factors and considerations to support the variance sought. A petition needs to be submitted at least 15 days prior to the board meeting where it is to be considered. The petitioner may also request to personally appear before the board to support the petition. The board will only accept petitions that are submitted in the following format:

(1) list the specific section of the rules to be varied, including part number and section;

(2) provide the petitioner's rationale for the variance;

(3) provide thorough documentation to support the request for variance; and

(4) provide nine copies of the petition and supporting documentation in soft-sided binders for

review by the board.

B. Decisions made by the board on a petition for variance shall be made in the same procedural manner as other actions of the board.

C. The denial of a petition for variance cannot be appealed.

[16.34.13.13 NMAC - N, 6/16/2001; A, 10/4/2007; A, 07/14/2018]

HISTORY OF 16.34.13 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with State Records Center and Archives under:

Rule 12, Administrative Procedures, 5/23/1995.

History of Repealed Material:

16 NMAC 34.13, Administrative Procedures - Repealed, 6/16/2001.